

## GENERAL & SECTOR SPECIFIC GUIDANCE

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## GENERAL GUIDANCE NOTE

### Application-based payments

#### Who should read this?

Any company which offers digital goods and/or services that are purchased via premium rate (i.e. where a charge is made to the consumer's phone bill and/or pre-pay account).

#### What is the purpose of the Guidance?

To assist all companies operating in the digital space arena to better understand and comply with PhonepayPlus' expectations where premium rate is used as the relevant payment mechanism for application-based payments. While some elements within this Guidance also exist in other PhonepayPlus Guidance, this is intended to draw together information into one place for those using application-based PRS payments.

#### What are the key points?

The Rules, as contained in the PhonepayPlus Code of Practice, are outcomes-based and designed to be flexible and adept enough to incorporate technological innovations as mobile payments continue to evolve.

This guidance covers the following key topics:

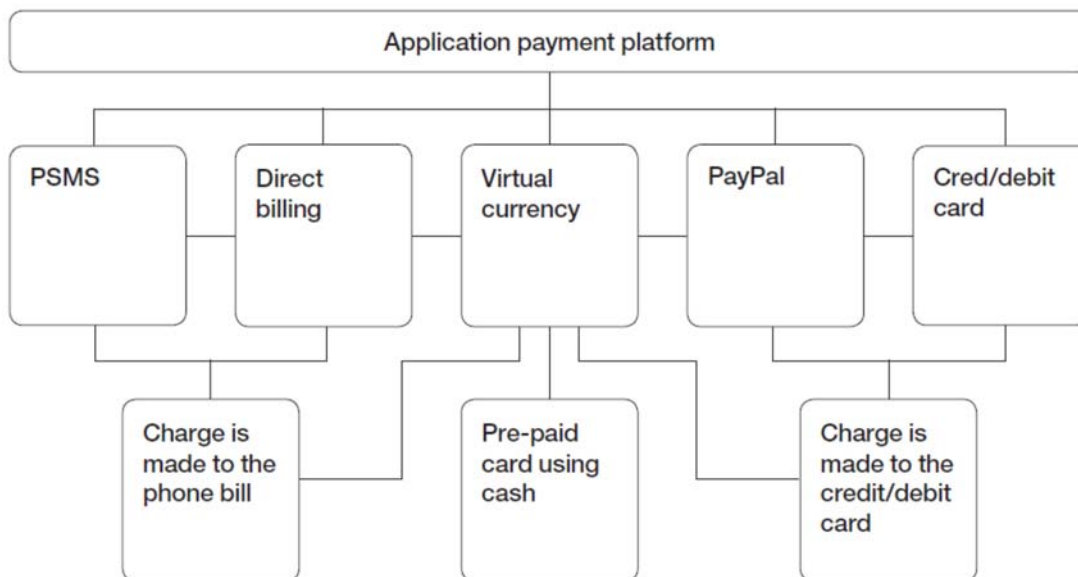
- Recommendations as to what pricing and other key information should be included at the point of sale for both apps (including the use of 'freemium' based models) and in-app purchases (e.g. promotion of virtual currencies), including best practice as to how companies can robustly verify a consumer's consent to charge.
- Identification of potential risks as posed by malicious software ('malware') in compromising the integrity and validity of a consumer's consent to be charged or marketed to.
- A reminder that consumers must have a clear method of exit from a service, which should immediately result in them receiving no further charge once they have exercised it, and recommendations as to how that method of exit can be sufficiently clear to consumers.
- Clarification that consumers should be provided with clear and identifiable contact details to make a complaint or enquiry, and in line with PhonepayPlus' generic expectation that such matters should be resolved quickly and efficiently by the provider concerned.
- Any company offering a mobile-based payment mechanic, such as premium rate, should ensure their services are compatible with each technical network platform and/ or handset on which they are promoted.

**1. What is application-based billing?**

**1.1** In this context, application-based billing refers to a payment made in respect of a premium rate service, that is initiated as a result of a software application resident on a PC, mobile phone or other device (such as a tablet).

**1.2** The following diagram gives some idea of the different payment options that developers currently use for application-based billing:

\*\*When using virtual currency, a consumer's 'virtual wallet' may contain currency purchased by various methods, including premium rate payment



**1.3** Applications that facilitate premium rate payment utilise several different methods of delivery, but essentially these methods currently filter down to three final direct methods of charging consumers: credit/debit card, the user's mobile phone bill and/or pre-pay account, and cash where a pre-paid card is purchased. PhonepayPlus' remit only extends to certain mobile phone bill payments (i.e. payments that relate to services that fall within the definition of "Controlled Premium Rate Services" (or CPRS)).

**1.4** At present, there are three basic models which are used in order to offer products and complete transactions. These are as follows:

- (a) Payment before download of, or access to, an application (this is also covered extensively in the General Guidance Note on Promoting PRS;
- (b) Payment for additional content from within an application;
- (c) Usage initially free, but later chargeable after a time period or after a certain criteria has been met (a model often described as 'freemium').

## 2. What is the purpose of this Guidance?

2.1 This Guidance is designed to help providers achieve the following Outcomes in relation to these three models of mobile-based payment:

Transparency – Outcome: “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”;

Password protection and security – Outcomes: “That consumers of premium rate services are treated fairly and equitably” and “That premium rate services do not cause the unreasonable invasion of consumers’ privacy”;

Complaint handling – Outcome: “That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily”;

Method of exit – Outcome: “That consumers of premium rate services are treated fairly and equitably.

2.2 Key Rules supporting the Transparency Outcome are as follows:

**2.2.1** *Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made [...]*

**2.2.2** *All written information which is material to the consumer’s decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernable.*

**2.2.7** *In the course of any promotion of a premium rate service, written or spoken or 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.*

**2.2.8** *Any messages that are necessary for a consumer to access, use or engage with a service but are provided separately from the service itself must be free of charge.*

2.3 In addition, consumers may be misled by promotional material, which would breach our Fairness Outcome. The key Rule supporting this Outcome is as follows:

**2.3.2** *Premium rate services must not mislead or be likely to mislead in any way.*

**2.4** Password protection and security could, if compromised, result in two Outcomes (Fairness and Privacy) being breached. The key Rules supporting these Outcomes are as follows:

**2.3.3** *Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.*

**2.4.2** *Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent [...]*

**2.5** The key Rule supporting the Complaint-handling Outcome is as follows:

**2.6.2** *Level 2 providers must provide an appropriate and effective complaints process which is free or low-cost.*

**2.6** Lastly, the key Rule supporting Method of exit is as follows:

**2.3.11** *Where the means of termination is not controlled by the consumer there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.*

### **3. Pricing and other key information**

**3.1** Where consumers make payment before they access an application, either as a one-off payment or a subscription, then it is important that they are given all information, including the price, which is likely to influence their decision to purchase before they consent to purchase. The following information should be considered key:

- The total cost of the service, including any initial charges such as a joining fee; where consumers may be offered the opportunity to purchase 'extras' while using the service, we would recommend it as best practice that they are clearly informed of this before their initial purchase.
- The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine).
- Whether the service bills by subscription – i.e. carries a repeat charge which ends only upon termination by the consumer.
- Whether the downloading of an individual application will likely 'trigger' the sending of separate, chargeable push notifications to the end-user's phone.
- Whether the application uses large amounts of data, which could incur a secondary telecommunications charge and so result in consumer 'bill shock'.

*Pricing and other key information for payment before download of an application*

- 3.2** Pricing information will need to be easy to locate within a promotion – i.e. close (proximate) to the access code or link to purchase a service. Where a promotion is contained within a website or a mobile website, it should not be necessary to scroll down (or ‘zoom in’ on a smartphone touchscreen) beyond the initially presented screen in order to discover the price, unless the access code or link to purchase a service is also in the same area.
- 3.3** The price should also be easy to read once it is located, and easy to understand for the reader (i.e. be unlikely to cause confusion) and expressed in UK sterling. Loose or unclear descriptions of price are not acceptable, examples of which would include the following:
- ‘premium rate charges apply’
  - ‘100p’
  - ‘1.50GBP’
- 3.4** In some cases, PhonepayPlus accepts that prominence may take precedent over proximity. An example would be a mobile web page containing a number of access codes or links to downloadable services, which prominently state a price and key terms for all the services on that page.
- 3.5** Where this is the case pricing should be of similar size, and prominence, to the call to action (e.g. it would not be acceptable to have a large, clickable icon which dominates the screen and pricing in a much smaller font). If the call to action is a clickable link/ icon which the consumer clicks to respond, then pricing information should clearly refer to it – e.g. if the link/icon is worded “accept” then the pricing information should state “click accept to pay £4.50” or similarly clear wording.
- 3.6** In addition, where a consumer clicks on a link (such as an icon on a web page or a pop-up) to purchase a service, and is clearly informed of the price and key terms before they are then given an opportunity to actively consent to the purchase, PhonepayPlus would also regard this as acceptable. However, any clickable links or icons should reflect the earlier call to action – e.g. if the call to action states that a consumer must click ‘confirm’ to make a purchase, then the link or icon to purchase should read ‘confirm’ (and not ‘proceed’ or ‘next’ which could be construed as misleading).
- 3.7** Pricing should be presented in a horizontal format, and should be easily legible in context with the media used. It should be presented in a font size that does not require close examination by a reader with average eyesight, and this should take into account whether the information is static or scrolling. Lastly, any colour combination used to present the price or other key information should not affect clarity.

*Key information where a service can be accessed on more than one device*

- 3.8** Some applications, such as those which allow electronic access to a newspaper or other journal, may be accessible on more than one device – e.g. PC, mobile phone, tablet, etc. Where this is the case, the consumer should be clearly informed about which devices their payment allows them to access content on (if it is not all devices).
- 3.9** In addition, it should be made clear which devices will support the application, if this is not already clear from a list or from clear minimum device specifications. This is in order to ensure that consumers do not purchase a service that is not then technically compatible with the device they intend to use to access it.

*'Freemium' services*

- 3.10** An increasing number of services involve consumers accessing an application without making any initial payment to do so. This is sometimes known as 'freemium', when there is no initial access charge to an application. The application is then monetised in one of the following ways:
- Consumers are offered the chance to purchase extra content (such as 'power-ups' or 'add-ons' for an on-screen avatar, or virtual gifts within dating services) while engaged in it;
  - Consumers access a demo version of an application (for example, one level of a video game) and then are offered the chance to purchase the full version, or additional, chargeable levels of the demo;
  - Consumers access an application for a limited free period of time in the clear knowledge that they will be charged once this time period has elapsed.
- 3.11** Where an application is free for an initial period, then PhonepayPlus would consider it acceptable to promote the free element of the service, provided the following was also true:
- The promotion should clearly state what is and isn't free – i.e. any use of the word 'free' (or variations) must be clearly qualified in a way that is immediately visible, understandable and proximate;
  - The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences. If both of these have been clearly provided before the consumer consents to the free trial then it is not a requirement to remind the consumer before charging commences. However, it is good practice to remind consumers in this situation, using on-screen notifications, text messages or emails as appropriate;
  - In order to avoid consumer confusion, charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service comes to an end. Charging should not commence beyond what is reasonably practicable from this point, as consumers may be likely to have forgotten their initial opt-in to the free element and such charging may thereby generate consumer distrust.



*Pricing and other key information for purchases within an application*

**3.12** When consumers make additional purchases while using an application-based service, whether they have made an initial payment to access the service or not, it is important they are aware of the pricing and other key terms, as set out in paragraphs 10-14 above. However, paragraph 2.2.1 of the Code states:

**2.2.1** *Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*

**3.13** PhonepayPlus interprets this as a need to clearly inform the consumer of the price of a purchase before they consent to it, and not necessarily at each stage of a promotion with multiple steps. However, when purchases take place within the middle of a service, especially one with a relatively immersive real-time experience (such as a video game), PhonepayPlus recognises that providers will wish to ensure that presenting consumers with purchase information, and having them consent to it, does not impact on the consumers' experience of the service any more than is necessary.

**3.14** With this consideration in mind, PhonepayPlus sets out the following (non- exhaustive) methods around the provision of pricing and other key information when consumers purchase via an application which would be likely to be considered acceptable:

- (a) Consumers are informed of the price of purchase each time they are presented with an extra purchase option/item. Once a purchase option/ item has been selected, they must positively confirm payment in an auditable way and be sent a clearly worded receipt for the purchase<sup>1</sup>. This receipt can be delivered either by SMS or email, or be easily accessible records within the application architecture, and should clearly contain the details of the transaction. While we would not expect consumers to be informed of customer contact details on each occasion, they must have previously been clearly informed;
- (b) Consumers are clearly informed of the price of any extra purchase options/items before they begin to interact with the service, and then each time they log on after that – in practice, this will work only where there is a uniform price for each extra purchase, or a small number of variant prices. If this has happened, then consumers need not be informed of the price each time they browse or otherwise select an extra purchase option/item, but rather just be reminded that there is a charge. As before, once a consumer has selected, they must positively confirm payment in an auditable way and be sent a clearly worded receipt for the purchase<sup>2</sup>, containing contact details in the event of consumer complaint or enquiry.

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<sup>1</sup> In circumstances where a consumer's interaction with a service would require multiple receipts to be sent in a short space of time – e.g. purchases made during a video game – which may interrupt the flow of the interaction, then it would be acceptable to send receipts for each purchase at the conclusion of the gaming experience.

<sup>2</sup> For more information about acceptable methods of receipt, and information the receipt should contain, please reference paragraph 3.14 (a))



**3.15** Providers should note that informing consumers of the price of extra items at the start of a video game or virtual world, and then charging them without further consent as soon as their avatar makes contact with extra items within the service, is unlikely to be considered acceptable by a PhonepayPlus Tribunal, unless consent for extra charging (with the consumer fully aware of the full details of the likely charges) has been obtained in advance in a positive, auditable way.

**3.16** Providers should also note two specific requirements about receipts for purchases:

- They should not contain cross-promotion for any other service, as this is likely to compromise consumer awareness as to price confirmation information.
- The receipt should either be sent by someone other than the developer, or a record of the contents of the receipt, including a time-stamp for when it was sent, should be retained by a party independent of the developer.

#### **4. Method of Exit**

**4.1** PhonepayPlus' General Guidance Note on ['Method of exit from a service'](#) sets out PhonepayPlus' expectations around the requirement that consumers are provided with "a simple means of permanent exit from the service" as set out at Rule 2.3.11 of our Code.

**4.2** The Guidance recognises that there may be different technology or service mechanics which require a different method of exit from the consumer texting the 'STOP' command to a shortcode. However, the Guidance recommends in the strongest possible terms that providers continue to use the 'STOP' command as a method of exit where it is technically possible and practical (i.e. it does not add extra cost to the consumer) to do so.

**4.3** In addition to the expectation set out in the General Guidance Note on ['Method of exit from a service'](#), PhonepayPlus would have the following consideration and expectation around consumer exit from applications:

- (a) Where the ability to charge will continue unless a consumer uninstalls an application, then consumers must be made fully aware of this, and the process for uninstalling the app must be clear and simple. Once the application is uninstalled, all charging must cease.
- (b) Where an application charges consumers on a regular basis once installed, and without further consumer consent – i.e. the application does not facilitate further purchase to which the consumer consents, but rather charges in the manner of a subscription – then it will be considered to be a subscription service and PhonepayPlus would strongly recommend the use of the 'STOP' command in all cases where it is technically possible to do so. Providers should also be aware that such services will be required to comply with our Code in terms of sending spend reminders (see paragraph 2.3.12d).
- (c) Where an application charges consumers on a regular basis once installed (see b) above) and it is not possible to use the 'STOP' command, then PhonepayPlus would recommend that the method of exit is clearly associated with the method by which the application was purchased.

## 5. Misleading promotions

5.1 PhonepayPlus expects that all promotions are prepared with a due sense of responsibility to consumers and promotions should not make any factual claims that cannot be supported by evidence, if later requested by PhonepayPlus to do so. Some examples of promotions that would be likely to be considered misleading by a PhonepayPlus Tribunal are as follows:

- Omission of information about a service being subscription-billed (or omission of any of the key subscription information, such as frequency of billing and how to opt out);
- Implication that a service is free of charge, if this is not the case;
- Promotions which mislead as to the type of service on offer (for example, a 'glamour' service should not be promoted as an adult service, or an unlicensed video game should not be promoted as an officially licensed product).

## 6. Virtual currency

6.1 Another method of mobile-based payment is the opportunity for consumers to purchase virtual credits, tokens, or other non-sovereign currency within an application. These can then be exchanged, as if they were currency, for a variety of services which may or may not be offered within the same application in which the credits or tokens were first purchased.

6.2 Virtual currency can often be purchased via a variety of different payment methods, of which premium rate billing is only one.

6.3 Our market research and testing, combined with some consumer evidence of issues and concerns, has identified a range of potential risks around purchase of virtual currency through premium rate services (PRS), all of which relate to whether transparent key information is provided to consumers in order that they can make an informed decision before consenting to purchase. For these reasons, PhonepayPlus offers the following guidance to ensure Code compliance:

- (a) The exchange rate of the currency (e.g. 100 credits = £1) should be clear and prominent to the method of purchase;
- (b) Consumers should be clearly informed if the virtual currency has an expiry date and, if so, what that date is;
- (c) Consumers should be clearly informed if unused currency cannot be redeemed;
- (d) Consumers should be clearly informed whether the virtual currency is specific to one application, and if it cannot be used outside of that application;
- (e) Providers of virtual currency should not alter the 'exchange rate' without due warning to consumers that the rate is subject to alteration, notification when the rate changes, and notification of what the new rate will be. Frequent alteration of the exchange rate may result in providers being found to be in breach of paragraph 2.3.2 of the Code (Misleading);
- (f) Consumers of virtual currency bought using PRS should be able to switch their method of payment, where other methods are available, easily and without undue complication;

- (g) It would be considered good practice if, once virtual currency has been purchased, the price of any services which can subsequently be bought were clearly displayed next to the method of consent to purchase. A failure to do so could, in some circumstances, be considered misleading by a consumer, where consumers have purchased the virtual currency using PRS as a billing mechanic. As an alternative, and where the range of items that can be bought using a virtual currency is not extensive, we would suggest the cost of items which can be bought using virtual currency is made clear to the consumer prior to purchase.

## 7. Password protection and security

### *Consumer consent to charging*

7.1 PhonepayPlus expects all PRS purchases to be clearly auditable. For avoidance of doubt, this means that a consumer's consent must be provided in a way which is robust. Ordinarily, PRS purchases initiated using an MO message (mobile origination – i.e. sent by the consumer to a shortcode), or made using Payforit, would be considered to be robust in terms of evidence which proves consumer consent. However, where PRS purchases are made without either of these two elements being present, then factors which can contribute to robustness are:

- An opt-in is PIN-protected (e.g. the consumer must enter their phone number to receive a unique PIN to their phone, which is then re-entered into a website);
- A record is taken of the opt-in and the data is time-stamped in an appropriately secure web format (e.g. https or VPN);
- Records are taken and maintained by a third-party company which does not derive income from any PRS. We may consider representations that allow a third-party company which receives no direct share of PRS revenue from the transaction, but does make revenue from other PRS, to take and maintain records. Where neither of these are the case and the provider wishes to establish its own system for securely recording purchases, then the burden of proof and level of scrutiny will likely be greater in the event of an investigation. In all 3 of the methods outlined here, it will have to be proven to PhonepayPlus' satisfaction that these records cannot be created without consumer involvement, or tampered with in any way, once created;
- PhonepayPlus is provided with raw opt-in data (i.e. access to records, not an Excel sheet of records which have been transcribed), and real-time access to this opt-in data upon request. This may take the form of giving PhonepayPlus password-protected access to a system of opt-in records;
- Any other evidence which demonstrates that the opt-in cannot be interfered with.

For more details around this area, please see the General Guidance Note on ['Consent to charge'](#).

7.2 Lastly, PhonepayPlus is aware of the potential for some smart devices to download applications containing malicious software ('malware'), which may put consumers of PRS at risk. These risks can be currently identified as follows:

- The sending of a text message containing a keyword which consents to subsequent charging to PRS shortcodes without the consumer's knowledge or consent. This can be compounded by the use of coding to prevent the end-user from seeing a

mobile terminating (MT) message to raise suspicion that they are, in actual fact, being billed for the service in question.

- The dialling of PRS numbers without the consumer's knowledge or consent.
- The illicit access of a consumer's contact list (which could include numbers on the consumer's SIM card, email addresses or social networking contacts) and the subsequent relaying of those contacts to another party without the consumer's consent, in order to, for example, build up unauthorised marketing lists.
- The illicit access of a consumer's handset's International Mobile Subscriber Identity (IMSI) number (i.e. without consumer knowledge or consent, and for the purpose of unsolicited PRS charging or marketing).

### *Password protection*

- 7.3** Where an application has been accessed, a secure audit of consumer consent is often provided by means of the consumer having entered a password each time they re-engage the service and before they commit to purchases. Password protection can be built into a digital distribution platform (e.g. Apple's iTunes Store, the Android Marketplace, etc.), or an application itself.
- 7.4** Such a mechanic, while potentially verifying that consent to purchase came from the consumer's handset if properly encrypted, does not always provide complete protection from unauthorised charges. Where consumers have accessed an application from which it is relatively easy and quick to make repeat purchases, there have been instances of accidental unauthorised purchases being made through mobile devices accessed by children, or others, which the owner of the handset themselves did not consent.
- 7.5** As a result, PhonepayPlus would additionally recommend (by way of best practice) that regularly accessed applications be protected by a requirement to enter a password each time the application is re-opened. However, where there is an allegation that someone other than the consumer has purchased from an already opened application, PhonepayPlus will consider the case on its own merits and make an assessment as to how likely it was that the purchase was authorised by the consumer. We would expect providers to offer refunds where unauthorised use was clear, but would also consider the degree of culpability of an affected consumer in not protecting their password or controlling access to their phone account.

## **8. Complaint handling**

- 8.1** Responsibility for handling complaints about a service rests with the Level 2 provider, as set out in further detail in the General Guidance Note on the '[Complaint-handling process](#)', in which Level 1 providers are expected to step in and take over the process in situations where a Level 2 provider has neglected its duties in any way.
- 8.2** Mobile-based payment, especially where virtual currency is involved, may have several component parts to a service delivery-chain. In addition, the service may be delivered by a means (e.g. through an ISP connection) other than the method of purchase through a Public Services Telephone Network (PSTN); and, in the case of virtual currency, it may be

delivered with a significant time delay from when the currency was first purchased (where the consumer does not immediately use the currency they have purchased).

**8.3** As with all PRS, we would expect consumers to be clearly provided with a non- PRS number for the purposes of making enquiries or complaints about a service before they consent to purchase. It is important that all companies within a service delivery-chain are able to quickly direct the consumer to the right party to deal with their complaint, albeit that the Level 2 provider retains responsibility for the complaint.

**8.4** It may also be considered good practice for the receipt of customer care calls to be handled by an aggregator with direct network connection. This is so that the aggregator concerned can more quickly identify any issue within an application which is causing a rapid increase in, or high volume of, calls and take appropriate action to address these issues with the developer. Where this is not the case, then the organisation handling customer complaints should share such information with the aggregator as soon as is practicable.

## **9. Technical quality**

**9.1** All providers of services offered via a mobile-based payment mechanic should ensure their services are compatible with each technical network platform and/ or handset on which they are promoted. Where this is not possible, consumers with incompatible devices should be prevented from purchasing the service in question.

## GENERAL GUIDANCE NOTE

### Complaint-handling process

#### Who should read this?

All Network operators and providers involved in the provision of premium rate services (PRS) to consumers. Part 3 of the Code of Practice deals with responsibilities spread across the PRS value chain, and it makes clear all parties bear some responsibility for the provision of a positive consumer experience when matters arise during or after the use of such services.

#### What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations in relation to consumer complaint handling, by way of the following:

- Clearly defining the roles and responsibilities of relevant Network operators, and all Level 1 and Level 2 providers in the chain;
  - **Note:** Consumer facing Network Operators that are also Terminating Network Operators fall under PhonepayPlus regulation and therefore are obliged to comply with the Code. Other consumer facing network operators should also read this Guidance as their role forms an essential part of the complaint-handling process.
- Setting out some desired consumer outcomes, along with an example of how to deliver the 'minimum standard of customer care' that would achieve them.

Obligations on providers are set out in paragraphs 2.6 and 3.1.1(d) of the [PhonepayPlus Code of Practice](#). At 3.1 it states:

#### 3.1 General responsibilities

All Network operators, Level 1 and Level 2 Providers must:

- 3.1.1 ensure that PhonepayPlus regulation is satisfactorily maintained by;
- (d) taking all reasonable steps to ensure that consumer complaints are resolved quickly and fairly and that any redress is provided quickly and easily.

It is important to consider what role each party plays in relation to complaint handling. While network operators and providers may have contractual arrangements in place assigning responsibility proportionately, parties need to consider how the consumer is likely to engage with them in the result of an issue arising.

Where possible parties should have a clear idea of how complaints are handled by others in the value chain and ensure they are equipped to assist where necessary to ensure consumer complaints are resolved quickly and fairly whatever the circumstances.



## What are the key points?

- This General Guidance Note ('the Guidance') sets out PhonepayPlus' expectations with regard to the complaint-handling process for all providers/services.
- Responsibility for complaint handling lies with the Level 2 provider in the first instance.
- Network operators (including customer facing ones) and/or Level 1 providers are expected to step in and take over the process in situations where a Level 2 provider is unable to fulfil or otherwise neglected its duties in any way.
- Separate information on complaint-handling processes for 'broadcast' is set out in section 5 below.

### 1. Desired outcomes – what we believe good complaint handling should look like

- 1.1 Consumers have certain expectations when, in their mind, an issue has arisen that gives them cause for complaint. We believe that these expectations give rise to certain outcomes, as follows:
- Pursuing a complaint should not unduly cost the consumer in terms of time or money.
  - Consumers with valid claims should have to make as few calls as possible in order to find redress.
  - Providers should be courteous and respectful to consumers at all times.
  - Consumers should be kept informed as to the status of their complaint.
  - Providers should make every reasonable effort to resolve a consumer's complaint.
  - The Level 2 provider should take the lead in providing redress (in the case of a valid complaint). Where a Level 2 provider does not, and the Network operator and/or Level 1 provider is aware of a problem, they must take the initiative as appropriate and proactively seek to provide redress.
  - Consumers must have recourse to an objective third party to arbitrate over disputes.

### 2. Complaint-handling process

- 2.1 The Code focusses on quick and easy resolution of complaints. This involves consumers having access to both information and a process by which issues can be identified, shared, and considered.

#### *Access to complaint handling process*

- 2.2 The 13<sup>th</sup> Code no longer requires that a non-PRS telephone number is available, and promoted to consumers, in all circumstances. However PhonepayPlus still expects a non-PRS phone number to be available in circumstances where it is the most appropriate and effective means for customers to gain access to support.



### Appropriate means of access

- 2.3** Providers must consider a number of factors before settling on an appropriate means of access for complaint handling, or customer care. This includes:
- The means of access to the service, including any security measure adopted – for example, services accessed by smartphone or tablet may involve just a phone number to access it or may require users to register an email account.
  - The nature of the problems that may arise, regardless of likelihood, and the type of remedial support that may be necessary – for example, a web-based service may develop a technical fault and those issues may also prevent affected individuals using a web-based complaint handling system.
  - Intuitive design – for example, where the service design allows for easy access to the start point of any complaint handling process as soon as the issue is identifiable.

### Effective

- 2.4** The Code refers to the ability “*to have complaints resolved quickly and easily...and that any redress is provided quickly and easily*”. Complaint handling is therefore not just about gathering information from a complainant, but being able to resolve matters fully and to provide a proper form of redress.
- 2.5** Just by using a non-PRS number for the purpose of receiving complaints does not necessarily mean the complaint handling process will be effective. Traditionally it has enabled consumers to explain problems in their own words and to answer any questions to enable providers to resolve matters effectively. Any alternative means of access to complaint handling processes must address the challenges with delivering high quality customer care.
- 2.6** When developing the process, providers ought to consider:
- How the data is gathered,
  - How it is stored,
  - How issues are reviewed or assessed, and
  - How the matter is escalated (where necessary).
  - The process ought to operate in such a way that gives the complainant confidence that their complaint is being properly considered, and dealt with in a timely manner.
- 2.7** All support services should evolve based on experience with the way that the process is working. Any defects identified in the complaint handling process should lead to amendments to it.
- 2.8** For example, in light of the consumer not being in conversation with a helpline operator, to be effective, any alternative process should give initial feedback or provide an acknowledgement of the complaint. This must be presented in some form shortly after the initiation of the complaint, immediately if possible.

**2.9** The alternative process should also ensure it results in swift redress being provided if necessary.

- If the information needed to begin a claim for financial redress such as for a refund – is known, the process should be designed to gather such information at the first feasible opportunity.
- Where any process has multiple steps, and some of those are unreasonable, it is likely to be considered an ineffective process and in breach of the Code.

*Where consumers contact someone other than the Level 2 provider*

**2.10** PhonepayPlus recognises that issues can come to the attention of the consumer at different times and in different circumstances.

- Sometimes the issue will be identified while the consumer is using the service itself, and will require assistance in the context of dealing with a fault or getting help in making further or better use of it.
- Sometimes it may be an issue that is identified at the point when the charges are considered, such as when a message is received on the consumer's phone; or when the consumer inspects their phone bill.

**2.11** Depending on the context, the behaviour of the consumer in raising a complaint is likely to be different. Level 2 providers must equip both the consumer and relevant third parties, such as consumer facing Network operators, in such a way that enables the consumer to seek help and, where necessary, effective redress for issues when they arise. This may involve:

- Arrangements to liaise directly with consumer facing networks (such as BT, Virgin, Sky and the mobile networks) to ensure that they have the information to quickly redirect consumers who contact their phone provider first (usually in response to their phone bill) to the Level 2 provider.
- Where the Level 2 provider has a clear complaint-handling process, clear channels of communication with such third parties need to be established so that consumers can be directed to start that process quickly and easily. Where such a process is communicated, and is considered effective, Network operators and Level 1 providers ought to support the Level 2 provider by following the stipulated process.

**2.12** Ultimately, consumers will contact the easiest person to find by the most convenient means available to them. This will be based on:

- Their knowledge of the service,
- Information given to them during their previous use and engagement with it, and
- Their ability to locate additional information where necessary.

**2.13** Arguably the first step in the complaint-handling process involves the Level 2 provider giving clear branding for the service and identifying themselves as the service provider. This means any gaps in the consumer's knowledge, such as specific helpline numbers or email contacts to seek support, can be addressed by the consumer looking up such information on an internet search engine or by calling their Network operator or PhonepayPlus and asking about the service or provider by name.

- 2.14** Even though the Code does not specifically require the Level 2 provider to run a call centre and have a non-PRS number in place and promoted to consumers, this may still be the most effective means of giving consumers access to redress.
- 2.15** The reason for this may be the journey taken by the consumer prior to them seeking direct contact with the Level 2 provider. If they have called their Network operator first, they are already on the phone and may wish to be given a telephone number to make another call, this time directly to the provider who can deal with the issue. If a phone number is available, it should be promoted transparently to consumers using the service in order that they can take the option of noting it and calling the provider directly without seeking assistance from the network operator first.
- 2.16** However, where a service involves email-based account security or identification; or it operates in a manner that includes internet based communication with other users or service operators – then it is likely consumers will consider a similar email or internet based solution first when accessing any complaint-handling process. Above all it must be quick, easy and accessible to the consumers in order to progress their complaint to a conclusion.
- 3. Suggested timetable for responses to be made (an example process)**
- 3.1** Some complaints will take longer to process than others – either because the issue is more complicated than normal, or perhaps because, for reasons outside of the provider’s control, they are unable to act as quickly as they would like. In practice, a PhonepayPlus Tribunal is likely to look at the facts of each case, and decide on its merits. This is why we have purposely chosen not to give any prescriptive timelines for calls to be made within the example process shown above.
- 3.2** However, we think it may be helpful to offer some advice on what we expect it to look like in a typical case:
- Where a consumer has contacted their Network operator and questions the legitimacy of the charges, we believe that the Network operator should refer the consumer to the provider directly to seek resolution of the issue in the first instance. However, we expect the Network operator to invite the consumer to call them back after **five working days**, if a suitable response is not given by the provider.
  - Where the consumer chooses to leave a message or send an email – and a resolution cannot be made immediately – they should receive a ‘holding response’ within **one working day**. Regardless of the initial contact, where a Level 1 or Level 2 provider becomes aware of a problem, we believe that a resolution should be offered to that consumer within **five working days**.
  - Where a resolution has not been reached with the Level 2 provider, and the consumer has resorted to calling the MNO back, the Level 1 provider (or MNO) should contact the consumer within **five working days** with a proposed resolution.

#### 4. 'Basic rate' call charges requirement

- 4.1 Since 13 June 2014, regulations introduced by the Department for Business, Innovation and Skills (BIS)<sup>3</sup> apply a limit to the cost to consumers accessing customer helplines. The regulations do not demand that companies or organisations provide a helpline, but where they do provide one, paragraph 41 of the Regulations prohibits customer helplines charging consumers at any more than basic rate for calls made in relation to their purchases.
- 4.2 This precludes the use of numbers on the 09, 087 and 084 ranges to operate a telephone line for consumer contact about a product already purchased, whether charged via PRS or not, or to cancel a contract.
- 4.3 BIS has produced guidance in relation to the Regulations, which can be accessed via the gov.uk website<sup>4</sup>. PRS providers should pay particular attention to Section J of this guidance.

##### *What about PRS that provides technical support?*

- 4.4 BIS guidance sets out that this need not come under Regulation 41, provided it is clear to the consumer that the line exists to provide technical support for a product already purchased (e.g. a laptop, tablet, software, machinery, white goods or other electronics), with that technical support being charged separately from the original purchase via the cost of the call.
- 4.5 Technical support lines which carry a premium rate charge must not provide the facility to complain about a product already purchased.

##### *What about 087 services which provide something other than a consumer complaint facility?*

- 4.6 Where an 087 number is used to provide a PRS (such as chat, conference call facilities, data capture – i.e. receiving an order and/or payment for a product from consumers who call, or other forms of entertainment and information) its use will be compliant with the Regulations as long as no consumer complaint facility is provided on the 087 number.
- 4.7 However providers of the such PRS will no longer be permitted to use any other 087 or other premium rate number, to receive complaints about the premium rate service.
- 4.8 PhonepayPlus recommends that Level 2 providers who use 087 numbers do the following:
- a) Review their current services against the BIS Guidance in order to ascertain their likely compliance with the Regulations.
  - b) Take appropriate steps to alter any services which are not compliant, particularly in respect of complaint handling arrangements for 087 services, or transfer services to a compliant number range.
  - c) Ensure that premium rate services continue to operate in full compliance with outcome 2.6 of our Code relating to 'complaint handling', and relevant rules, using suitable number ranges for complaints handled via the telephone.

<sup>3</sup> Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf)

4.9 PhonepayPlus also recommends that Level 1 providers and Network operators that operate and provide numbers for the service types outlined above note the Regulations and conduct appropriate due diligence and risk control to ensure they are not facilitating unlawful practices through the operation or provision of numbers.

5. **Guidance on what might be expected from Level 2 providers in relation to Rule 2.6.6**

5.1 Rule 2.6.6 of the [PhonepayPlus Code of Practice](#) states the following:

**2.6.6**

*Level 2 providers must provide upon request to PhonepayPlus such information that allows examination of how they have handled any consumer complaint.*

5.2 When considering whether a Level 2 provider has dealt with a complaint in line with the relevant Code Outcome, PhonepayPlus is likely to request the following evidence from that provider:

- A record of the initial contact from the consumer – if this is a letter or email, then our expectation is that a copy will be provided. If the initial contact is through a telephone call, then a recording of the call should ideally be provided, or in cases where no recording is available, a time-logged record of the call, consumer details and a clear description of the consumer's issue.
- Records of any and all subsequent activity in relation to the consumer's complaint once it has been initially logged – this would include any internal emails relating to the complaint, a record of any key decisions or actions taken, a record of all subsequent contact with the consumer (whether via letter, email or call) and any data records which have been referenced in relation to the consumer's complaint (e.g. call recordings, records showing the receipt of MO (mobile originating) messages or the dispatch of MT (mobile terminating) messages, records showing verifiable consent to web-based charging).
- Records of any final decision made in relation to the consumer's complaint, and of any refund issued (e.g. when any refund was issued, how and for what amount) – we would consider it helpful to record whether the consumer agreed with the decision, or not.

5.3 In order to ensure that such records are available to PhonepayPlus for a reasonable period while carrying out any further investigation or enquiry, providers should retain these details for three months after the consumer's initial complaint.

## 6. Guidance on ‘broadcast’ complaint-handling processes

- 6.1** With regard to complaints made about services operating within the ‘broadcast’ medium (e.g. TV voting), where a complaint relates to both the editorial and the premium rate element of a service or promotion, our expectation is that the broadcaster will apply a complaints resolution process to the premium rate element which complies with any minimum requirements as set out in the rules in [PhonepayPlus Code of Practice](#) around ‘Complaint handling’ (paragraph 2.6).
- 6.2** To be clear, PhonepayPlus’ rules on complaint handling would not apply to complaints which do not relate to any alleged breach of [PhonepayPlus Code of Practice](#) (for example they would not apply to purely editorial complaints that do not involve any element related to PRS.). Consumers should not be led to assume otherwise. Consumers who have complaints about purely editorial content should refer to the Ofcom Broadcast Code:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/broadcastingcode2011.pdf>

## GENERAL GUIDANCE NOTE

### Consent to Charge

#### Who should read this?

All Network operators and providers involved in the provision of premium rate services to consumers.

#### What is the purpose of the Guidance?

To assist networks and providers by clarifying PhonepayPlus' expectations by way of the fulfilling the following Rules of the [PhonepayPlus Code of Practice](#):

#### 2.3.3

*Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.*

#### What are the key points?

This Guidance covers the following areas of consent to charging:

- Why is the capability to verify your right to charge important?
- What is robust verification to consent to charge?
  - Voice services
  - Charges to mobile devices
  - Premium SMS charges
  - Web-based charge initiation
  - Network involvement in MSISDN capture
  - Pay per view services



## 1. Why is the capability to verify your right to charge important?

- 1.1 Premium rate services allow a charge to be generated to a consumer's phone bill, whether pre-paid or post-paid as part of a contract with an originating network, directly and remotely. A major concern then is that they can be charged without having requested or consented to any purchase.
- 1.2 It is important to understand the need for transparency when establishing any consent to charge a consumer via PRS payment. The key service information necessary to comply with rule 2.2.4 of the [PhonepayPlus Code of Practice](#) must be presented clearly and with suitable proximity and prominence. This is to ensure any action on the consumers part reflects a genuine intention to consent to the charges triggered by the action.<sup>5</sup>
- 1.3 We treat matters such as these with the utmost seriousness and will always work closely with the appropriate authorities (such as the Serious Fraud Office and the local police) and continue to provide them with the evidence they require in order to prosecute those who commit offences.
- 1.4 Without prejudicing the primacy of such criminal cases, where a PhonepayPlus Tribunal finds that a service has breached the Code in this respect they can also order refunds for all those consumers affected, whether they have made a complaint to PhonepayPlus or not, and PhonepayPlus will generally do its best to ensure that the perpetrators of unauthorized charges do not profit from them at the expense of the PRS market's reputation.
- 1.5 For this reason, it is essential that providers can provide robust evidence for each and every premium rate charge.

## 2. What is robust verification of consent to charge?

- 2.1 Robust verification of consent to charge means that the right of the provider to generate a charge to the consumer's communication bill is properly verifiable. By 'properly verifiable', we mean a clear audit trail that categorically cannot have been initiated by anything else other than a consumer legitimately consenting, and cannot have been interfered with since the record was created.

### *For Premium SMS charges*

- 2.2 PhonepayPlus considers that a fully robust way to evidence consent for a PSMS charge is for the consumer to initiate the transaction with a Mobile Originating message (or 'MO') to a shortcode. In this way, the billing Mobile Network Operator's ('MNO') record is sufficiently robust to verify the charge.

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<sup>5</sup> Further information can be found in the General Guidance on [Promoting PRS](#)

*For non-geographic numbers and voice shortcodes*

- 2.3** In the case of calls to non-geographic numbers (such as 09 or 087) or to voice shortcodes, robust verification can take the form of an originating Network operator's record of the consumer's initiation of the call.
- 2.4** In cases where a consumer disputes such a charge, all other circumstances being equal, we will accept that the charge was valid, if such a record by an originating Network operator is submitted.

*For other charges to a mobile device*

- 2.5** For charges to mobile communications devices, robust verification requires different considerations. In part this is because it can take place in several ways:
- 1) A premium SMS (PSMS) charge, where the consumer is charged when the provider receives a PSMS from them or when they receive a PSMS from the provider
  - 2) A charge initiated by the consumer entering their mobile number on a website
  - 3) A charge initiated by the consumer on a website where pre-identification of their number by their mobile network facilitates charging.

*For charges generated by entering a mobile number on a website*

- 2.6** Some services are initiated by a consumer entering a mobile number on a website, or a mobile website (i.e. a website browsed on the mobile handset). This is most frequently where the consumer browses the site on a laptop or tablet, or where they browse via wi-fi – and not their mobile network's internet provision – on their phone. Consumers do not always appreciate that entering their number can result in a charge being generated to their mobile device, or that the entry of their number can be understood as being consent to future marketing by the provider concerned.
- 2.7** The risk of harm is increased where a consumer enters a mobile number belonging to someone else (either by mistake or deliberately) and generates a charge to a second – unwitting – consumer. Even if there are no chargeable messages, just free marketing messages, the second consumer often feels that their privacy has been invaded (see Part Two for further information around marketing).
- 2.8** So in these circumstances we recommend that consumers should always be encouraged to initiate services, or future marketing, with an MO message.
- 2.9** If alternative means of initiation are considered, the following factors must be considered:
- All costs and other charging information should be clearly stated and be proximate and prominent to the field where the consumer is to enter their number;
  - After entering the number, a Mobile Terminating message ('MT') should be sent to the consumer. As an example this should state:  
*"FreeMsg: Your PIN is [we would suggest an alphanumeric format for better security], please delete if received in error"*

- 2.10** Instructions on the website should make clear that the consumer has to enter the PIN they have received back into another field (preferably directly below the first field where they have entered their mobile number). If the PIN entered matches the PIN which was sent by text to the consumer, this would be considered to verify consent to a charge provided that:
- A record is taken of both elements of the opt-in process (i.e. the entry of the number and the generation of a text with a unique PIN, and the re-entry of that PIN back into the website), and data is time-stamped in an appropriately secure web format (e.g. via https, VPN or SQL protocols);
  - The PIN is not indefinitely valid – i.e. if no PIN is entered into the website within three hours of the MT message being sent, then the PIN should cease to be valid to that consumer;
  - The records are taken and maintained by a third-party company which does not derive income from this PRS. We may consider representations that allow a third-party company which receives no direct share of PRS revenue from the transaction, but does make revenue from other PRS, to take and maintain records. It will have to be proven to PhonepayPlus' satisfaction that these records cannot be created with faked consumer involvement, or tampered with in any way once created; and
  - PhonepayPlus is provided with raw opt-in data (i.e. access to records, not an Excel sheet of records which have been transcribed) and real-time access to this opt-in data upon request. This may take the form of giving PhonepayPlus password-protected access to a system of opt-in records.
- 2.11** While it is not a requirement of compliance with the PhonepayPlus Code of Practice, we would recommend that providers using PIN-based opt-in to verify purchases of PRS, or an opt-in to marketing, also keep such screenshot records as to link opt-ins to the web-based advertising which the consumer will have seen, prior to giving consent to be charged. This provides certainty, where there is a complaint, that not only has the consumer opted into charging but also that they could not have been misled by any advertising when they did so.
- 2.12** Any MT message sent in these circumstances should not act as a promotion for the service itself (e.g. use its name). They should be designed and drafted as a functional tool to enable the completion of the verification process. Where it does act as a promotion and instructions given could be used by a recipient who had not moved through the prior steps in the verification process, it may breach other Code rules. Advice on this can be sought from PhonepayPlus directly.
- 2.13** In some circumstances providers, instead of providing a PIN for entry into a website, invite the consumer to reply with an MO containing a keyword in order to agree to a charge. In these circumstances, and without the entry of a PIN to prove consumer interaction with the website, there is a greater chance that consumers could be subscribed without their explicit consent. For this reason where a consumer is asked to reply with an MO rather than by entering a unique PIN into a website, we would expect any MT message which arises from the consumer having entered their number into a website to contain all key service information, including name of the provider, price and whether it is a subscription or not.

*For charges on a website where the consumer's mobile number is already known by the network*

**2.14** Where a consumer is on a mobile website using their mobile network's internet provision, the mobile network is able to match their handset's internet activity to their mobile number, and so independently verify any consent activity. A number of systems exist to do this, but all involve one of two methods:

- a) Consumer consent to a purchase is verified using secure payment screens served by a third party intermediary with mobile network accreditation rather than the provider. Examples include Payforit and its Enhanced Single Click format, Charge 2 Mobile, or other direct billing facilities endorsed by mobile networks using forms of secure payment library.
- b) Consumer consent to a purchase is verified by matching a mobile network's record of their presence on a mobile website with the intermediary's record of the same, where the intermediary also retains screenshots documenting consumer activity and consent. We would strongly recommend that any party who wishes to employ this method contact PhonepayPlus before they begin to operate it, as there are a number of criteria which would need to be met before PhonepayPlus would consider this method to be fully secure. In addition PhonepayPlus approval does not necessarily mean that mobile networks will agree to act as an independent verifier for such a method.

**2.15** Providers who are considering using a method of verifying consent to charge, which employs a method that does not involve independent Network operator verification of consent, are strongly advised to contact PhonepayPlus before they begin to operate it.

*For pay-per-page, or pay-per-image, viewed*

**2.16** Some charges, or opt-ins to marketing, are generated once consumers click on a mobile website – often to view an image or a page. Consent to receive a charge, or opt in to marketing, must be subject to robust verification, as set out above depending on whether the consumer's number is known to the mobile network or not when they enter the website.

**2.17** Where providers use this service mechanic for charging consumers to browse content on the internet, some content can be bundled together on one webpage with charges levied for all of it in a combined purchase. To comply fully with rule 2.2.7 of the Code, the cost of viewing the page containing multiple images or pieces of video footage must be clearly and prominently stated prior to the consumer selecting to view that page and incurring any charge.

**2.18** Such services are also subject to separate requirements to comply with Special Conditions when operating. For further information, please see the relevant special conditions notice on the PhonepayPlus website.

## GENERAL GUIDANCE NOTE

### Definitions

#### Who should read this?

All Network operators and providers involved in the provision of premium rate services ('PRS') to consumers.

#### What is the purpose of the Guidance?

To assist Network operators and providers by clarifying whether they are required to register with PhonepayPlus before operating PRS. This General Guidance Note also sets out PhonepayPlus' expectations around the [PhonepayPlus Code of Practice](#), and how any investigation procedures resulting from suspected breaches of [PhonepayPlus' Code of Practice](#) are likely to operate, depending on how a registered party is defined under the [PhonepayPlus Code of Practice](#).

#### What are the key points?

This General Guidance Note is designed to:

- Briefly signpost the Code definitions of Network operators, Level 1 providers and Level 2 providers
- Explain how PhonepayPlus would determine responsibility in the event of an investigation
- Explain how PhonepayPlus would determine whether a registered party is a Level 1 or a Level 2 provider where there is material doubt

## 1. Definitions of providers in the PRS value chain

### Network operators

- 1.1 The definition of a Network operator has not changed from the previous edition of the [PhonepayPlus Code of Practice](#), and stems from a category of persons specified in the Communications Act 2003. If you are unsure whether or not your company would be considered a Network operator, you should contact PhonepayPlus for further advice.

### Level 1 and Level 2 providers

- 1.2 Level 1' and 'Level 2' providers are defined in the [PhonepayPlus Code of Practice](#) at paragraph 5.3.8, as follows:

#### **5.3.8**

- (a) *A Level 1 provider is a person who provides a platform which, through arrangements made with a Network operator or another Level 1 provider, enables the relevant PRS to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant PRS.*
- (b) *A Level 2 provider is the person who controls or is responsible for the operation, content and promotion of the relevant PRS and/or the use of a facility within the PRS.*
- (c) *In respect of any relevant PRS where PhonepayPlus considers there to be a material doubt whether a person involved in any way in the provision of the service and/ or who receives directly or indirectly any part of the charges made to the consumer for provision of the relevant PRS is a PRS provider falling within (a) or (b) above, PhonepayPlus shall determine whether that person is a Premium rate service provider and whether the person is a Level 1 or Level 2 provider with reference to Guidance which it shall issue from time to time.*

### How is responsibility for promotion, operation and content defined? What about sub-contractors beyond a Level 2 provider?

- 1.3 Paragraph 5.3.8(b) of the PhonepayPlus Code of Practice refers to a Level 2 provider as a person “*who controls or is responsible for the operation, content and promotion*”
- 1.4 PhonepayPlus is aware that not all entities who we would deem to be Level 2 providers will generate all the promotion or content, or perform all the operation of their services, in-house. A significant number of Level 2 providers will sub-contract with other entities to undertake promotional functions (e.g. in print, broadcast, or SMS-based promotions), to support or supply certain technical platforms involved in the provision of a service, or purchase content which the Level 2 provider will then package and sell under their brand.
- 1.5 In such circumstances, PhonepayPlus **does not** regard a party which is sub-contracted to provide only some of the functions of promotion, operation and content as a Level 2 provider. Rather, these entities are regarded as contracted parties. Contracted parties are not required to register with PhonepayPlus and are not considered to be directly regulated by [PhonepayPlus' Code of Practice](#). Rather, the Level 2 provider who has sub-contracted those functions will be considered to retain responsibility for the contracted party's actions.



What about sub-contracted digital marketing?

- 1.6 In addition to the use of contracted parties as outlined above, an increasing number of Level 2 providers will sub-contract with another entity to handle web and other digital-based marketing functions, such as pop-up and banner ads which redirect consumers to browse a PRS provider's products. This practice is generally known as "affiliate marketing", and the sub-contracted partners as affiliates.
- 1.7 In these circumstances, PhonepayPlus also **does not** regard a party which is sub-contracted to provide digital marketing as a Level 2 provider. This is because they do not have overall control or responsibility as a whole for the operation, content and promotion of the service but rather just provide a digital advertising source that links a consumer to the service.
- 1.8 As such affiliates are not required to register with PhonepayPlus and are not considered to be directly regulated by PhonepayPlus' Code of Practice. Again, the Level 2 provider will be considered to retain responsibility for the affiliate's actions.
- 1.9 For more information on the expectations we would have of Level 2 providers in terms of effectively controlling the actions of affiliates, please read the General Guidance note on Digital Marketing.

What about where some operational aspects of a service are handled by a Level 1 provider?

- 1.10 PhonepayPlus is aware that, in some circumstances, certain technical aspects of a service will be handled by a Level 1 provider further up the delivery chain from the Level 2 provider. Examples could include, but are not limited to, occasions where a Level 1 provider's technical platform handles the sending of SMS-based marketing, or where the Level 1 provider's platform processes a consumer's instruction to stop a service and ensures no further billing takes place.
- 1.11 In these cases, where the failure of such an operational component has led to a breach of [PhonepayPlus' Code of Practice](#), paragraphs 3.8.1 and 3.8.2 of the Code set out that the Level 1 provider should be regarded as the party responsible for the technical failure, and so the breach itself, as if it were the Level 2 provider. The Level 2 provider who would ordinarily be responsible for the service in its entirety would not be held in breach for this particular aspect of any consumer harm. However, they may still be considered responsible for other aspects of consumer harm which arose in connection with the service.
- 1.12 PhonepayPlus is also aware that in some cases a Level 1 provider may provide a "white label" service, the operation and promotion of which it very tightly controls (for example by not only providing the technical platform or operation of the service to the consumer but also either providing the promotional material for the service or prescribing the manner in which the service may be promoted and exercising a right of veto over each promotion before its release into the public domain). In other cases a Level 1 provider may, under their contractual powers, conduct frequent monitoring of service activity and promotions to ensure that the services are operating and being promoted in a compliant manner. In the former scenario PhonepayPlus is very likely to regard the Level 1 provider as the Level 2 provider as they are in *de facto* control of the service and its operation. In the second scenario PhonepayPlus is likely to regard the Level 1 provider's actions as consistent with



pursuing its due diligence and risk assessment obligations under the Code and thereby not regard it as the Level 2 provider.

## 2. How PhonepayPlus will determine responsibility during an investigation

2.1 In the event that PhonepayPlus investigates an alleged breach of the [PhonepayPlus Code of Practice](#), it will first request information from various parties within the relevant value-chain to determine each party's role in the service. In most cases, it will be clear fairly quickly whether a party is either a Level 1 or Level 2 provider or a contracted party; however, the information we request should include the provider's opinion and reasoning as to where they fall within the value-chain. This is in order that PhonepayPlus can fully consider this issue before any decision is made.

2.2 The key factor to remember during this process is that PhonepayPlus will look to identify the responsibilities of each party in the delivery chain, in order that any breaches can be correctly considered against the party responsible for them.

## 3. How PhonepayPlus will determine whether a party is a Level 1 or Level 2 provider where there is material doubt

3.1 From time to time PhonepayPlus will be required, or otherwise asked, to make a decision about where a party sits in the value chain where it is less straightforward to do so. This may be in the context of an investigation or a request for compliance advice, and because there is material doubt about whether a provider is either a Level 1 or Level 2 provider, or because a party doubts they should be defined as a PRS provider at all in the given circumstances.

3.2 In these circumstances paragraph 5.3.8(c) of the PhonepayPlus Code permits PhonepayPlus to determine whether a registered party is a Level 1 or Level 2 provider. We will consider each example on a case-by-case basis in these situations, and the paragraphs below set out a number of examples where consideration has been made in the past. However, generally we will consider the following, non-exhaustive, list of factors when making our determination:

- The level of control that the party, and other parties in the value chain, have over promotion, operation and content of the service
- The contractual agreements between parties in the value chain
- Whether the promotion, operation and/or content have been sub-contracted to a single party further along the value chain
- Whether a party within the value chain controls (and potentially promotes) a platform to which other parties connect to provide a service
- Whether any party in the value chain controls any technical platforms which operate specific aspects of a service

3.3 It is not often that circumstances arise when there is material doubt which would require PhonepayPlus to make a decision as to whether a party is a Level 1 or Level 2 provider. However the following examples, the first two being actual previous determinations and the third a theoretical example, provide an insight into how PhonepayPlus makes its decisions.

### Example One: Status of app store merchants

An app store contacted PhonepayPlus to enquire about the likely status of its merchants, and whether such merchants would be regarded as Level 2 providers and therefore part of the PRS value chain. The app store had a direct connection with mobile network operators, and provided their own payment and browsing platforms to which merchants submitted content.

The app store would first test the content concerned to make sure it worked, did not contain malware, and was not offensive, inappropriate, or against the law. If the content passed these tests then it would be uploaded by the app store and they, not the merchant, would control product description and pricing and other key information on the browsing platform. Whilst some content was aimed specifically at children, it was kept in a “children’s area” of the app store browser where the app store ensured the price was capped as required by the PhonepayPlus Code of Practice.

Consumer complaints were handled directly by the app store, with no need for the consumer to contact or enter into dialogue with the merchant at any point.

PhonepayPlus advised that in this case the app store was firstly undertaking functions of a Level 1 provider, due to its direct connection to a network and its provision of a payment platform. In addition, it was still found to act as the Level 2 provider for the following reasons:

- Whilst merchants did upload content, the app store tested and approved it before uploading it themselves, so giving them gateway-based control over the content which was offered to consumers
- The app store clearly controlled not only the operation of the service – i.e. payment mechanisms and provision of the content directly to consumers – but also the promotion given that the merchant was unable to directly add or change pricing or any other information about their content on the browsing platform.
- Therefore as part of their contractual agreement with the app store, the merchants had given over control of promotion and content and, the app store now controlled these as well as operation.
- In addition, the app store had also taken control contractually of the complaints process from start to finish.

A second app store also contacted PhonepayPlus with the same enquiry. As before they had a direct connection with mobile operators, and provided their own payment and browsing platforms to which merchants submitted content. However this second app store relied upon a series of monitoring programs and consumer feedback, both to post the submission of content, and to identify malware or inappropriate or unlawful content, and did not test content prior to its addition to the browsing platform. Merchants were also able to add or change pricing, or other information relating to their content, themselves.

In addition whilst the app store monitored how the merchant handled complaints, the merchant had first-line responsibility for receiving and handling them.

In this case PhonepayPlus advised that the app store was acting as a Level 1 provider, due to its direct network connection and its provision of payment mechanisms. However despite the enhanced risk control mechanisms the app store displayed, their merchants would still be regarded as Level 2 providers for the following reasons:

- Whilst the app store did monitor uploaded apps and quickly remove malicious or offending content, they did not have gateway-based control over the content offered to consumers and as such this control was still held in the first instance by the merchant.
- The merchant was able to add or change pricing and other key information about their content as it was presented on the browsing platform, and so retained responsibility for promotion.
- The app store did not have full control of the complaints process from start to finish, and so responsibility remained with the merchant.

#### Example Two: Status of small charities using a donation platform

A mobile Network operator contacted PhonepayPLUS to enquire about the status of small charities who operated a donation platform for which it controls the PRS text function. Donors would text the platform's shortcode with the keyword of their chosen charity – e.g. CATS4 - followed by the amount (up to £5) they wished to donate.

The donation platform, as controlled by the mobile network, would then send the donor a receipt, thanking them for their donation, confirming the amount donated, and providing a customer services number to call in the event of any complaint or enquiry. The customer service number, and any subsequent complaints process and refund, was entirely handled by the mobile network.

Whilst the great majority of promotion was on the donation platform's website, also controlled by the mobile network in respect of text-based donation, the charities concerned could promote the shortcode and their keyword to potential donors and they would have control over such promotions.

PhonepayPLUS advised that it was likely that the mobile network could be regarded as acting as the Level 2 provider, with the charities using the platform falling outside the value chain when they did so. This was due to the following:

- The mobile network clearly controlled the operation of the service, and also the content – i.e. the mechanism by which the donation was made and the issuing of the receipt which thanked the donor.
- In addition the mobile network controlled the information given in the receipt, which gave them final responsibility for the information provided about the donation, and ensuring that donors were provided with an accurate number to call in order to complain or make enquiries.
- The mobile network also handled any complaints in their entirety, and directly issued any refunds.
- Whilst the charities who used the donation platform could promote the shortcode and their own keyword, the charities concerned were very small in size, and as such their own promotional efforts were highly unlikely to reach a large number of consumers. In addition the issuing of a receipt by the mobile network to donors acted as a safeguard on their part against a donor being misled by a promotion for which the charity was directly responsible.

Historically complaint levels about charitable donation have been extremely low. However PhonepayPLUS advised that if complaint levels grew then we would have to revisit this advice.

It is also important to note that this advice does not apply to medium or larger charities which connect with a Level 1 provider in respect of their own individual shortcodes which they (and not the provider of the payment platform) then promote. In such circumstances it is highly likely that the charity would be regarded as a Level 2 provider.

Example Three: “White label” voice services - theoretical

A Level 1 provider with a direct network connection controls an Interactive Voice Response (IVR) platform and mechanism for international call routing, which they allow a variety of clients to connect to. The clients connect to the same platform, and the same basic service, through different numbers which they promote themselves. The numbers that the clients use may even have different prices per minute. The Level 1 approached PhonepayPlus to ask whether or not their clients would be regarded as a Level 2 provider.

PhonepayPlus has not previously given formal advice on this question, however circumstances exist which might cause such a question to be asked. In such circumstances PhonepayPlus’ likely consideration would be as follows:

- That the clients would still be responsible for all promotion of the services in relation to the numbers they use in their contracts with the Level 1 provider, and further they place their own brand, and sometimes their own price point, on them.
- Whilst the Level 1 provider controls the operation of the IVR facility– i.e. the routing of the call – it does so only as a result of it providing the technical platform, which is done on behalf of the client.
- This is different from circumstances where the Level 1 provider dictates the operation of the service (rather than meeting requirements of the client) and also controls the promotional aspects of the service.
- As a result of the factors above, it is likely the client would be regarded as the Level 2 provider in the circumstances as described.

## GENERAL GUIDANCE NOTE

### Digital marketing and promotions

#### 1. What is digital marketing and what problems may arise?

1.1 In this context, digital marketing and promotions refers to a broad range of marketing practices that make use of online platforms. Many of these practices generate revenue for the industry, driving innovation and allowing consumers to engage with premium rate services (PRS) as a payment method.

1.2 Some examples of practices which are legitimate and able to satisfy the outcomes of the Code are:

- Banner ads
- Pop-ups and pop-unders
- Search engine marketing (SEM) and search engine optimisation (SEO)
- Adware

Although the above practices can be undertaken in a way that is legitimate there is still potential for consumer harm, and PhonepayPlus has seen instances where consumers have been misled by marketing using these techniques in the past.

1.3 Examples of practices which are always capable of misleading if not treated with caution and control:

- Typosquatting
  - Registering internet domain names that are misspellings of well known brands. Consumers are taken to a promotional website following their typing error of a well-known online service – often consumers are not immediately made aware of their mistake and may associate such promotions with the service they were actively looking to reach.
- Clickjacking
  - Consumers are induced into clicking on something that is different to what they perceive they are clicking on. By clicking on a disguised link on a web display the consumer triggers other internet functions. The consumer is unaware of what they are instigating and where such clickjacking is relied upon for consent, this is invalidated by the user's experience and knowledge.
- Likejacking
  - Similar to clickjacking, however the consumer is using commonly used social media functions as displayed on the screen – often the consumer is unaware at the time of the wider impact of their use of a social media application or their decision to 'like' a particular piece of social media content.

- Content locking
    - Specifically this relates to marketing techniques used by one party, such as an affiliate marketer, to generate leads and increase conversions for a second party's online service transaction. Consumers are often induced to make the payment on the second party's website because they believe it is the only means of accessing the original party's content, and not because of any interest in the product or service for which they make payment. Furthermore, commission from the payment goes to the marketing affiliate to pay for content that may be presented as being "free".
- 1.4 This is not an exhaustive list. The market is constantly evolving and while PhonepayPlus will endeavour to keep the list as up-to-date as possible, providers should constantly be aware as to whom their services are marketed to online and whether these and other emerging practices are likely to meet the outcomes set out in the Code. Detailed examples of practices, including those mentioned above, that may cause a breach of the Code can be found in the Annex to this Guidance.
- 1.5 This Guidance also clarifies that it is the responsibility of providers to control affiliate marketing carried out on their behalf and sets out some recommendations as to how to do so safely. For further assistance on controlling risk when using affiliate marketers please read part 10 of the 'Promoting premium rate services' Guidance<sup>6</sup>.
- 1.6 When managing any digital marketing campaign, PRS providers should address potential risks by actively seeking to meet outcomes in the PhonepayPlus Code of Practice (the 'Code'). In particular, PRS providers should give due regard to:
- Transparency – Consumers must be presented with all vital information, including the price, relating to a PRS service before they commit to purchasing it.
  - Fairness – If consumers are to have confidence in the PRS industry, it is important that they are not intentionally misled.
  - Privacy – Consumers should be protected from an invasion of their privacy. Any promotional material must be delivered appropriately and with the consumer's consent, which must be knowingly given and clearly identifiable.
- 1.7 Businesses, advertisers and relevant trade bodies, such as the Internet Advertising Bureau (IAB), are collectively seeking ways to improve the quality of digital advertising through a range of campaigns. These campaigns are frequently seeking to achieve similar outcomes as those set out in the Code so as to improve consumer experience and reduce the need for people to resort to ad blockers. We recommend PRS providers consider advice and support offered through such third parties<sup>7</sup>.

<sup>6</sup> [http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Promoting-PRS\\_Oct\\_15v2.pdf](http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Promoting-PRS_Oct_15v2.pdf)

<sup>7</sup> The Internet Advertising Bureau website is [www.iabuk.net](http://www.iabuk.net)

## 2. How to manage relationships with affiliate marketers, lead generators and other digital marketing partners

- 2.1 PRS providers often subcontract their digital marketing to partners, the majority of which are known as ‘affiliate marketers’. This is an entirely reasonable and legitimate thing to do, and can provide value to providers by leveraging external marketing tools and techniques paid for on a results basis.
- 2.2 However, providers who use affiliate marketers need to be aware of two key points:
- Responsibility for ensuring that promotions are compliant with our Code remains with the PRS provider regardless of whether this activity is sub-contracted to a third party such as an affiliate marketer. So if an affiliate marketers activities lead to a breach of the Code in relation to a PRS service, then a Tribunal will generally hold the PRS provider accountable for the breach under the Code.
  - Indeed, we have seen a number of cases where affiliate marketers have been responsible for misleading digital marketing practices of the kind outlined within the Annex to this guidance in an attempt to inflate their revenues by engaging consumers in services without their clear understanding and informed consent.
- 2.3 Providers therefore must put in place appropriate controls to ensure their affiliate marketing adheres to the Code as part of their ongoing compliance processes. The absence of any such mechanisms may be viewed by a PhonepayPlus Tribunal as a failure of the provider to assess the potential risks posed by a party with which they contract and maintain steps to control these risks.
- 2.4 PhonepayPlus expects PRS providers to take account of PhonepayPlus’ Guidance on Due Diligence and Risk Assessment and Control (DDRAC)<sup>8</sup> on Clients. In particular, PRS providers should undertake effective due diligence on any affiliate marketer that they are seeking to engage. As stated in paragraph 2.1 of the Guidance on Due Diligence and Risk Assessment and Control on Clients, providers should seek sufficient information to assess the suitability of a new client. In the case of affiliate marketers, Level 2 providers might want to consider the following in addition to ongoing considerations already set out in the DDRAC Guidance (the following is not an exhaustive check list but intended as a guide; we also recommend that providers keep an audit trail of any actions taken in order to minimise consumer harm in what is a high risk area):
- a) Companies checks;
  - b) Reputational checks through app stores, blogs, AV vendors, Level 1 providers etc.;
  - c) How established the affiliate marketer is;

<sup>8</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Due-diligence-risk-assessment-and-control.pdf>



- d) Whether, according to any information that has been made available to the Level 2 provider or to industry more generally, the affiliate has been associated with any breach of the Code or any other related Codes of Practice or law – this, in particular, should be monitored on an ongoing basis;
- e) Whether the affiliate marketer is aware of and committed to compliance with the legislative and regulatory landscape, i.e. the Code and other relevant codes and legislation including the Data Protection Act, Privacy and Electronic Communications Regulations 2003 (PECR), the Committee of Advertising Practice (CAP) Code and relevant consumer protection laws;
- f) How the affiliate marketer sources its traffic. For example, does it source its traffic from file-sharing websites? Traffic should not be obtained from illegal sources;
- g) If the affiliate marketer sub-contracts with other affiliate marketers (which will amplify any risk), they too should be bound by contract to not obtain traffic from illegal sources;
- h) Whether the affiliate marketer is willing to explain where and in what terms it plans to place your advertising and/or provide visibility of this retrospectively;
- i) Using traffic monitoring using tools such as Alexa or SimilarWeb to understand how an affiliate generates traffic;
- j) The level and sophistication of the tracking technologies the affiliate uses;
- k) Whether the marketer in question has fraud detection systems and monitoring tools in place;
- l) Whether the affiliate marketer is prepared to run its service on a trial basis where funds are capped until the relationship is fully established.

2.5 In addition, PhonepayPlus expects PRS providers throughout the value-chain to:

- a) Set clear expectations for their affiliate marketers around Code compliance and obtain a clear commitment to this end as part of any contract signed.
- b) Ensure that affiliates will not engage in any of the misleading practices listed above or any other such misleading practices.
- c) Closely monitor their affiliate marketing, particularly in response to consumer complaints, abnormal traffic patterns and where an affiliate marketer has previously been associated with a breach of the Code. We believe that effective monitoring and, as far as is possible, tracking are in the interest of the PRS industry.
- d) To this end, we recommend that providers analyse their traffic on an ongoing basis, responding to any abnormal activity and gaining an understanding of how consumers arrive at a promotion, and monitor and audit their affiliate marketing periodically regardless of activity to ensure that it is both effective and compliant. The Internet Advertising Bureau (IAB) has produced a useful best practice guideline that may be a helpful starting point on how to conduct an affiliate audit albeit without informing your affiliates that you intend to conduct it. It can be found at: <http://www.iabuk.net/resources/standards-and-guidelines/conducting-affiliate-audits-best-practice>.

- e) Make it clear to affiliate marketers (and reflect this in the contract) that any failure to comply with the expectations set will result in suspension or forfeiture of payments.
- f) If an affiliate marketer is unable to meet the expectations placed on it, providers are advised to review their relationship with the affiliate marketer concerned. Keep clear records of any activity, and make them available to PhonepayPlus upon request.

2.6 While we recognise that Level 2 providers generally contract with digital marketing partners, Level 1 providers are responsible for the risk assessment and control of their clients (i.e. Level 2 providers) to ensure that consumer outcomes outlined in the Code are met, including around their promotional material. This is particularly important where a client is known to be using affiliate marketing. In such cases, the Level 1 provider should check that the Level 2 provider has appropriate controls in place and raise any issue of concern should one arise. We recommend that Level 1 providers conduct a range of auditable checks on their clients, including (but not limited to):

- a) Checking that the client has a satisfactory means of identifying inappropriate activity or significant risk by a specific affiliate. This does not necessarily have to name the affiliate, just allow the client to distinguish them from other affiliates who also provide traffic to them;
- b) Ensuring the client has appropriate contractual arrangements and risk control processes in place to deal with affiliate marketing and misleading digital marketing more generally;
- c) Undertaking thorough and frequent checks to ensure the client's promotional material meets the outcomes set out in the Code;
- d) Monitoring activity for abnormal service behaviour on an ongoing basis and taking action upon it;
- e) Generally ensuring that the client carries out the sort of due diligence, risk assessment, and control (DDRAC) processes set out in paragraph 2.4 above and paragraph 3.12 of the [General Guidance note on DDRAC](#)<sup>9</sup>.

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<sup>9</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Due-diligence-risk-assessment-and-control.pdf>

## ANNEX

### EXAMPLES OF PRACTICES THAT MAY CAUSE A CODE BREACH

These examples are provided to equip PRS providers across the value chain to manage the risks posed by digital marketing campaigns and develop promotional material that complies with the Code of Practice. By avoiding these practices, and taking steps to reduce the impact when third parties use such practices without proper authorisation, PRS providers will improve compliance standards across the PRS market.

#### 1 Typosquatting

- 1.1 Typosquatting involves registering internet domain names that are misspellings of widely known and trusted internet brands. Examples might include “Dacebook” instead of “Facebook”, “Twtter” instead of “Twitter” and “Wikapedia” instead of “Wikipedia”. This takes advantage of consumers who mistype or click on mistyped links by redirecting them from their intended destination. Consumers are then led to a website that may be designed in a similar manner to the website that they were originally searching for.
- 1.2 In a PRS context, a consumer might be intending to visit a well-known website. However, having mistyped his or her intended destination into their browser’s address bar, the consumer arrives at a website that may look like his or her intended destination but contains a PRS promotion. The consumer may pursue the promotion based on its apparent association with a trusted brand.
- 1.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. If a provider were to align itself with or imitate another brand with which it does not have an association, in a way that is likely to mislead consumers about the nature of the service being offered.
- 1.4 Corrective action will be necessary if typosquatting takes place to give the consumer a clear understanding of what has happened. While this may have an impact on conversions, such corrective action is required to meet the outcomes of the Code; or typosquatting avoided entirely.

#### 2 Clickjacking

- 2.1 ‘Clickjacking’ is a technique used to trick a consumer into clicking on something different from what they perceive they are clicking on. This is also known as ‘user interface redress attack’ or ‘UI redress attack’. By clicking on a link that is obscured, masked or disguised consumers are redirected to a webpage that they had no intention of visiting. Users will often be unaware of the exploit as the link to the webpage they arrive at may be disguised as something else. For

example, a video website that has a play button on it which says "click to play a free video " however, an invisible IFrame has been placed on top of the page and lined up exactly with the play button. The consumer tries to click on the play button but instead has actually clicked on the invisible IFrame and is directed to another site. In essence, the consumer's click has been "hijacked".

- 2.2 In a PRS context, the consumer could be misled by being redirected to a website offering a PRS promotion, which may lead to a purchase under false pretences. In this example a compliant web promotion may be masked or obscured by something which attracts the consumer to click on a consent to charge icon or button without them fully understanding the potential costs.
- 2.3 Where a PRS promotion is linked to a promotion from another website, the link should be open and transparent, allowing consumers to make an informed choice. PRS promotions should clearly state what the service is, how it operates and, where possible, its cost, displaying relevant key information in a visible, legible and proximate format. Consumers should be fully aware as to what they are engaging in before any charging commences.

### 3 Likejacking

- 3.1 Likejacking is similar to clickjacking however it targets a consumers social media pages. It is similar because the consequences of any user's engagement with the 'like' function are not explained or clearly presented to them before its use. But unlike clickjacking the consequences may not be directly linked to a payment transaction. Instead other consumers are encouraged to pursue a link based on their contact's – potentially unknowing – endorsement. In certain cases, clicking on their contact's endorsement may result in them unintentionally 'liking' the same promotion and further publicising it under false pretences. The deception is particularly effective and spreads virally due to the personal nature of the endorsement.
- 3.2 The 'liked' link may then take the consumer to a website containing a PRS promotion, often with inadequate transparency. Consumers are therefore engaging in a promotion based on a contact's supposed endorsement as well as marketing the promotion themselves, without their prior consent. Likejacking is thus capable of contravening Code requirements around fairness and consumer privacy, and may lead to an investigation into relevant PRS.
- 3.3 Providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy (see Rule 2.4.1 of the Code). This includes leveraging a consumer's network of contacts without their explicit and knowing consent. Any links to a consumer's network of social media contacts should only commence after specific, auditable evidence of consent to do so has been received by the provider. Independently verifiable records of consent should be made available to PhonepayPlus upon request.

#### **4 Misleading banner ads, pop-ups and pop-unders**

- 4.1 Banner ads, pop-ups and pop-unders aim to attract consumers to promotions, usually based on other websites. It is important that the full user experience is considered when establishing promotional material, especially that which is within the control of the PRS provider and the promotion at the point of sale. In most cases, where pricing and other key information is clearly stated, they are likely to be compliant.
- 4.2 However, when a banner ad, pop-up or pop-under establishes a particular expectation or provides an inducement that contradicts the real product or service offering on the PRS website (particularly where it leads to a website where pricing information is not clearly stated) problems may arise. The consumer might be misled in contravention of the Code requirements.
- 4.3 In some cases, banner, pop-up and pop-under advertisements promise high street vouchers in order to induce customers to follow their link. Whilst the subsequent website may be transparent in terms of price and other conditions, the consumer may consent to a charge in the mistaken belief s/he will receive high street vouchers as a result. In cases where a consumer has been induced in a misleading fashion, a compliant landing page may not fully correct or remedy the impact of that inducement.
- 4.4 Consistent with Rules 2.2.1 and 2.3.2 of the Code, all PRS promotions should be as open and transparent as possible and must not mislead, and thereby allow consumers to make an informed choice. Links to PRS promotions must therefore be open and transparent and not entice consumers under false pretences. PRS promotions must clearly state what the service offered is, how it operates and, where possible, its cost, displaying relevant key information in a visible, legible and proximate format.

#### **5 Misleading search engine marketing and search engine optimisation**

- 5.1 Search engine marketing (SEM) and search engine optimisation (SEO) both aim to improve a service provider's visibility in search engine results pages. Both are prominent and legitimate means for PRS providers to market their products. However, misleading terms could be used to artificially boost search engine ranking.
- 5.2 Providers are expected to use key words or meta tags that are accurate descriptors of the service being offered and should not mislead consumers either about the cost or the nature of the service. For example, where the meta tag 'free' is used, then the free element of the service must be made abundantly clear. If none of the service being offered is free, or the free element is not made abundantly clear, then the service is likely to contravene the Code outcome of fairness. Any reference to a brand association or company to which the provider is not associated is also likely to be considered misleading if it confuses consumers about the

nature of the service being offered. The PRS provider's own brand should be prominent and be displayed clearly as the operator of the service.

- 5.3 PhonepayPlus has also noticed examples of websites being compromised by PRS promotions. For example, a consumer enters a search term into a search engine that is completely unrelated to any PRS promotion. Having found the link they are looking for, the consumer clicks on the appropriate link only to be taken to a PRS promotion. Use of forced re-directs in this manner may contravene the Code and we will investigate where necessary.

## 6 Content locking

- 6.1 When a practice known as content locking or content unlocking is used, consumers are enticed into purchasing a product, often PRS, in order to access unrelated content. Consumers may be looking to download an app or a new film or access a particular offer (shopping vouchers for example), which is not made available until they go through a certain number of steps where charges might be incurred. In PRS terms, a consumer might for example be prompted to enter his or her mobile phone number in order to download a film or access shopping vouchers but in reality they are entering into a subscription-based quiz. Effectively consumers enter the quiz to access the 'locked' content.
- 6.2 Ransomware<sup>10</sup> is a particularly severe case of content locking where a consumer's browser is locked. The consumer is then invited to enter a survey to 'unlock' his or her browser, effectively being held to 'ransom' in the process. Completing the survey then enters the consumer into a PRS promotion and often the browser remains locked.
- 6.3 PRS promotions that garner consumer consent to engage in PRS in order to access unrelated content are likely to be considered misleading if the relationship between the service and unrelated locked content is not genuine. Any investigation would centre upon the transparency of the transaction and the fairness of charging a consumer for an unwanted third party service in order to pay for access to the original content. Where such original content is not supplied, this may be considered an aggravating feature of the PRS marketing campaign managed by the PRS provider.

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<sup>10</sup> Ransomware is a type of malware that restricts access to a computer system that it infects in some way, and demands that the user pay a ransom to the operators of the malware to remove the restriction

## 7 Adware

- 7.1 Adware<sup>11</sup> involves the downloading of software that propagates advertising designed to generate revenue for the developer. In principle this can be compliant with the Code, but, at the time of writing, we had rarely seen occasions when it has been compliant. We have particular concerns as to where adware is contracted without informed consent and the control it grants to a developer to manipulate a consumer's browser.
- 7.2 If a provider cannot ensure the prevention of consumers contracting any adware through PRS promotions they may view, we recommend that the provider reconsiders promoting its service through these means. Indeed, data relating to sales trends and customer service trends may prompt internal investigations into particular consumer journeys or advertising campaigns with a view to intervening and remedying any issues, including potential breaches of the Code.

## 8 Unsolicited electronic communications

- 8.1 PhonepayPlus receives numerous complaints from consumers about PRS marketing that, they feel, encroaches on their privacy. This includes potentially unsolicited email marketing that may, in certain cases, contain malware.
- 8.2 As set out in Rule 2.4.1 of the Code, consumers have the right to privacy. In line with guidance from the Information Commissioner's Office, electronic marketing can only be sent to consumers if the consumer has consented to receive it or if there is an existing, clearly defined and direct customer relationship and the customer is provided, in each marketing communication, with an opportunity to opt out and does not do so. For more information on PhonepayPlus' expectations around the consumer's right to privacy, providers should see the General Guidance Note on Privacy<sup>12</sup>.

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<sup>11</sup> Adware, or advertising-supported software, is any software package that automatically renders advertisements in order to generate revenue for its author. The advertisements may be in the user interface of the software or on a screen presented to the user during the installation process.

<sup>12</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Privacy.pdf>



## GENERAL GUIDANCE NOTE

### Due diligence; risk assessment, and control on clients

#### Who should read this?

All Network operators and providers involved in the provision of premium rate services ('PRS') to consumers. It is important that senior management have considered matters addressed by the guidance with a view to establishing the right framework and effective processes (including supervision) for due diligence, risk assessment and control (DDRAC).

#### What is the purpose of the Guidance?

Under the [PhonepayPlus Code of Practice](#), all Network operators and providers must carry out due diligence and risk assessment on any parties they contract with that form part of a value-chain delivering premium rate services to consumers. Due diligence and risk assessment and control represent separate and distinct processes that take place prior to the commencement, and throughout the duration, of a commercial agreement respectively. This General Guidance Note is designed to clarify PhonepayPlus' expectations as to how these processes should be performed in practice.

#### What are the key points?

PhonepayPlus believes that due diligence and risk assessment and control processes are central to good business practice. These processes are particularly important in the premium rate services market, where services are delivered to consumers through partnerships between Network operators and providers, which can, on occasion, include many different parties.

PhonepayPlus' expectation is that each party in a PRS value-chain will carry out due diligence prior to contracting with another party to provide a PRS. This should include an understanding of that party's history of compliance with [PhonepayPlus' Code of Practice](#), including any breaches of the Code of Practice. Once contracted, we expect there to be ongoing risk assessment and control mechanisms in place, appropriate to the roles of the parties involved, which ensure that the [PhonepayPlus Code of Practice](#) is complied with.

The procedures set out in this General Guidance Note are designed to assist Network operators and providers in developing due diligence and risk assessment and control processes that are fit for purpose, recognising that any systems implemented must be proportionate and relevant to their business operation.

### 1. Desired outcomes – what we believe good DDRAC involves

- 1.1 The PRS industry value chain forms a connection from the providers of products and services to the consumers – customers of one of a range of telecommunications network operators, both in the fixed line and mobile space. Such connections enable the purchase of products and services quickly and easily when chosen by consumers; however, they also equip companies and individuals with the opportunity to, among other things, apply unwanted charges to people's phone bills. DDRAC is essential to establish the key commercial connections and to prevent or limit the abuse of PRS numbers and shortcodes.

**1.2** The Code requires both carefully managed due diligence to be undertaken prior to contracting with other parties in the PRS value chain<sup>13</sup>, and compliance with the obligations related to risk assessment and control mechanisms which are found at paragraph 3.1.3(a) and (b):  
*“All network operators, Level 1 and Level 2 providers must . . . assess the potential risks posed by any party with which they contract in respect of:*

- a) the provision of premium rate services, and*
- b) the promotion, marketing and content of the premium rate services which they provide or facilitate,*

*and take and maintain reasonable steps to control those risks.”*

**1.3** DDRAC enables all parties in the value chain to be confident that the connections that are established are for good positive business and industry-wide growth. Such processes are built on the following four cornerstones:

- **Know your client** – all businesses have risks, and these can vary significantly dependent on the nature of the company and the services being operated. It is important to know your client so you can properly identify the risks involved and assess how to manage them. This is not to limit or prevent commercial relationships forming, but to ensure they are properly managed whether an issue ultimately arises or not.
- **Properly identify the risks** – this goes beyond listing risks, or simply identifying larger more obvious risks that may affect any commercial dealings. It involves proper consideration of the range and types of risks associated with particular clients and the services they provide, taking into account all the circumstances. This allows for effective management of the commercial relationship and careful preparation for handling of any problems that may arise.
- **Actions taken to control any risks** – once risks are identified, industry members must make a proper assessment of the issues that would arise if incidents occur, and take proportionate steps to minimise the likelihood of such issues resulting in consumer harm. Steps taken need not involve significant resources in advance. Good process planning and/or staff training may have a positive impact on a company’s ability to respond effectively when incidents do occur. Even matters that are perceived to be unlikely or appear minor can pose long term difficulties if businesses are under prepared to respond to matters that do arise.
- **Responding to incidents** – even where a business makes significant effort to comply with regulations and legal requirements, they may not be immune to problems arising. Providers ought to be prepared to respond calmly and proactively to incidents, working closely with the regulator and other parties in the value chain to identify, mitigate and

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<sup>13</sup> See paragraph 3.3.1 of the Code, which states: *“All network operators and Level 1 providers must perform thorough due diligence on any party with whom they contract in connection with the provision of premium rate services and must retain all relevant documentation during that process for a period that is reasonable in the circumstances.”*

correct any fallout, providing support to consumers. Breaches ought to be identified and acknowledged quickly when they arise so that they can be remedied and services are therefore delivered to a high standard to consumers.

- 1.4** This guidance sets out further information about each of these areas to equip industry members to build and maintain strong commercial arrangements. It will help businesses meet their obligations to conduct due diligence, risk assessment and control under Part 3 of the Code, and ensure consumer confidence in premium rate services.

## **2. Know your client – due diligence**

- 2.1** The start of any new venture or commercial relationship is an exciting and important period. In relation to premium rate services, these commercial arrangements often build a connection between providers of products and services with the consumers that are searching for them, establishing a quick and easy method of payment for such services. This connection is vital for revenue creation and service / industry development. The connection also establishes the opportunity for businesses to add false or unwanted charges onto a consumer's fixed line or mobile phone bills, or lead to payments being made based on misinformation or misleading promotions. So building the right connections and managing those relationships is important.
- 2.2** The opportunity to strengthen growth and development of services is also a chance to limit the damaging impact of non-compliant services coming into the market – by getting to know your client businesses, you can establish better long-term connections and can identify risks to consumers more easily.
- 2.3** The level and standard of due diligence should be consistently applied to all new clients before any binding legal contract or commercial arrangement is entered into. The [PhonepayPlus Code of Practice](#) requires that effective due diligence processes are in place. It does not prescribe the process, or the information to be gathered, so the examples set out below are to illustrate the kinds of information gathering and other actions both Network operators and providers could take, before a binding commercial agreement is formed:
- Contact details for a client's place of business;
  - Copies of each client's current entry (and first entry, if different) in the Companies House register;
  - Names and addresses of any relevant people with influence over the business, such as owners and directors;
  - Names and addresses of all individuals who receive any share from the revenue generated by the client;
  - Undertakings from the client that no other party is operating in the capacity of a shadow director under the Companies Act, if appropriate;
  - The names and details of any parent or ultimate holding company which the client is a part of, if appropriate;
  - Confirmation from PhonepayPlus that the provider is registered with PhonepayPlus (where registration is required);

- To make clients aware of PhonepayPlus and requiring adherence to the [PhonepayPlus Code of Practice](#)

**2.4** Any process needs to be implemented with the aim of getting to know your client, and if the usual methods of gaining an insight into the business leave room for doubt or a lack of clarity, businesses ought to consider what more is necessary to build a proper awareness of the client, the service and its associated risks.

### **3. Properly identify the risks – risk assessment**

**3.1** The Code places the obligation of risk assessment and control on all parties across the value chain, Network operators, Level 1 providers and Level 2 providers. Risk assessment and control is the business process that puts in place systems to assess and manage the level of risk that a particular client and/or their service(s) may pose in terms of non-compliance with the Code and/or the law, or causing consumer harm in general. Unlike due diligence, PhonepayPlus considers that the extent of any risk assessment and control needs to be proportionate to where the contracting party sits in the value-chain.

**3.2** The essence of undertaking an ongoing robust analysis of risk is to enable providers to ensure they are considering fully the regulatory risks posed by a contracting party throughout the lifetime of a contractual arrangement. Where a commercial judgment has been taken, and an assessment of ‘risk’ made, our expectation is that reasonable steps and/or ‘controls’ should be implemented to help pre-empt, where possible, the likelihood of consumer harm.

#### *Network operators obligations*

**3.3** We would expect Network operators to have in place risk assessment processes in relation to Level 1 providers with whom they contract. This might include a process for keeping under review the extent to which the Level 1 provider is associated with significant breaches by a number of its Level 2 clients, and a system to detect unusual patterns of use in relation to the services being offered across their network.

**3.4** Network operators should also satisfy themselves that their Level 1 clients have in place effective systems for due diligence and risk assessment and control, so as to protect their own end-users from harm.

**3.5** Where the risk profile of certain services or market sectors is known to be high, for example live adult entertainment or clients specialising in certain number ranges (such as 070, or a high rated voice service numbers), we would expect Network operators and providers to be particularly vigilant and ensure that appropriate (and where necessary additional) controls are in place. This level of vigilance would also be expected where the service type has an extensive history of breaches, whether by the potential client or not.

**3.6** We would also expect there to be consideration given to the length of time a provider had been active in the UK PRS market, particularly as this relates to knowledge of their responsibilities under the [PhonepayPlus Code of Practice](#) and how to operate their services in a way that pre-empts and prevents consumer harm. We would expect providers who are new to the market to be alerted to the requirement to register with PhonepayPlus. This can be

achieved within the standard terms and conditions of any contract referring to these obligations.

- 3.7** All providers, wherever they sit in the value-chain, bear a responsibility, where they discover instances of Code breaches and/or consumer harm, to report it to PhonepayPlus at the earliest available opportunity and take appropriate action to ensure cessation of the breaches or harm. This ought to involve providing information and support to affected consumers. As well as helping PhonepayPlus to assist in protecting consumers, this will assist in resolving issues quickly. Should the harm involved mean that an investigation is necessary, the co-operation shown by Network operators and providers in mitigating harm to consumers will be a significant factor when weighing evidence.

*Considering risks posed by Level 1 providers and other intermediaries in the value chain*

- 3.8** Where a business is building connections with a business other than a Level 2 provider, the following steps may be useful when assessing risks:
- Obtaining information about a client’s history of compliance with the PhonepayPlus Code of Practice, specifically any previous rulings made by PhonepayPlus, especially in respect of previous due diligence or risk assessment and control failings, and monitoring any patterns of breaches by their clients;
  - Checking whether any of the directors or other associated individuals have been involved, or connected, with other companies that have had previous rulings made against them by other regulators (e.g. Advertising Standards Authority; Gambling Commission; Financial Services Authority; Information Commissioner’s Office; Ofcom, including whether a client is on Ofcom’s ‘Number Refusal List’ or ‘Under Assessment List’; etc.). Should such rulings exist, then the practices that led to them being investigated should be considered as risks that might reoccur;
  - Inspecting the processes Level 1 providers have in place to assess the parties they contract with to comply with their own due diligence and risk assessment and control responsibilities;
  - Taking action to ensure that the client quickly addresses any issues which are identified (including monitoring to verify that corrective action has in fact been taken). Obviously, what ‘action’ the Network operator and/or Level 1 then decide to enforce will be determined by, and be made proportionate to, the contractual relationship in place. Therefore, it is important that the contracting party is subject to sufficient contractual control and understands the requirements placed upon them to ensure they continue to assess their own clients operating further down the value-chain.

- 3.9** The exact level and detail that a Network operator or Level 1 provider might wish to obtain and consider at any particular point may change as circumstances in the market change, or, if there has been a significant structural reorganisation altering the composition of the Level 1 provider concerned (e.g. the acquisition and/or merger with another company, creation of a holding company structure, change of a director(s)). This could potentially impact upon alter the commercial relationship that may have previously been entered into. The key point to

stress is that the risk assessment process is something that should be reviewed and responded to, where the circumstances make it reasonable to do so.

*Considering risks posed by Level 2 providers or other parties to which Part 2 Code responsibilities have been contracted out<sup>14</sup>*

**3.10** The importance of risk assessments being undertaken spreads across the value chain, however it becomes more impactful the closer you get to the operators of the services. PhonepayPlus would expect the risk assessment and control to be of a nature that ensures that the consumer outcomes that [PhonepayPlus' Code of Practice](#) requires are able to be met. Compliance with paragraph 3.1.3(a) and (b) of the Code is highly likely to include, but not be limited to, the following expectations:

- Assess key indicators as to whether a client is a potential high risk provider. Where the client has not previously operated PRS, or is otherwise unknown, they should be assessed as high risk in the first instance.
- Check the names of the client's directors and other associated individuals against previous PhonepayPlus decisions.
- Conduct a search using the PhonepayPlus registration database, or use alternative means to ascertain information about the client which is relevant to a risk assessment.
- Consider the service types being launched and any associated risks, using information from published adjudications and other industry information sources to identify trends and issues.
- Ascertain how a client will promote their service, and where warranted by the risk posed by the client and the service, seek examples of promotional material, assess them and issue any advice or direction to the client as a result.
- Take ongoing steps to control risk following the launch of the client's service, in line with the risk assessment already performed.

**3.11** Providers are advised to keep processes under review, and if necessary modify or refine, their existing risk assessment and control procedures to ensure that they meet, at the least, the expectations bulleted above. A failure to do so is likely to breach the Code in the event of an investigation.

**3.12** In the case of affiliate marketers and other agency agreements, Level 2 providers should consider the following in addition to ongoing DDRAC considerations already set out in Guidance elsewhere. This is not an exhaustive check list but intended as a guide. We also recommend that providers keep an audit trail of any actions taken in order to record activities for further reference and review as appropriate:

- Companies checks;

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<sup>14</sup> Where a Level 2 provider has sought the expertise of a third party and contracted out regulated activities, they may still be responsible under the Code for compliance with Part 2 rules. In such cases, the Level 2 provider is highly recommended to undertake due diligence to get to know their agent, and put in place risk assessment and control processes to manage that relationship effectively.



- Reputational checks through Google, blogs, AV vendors, Level 1 providers etc.;
- How established the affiliate network is;
- Whether, according to any information that has been made available to the Level 2 provider or to industry more generally, the affiliate or any associated individual has been associated with any breach of the Code or any other related Codes of Practice or law – this, in particular, should be ongoing;
- Whether the affiliate network is aware of and committed to the UK legislative and regulatory landscape, i.e. the Code and other relevant codes and legislation including the Data Protection Act, PECR, the CAP Code and relevant consumer protection laws;
- How the affiliate network sources its traffic. For example, does it source its traffic from file-sharing websites (this will likely result in increased risk);
- If the affiliate network sub-contracts with other affiliate networks in doing so (which will amplify any risk) and how it sources and vets individual affiliates;
- Whether the affiliate network is willing and able to explain where and in what terms it plans to place your advertising;
- Using traffic monitoring using tools such as Alexa or SimilarWeb to understand and monitor how an affiliate generates traffic;
- The level and sophistication of the tracking technologies the affiliate uses;
- Whether the network in question has fraud detection systems and monitoring tools in place;
- Whether the affiliate network is prepared to run its service on a trial basis.

Questions to consider as part of affiliate Due Diligence Risk Assessment and Control

Pre-Contract Due Diligence	Post-contract Monitoring, Risk Assessment and Control	Response
<ul style="list-style-type: none"> <li>• Who am I contracting with and what compliance record do they have?</li> <li>• Is any proposed contract in my best interests?</li> <li>• Does my affiliate understand my requirements and the requirements of the Code of Practice?</li> <li>• Does my affiliate network take compliance seriously?</li> <li>• Do the contractual payment terms and speed of payment potentially incentivise non-compliance?</li> </ul>	<ul style="list-style-type: none"> <li>• Is my monitoring systematic and does it give me a good understanding of how my customers are being drawn to my service?</li> <li>• Do I have the appropriate controls in place to ensure that any unusual activity is identified quickly?</li> <li>• Am I analysing all aspects of this relationship, including customer complaints?</li> <li>• Given the risks associated with affiliate marketing, can I demonstrate that my monitoring is sufficient, thus adequately mitigating those risks?</li> </ul>	<ul style="list-style-type: none"> <li>• If I do identify an issue, do I have a clear process in place to resolve it quickly?</li> <li>• Is this realistic and actionable?</li> <li>• Is my affiliate capable of identifying, or indeed willing to identify, and deal with rogue traffic sources?</li> </ul>



#### 4. Actions taken to control any risks

4.1 Having ascertained information about the company and considered all potential risks, it might follow that a Network operator or provider is in a position to develop a plan of action (made bespoke to a particular client) to sit alongside the contract, or an equivalent commercial arrangement that has been entered into. This could be made available upon request by PhonepayPlus and used as mitigation in the event of a formal investigation being raised. In this way, a company can ensure risks do not go ignored and processes by which to respond to incidents can be understood ready for implementation.

4.2 The formulation of an action plan could be based on the following:

- To periodically test and/or monitor certain 'risks' that would normally be associated to a particular service category (e.g. for a subscription service, it may be prudent to test the clarity of promotions, whether reminder messages have been sent, with delivery confirmation noted, and that 'STOP' commands have been properly processed);
- The frequency of such testing should reflect the risk posed by both the client and the service type. For example, a client with no breach history, or where none of the directors are linked to other companies with breaches, and low- risk service types (such as football score updates), would require far less monitoring than a client with an extensive breach history that provides a high- risk category of service (e.g. a subscription-based lottery alerts system with a joining fee);
- 'Mystery shopper' testing could be used as, and when, appropriate;
- Internal mechanisms to enable 'whistle-blowing' by staff, where appropriate;
- Putting in place internal checks that correlate with unusual patterns of activity which may indicate consumer harm (e.g. spikes in traffic and/or consumer complaints made directly to the provider about one specific service);
- Having a procedure to alter and address instances of non-compliant behaviour;
- Monitoring of the client's service to ensure that any directions given by PhonepayPlus have been complied with;
- Producing a compliance file, comprising of a written record of the assessment, the subsequent action plan and evidence of any monitoring and/or testing required by the plan having taken place. This record does not necessarily need to be lengthy (although this will depend on the client and the actions taken under the plan), but should be made available to PhonepayPlus upon request.

4.3 Any assessment of risk should be an ongoing process and reconsidered in light of any new information. This might include updates to a client's breach history, a change in an individual client's approach to compliance or alterations to the company structure (e.g. the acquisition/amalgamation of another company, the creation of a holding company structure, appointment of new company directors, changes to the company name, etc.).

#### *Assessment of any failure in relation to DDRAC*

- 4.4** Where consumer harm has occurred, the assessment that will always be applied is to determine on a case-by-case basis whether the risk that harm might arise was reasonably identifiable and controllable. PhonepayPlus will seek to examine what actions were taken by the provider that contracted with the party which caused the consumer harm to ensure this risk was managed appropriately.
- 4.5** Where a Network operator or Level 1 or 2 provider is unable to provide evidence to PhonepayPlus that adequate due diligence was carried out, or that an adequate level of risk assessment and control took place, a PhonepayPlus Tribunal is likely to classify this as a *serious* or *very serious* breach of the [PhonepayPlus Code of Practice](#) (dependent on the circumstances of the case).
- 4.6** Where such a breach is upheld, the PhonepayPlus Tribunal may enforce a range of sanctions, including that a compliance audit to be undertaken by an independent third party to address those failings and to bring a Network operator's, or registered party's, compliance framework up to the required standard. For more information about investigations, and the role of sanctions, please refer to the '[Supporting Procedures](#)'.

## **5. Responding to incidents**

- 5.1** Providers ought to be prepared to respond calmly and proactively to incidents, working closely with the regulator and other parties in the value chain to identify, mitigate and correct any fallout, providing support to consumers. Breaches ought to be identified and acknowledged quickly when they arise so that they can be remedied and services therefore delivered to a high standard to consumers.
- 5.2** In order to limit and address consumer harm, providers are encouraged to proactively alert PhonepayPlus to any issues regarding its own or third party services. Such proactive cooperation will be considered by PhonepayPlus in relation to decisions regarding the most appropriate action to take (if any). Where enforcement action is deemed necessary such cooperation is likely to mitigate any sanctions imposed by a Tribunal, particularly where there has also been swift identification of issues arising supported by evidence of remedial action taken in keeping with established DDRAC procedures set up by the Network operator or provider. Where further dialogue is considered necessary, an effective DDRAC procedure may assist PhonepayPlus making it more likely breaches can be resolved using the Track 1 procedure, as defined at paragraph 4.3 of the [PhonepayPlus Code of Practice](#).

## GENERAL GUIDANCE NOTE

### Enabling consumer spend control

#### 1. Excessive use

1.1. Excessive use of a premium rate service (PRS) can result in uncontrolled spending or over-spending and lead to a number of adverse user reactions, including 'bill shock'.

1.2. Rule 2.3.6 of the Code requires that:

*Level 2 providers must take reasonable and prompt steps to identify excessive use of its service or services by any consumer and to inform the relevant consumer of that usage.*

1.3. Excessive use, excessive spending and 'bill shock' are closely linked, and will often result in a negative reaction from a consumer upon receipt or acknowledgment of unexpected, unusual or excessively high charges applied to their mobile or fixed-line account.

1.4. Such examples often result in significant distress for the user; financial detriment; possible dissatisfaction with the PRS; and subsequent reputational damage to the industry<sup>15</sup>.

#### 2. What constitutes 'excessive use'?

2.1. Given excessive use can lead to bill shock, steps should be taken to mitigate the risks associated with those PRS being operated, in order that providers fully comply with Rule 2.3.6 of the PhonepayPlus Code of Practice.

2.2. 'Excessive use' refers to any potential incident(s) of high, sustained repetitive usage over a short period of time in excess of the range of usual behaviour and is often closely linked to, or results in, significant consumer spend. Attention may be drawn to incidents of excessive use through irregular spikes in traffic, or a cumulative spend which through comparison with a user within the standard range, may appear excessive. It should be noted that what may be deemed excessive use can vary depending on context and the characteristics of the service in question<sup>16</sup>.

2.3. Providers should monitor average user engagement across a defined period or billing cycle (daily, monthly, etc., as appropriate) to understand the average range of user activity, engagement and experience. Providers should also be observant of user patterns and any irregular activity, which may include sustained, repetitive use in a short period, or in short

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<sup>15</sup> Please refer to Annual Market Reviews for 2014/15 and 2015/16 for further information on consumer engagement with PRS.

<sup>16</sup> Examples can be found below, at paragraph 2.7 of this guidance.

bursts – for example if using ‘Question and Answer’ style services<sup>17</sup>, and a user sends repetitive and/or other message requests persistently and within a short space of time – this may be considered a trigger to enquire further about a potential example of excessive use.

- 2.4. When setting flags to highlight potential examples of excessive use, PhonepayPlus recommends that the modal<sup>18</sup> average may be suitable to gauge average user spend for many service types – this will give an indication of what spend level may be considered acceptable to the average service user, and give an indication to the provider as to when may be appropriate to contact a consumer in relation to any potential excessive spend or possibly compulsive, problematic use of a PRS, in line with the requirements of Rule 2.3.6 of the PhonepayPlus Code of Practice.
- 2.5. Once the average spend and/or other service usage level is established, PhonepayPlus suggests that a daily/monthly/etc. usage level or spend which is 100%, 150%, or 200% higher than the modal average may be considered potentially excessive. The level at which excessive use is determined will often be informed by what is appropriate to the service context and/or any incremental service charge or the average cost incurred by a consumer, and can serve as a flag or indication that it is an appropriate time to contact the consumer. In such cases, PhonepayPlus recommends that the provider contacts the consumer directly to inform them of their current spend and usage level so that they may take action, or continue using the service as is appropriate to their own situation<sup>19</sup>.
- 2.6. It should be noted that the recommendation at paragraph 2.5 is flexible, and is intended as an initial pragmatic guide for L2 providers to assist in highlighting examples of excessive use, or potentially problematic usage patterns in comparison to the average user. From a practical perspective, some regular service users may frequently use and spend in excess of an established average and may not view this as excessive or potentially problematic. In such cases, PhonepayPlus acknowledges that it would offer no benefit to contact such users within each billing cycle, and would suggest that such users, who acknowledge and are in control of their usage, can be added to a separate list of recognised high-use individuals, albeit with a degree of observation of their spend and usage levels if appropriate.
- 2.7. As noted above, what may constitute excessive or problematic levels of service use may vary depending on the service type and context in which the service operates. Providers are expected to establish consumer spend levels that are appropriate to the context and service type. To assist, some examples are included below:

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<sup>17</sup> These can be defined as services operating on a mobile shortcode to which the consumer texts a question, and then receives a message in response which contains the answer. These questions can be about trivia, or sometimes for entertainment purposes – e.g. the compatibility of two individuals named in the consumer’s text.

<sup>18</sup> The mode is the value that appears most often in a set of data. Using the modal average highlights the most common average usage, not taking account of extreme usage. PhonepayPlus recognises that there may be cases where the Mode is not the most suitable method of establishing average consumer spend, e.g. services with a high volume of unique users but a relatively low level of average engagements per user. In these cases we would suggest that providers contact PhonepayPlus to discuss alternatives.

<sup>19</sup> See paragraph 3.4 of this guidance for further information about contacting relevant consumers.

- a) Competition services and other games with prizes will also be likely to have different average user interaction and experience. The context in which this category of service operates will have a defined period of operation, and may potentially have a greater risk of consumer detriment, or examples of problematic patterns of usage. In this case, a provider should be able to quickly and easily identify examples of potentially problematic, repetitive usage which may amount to excessive use. The provider should have systems and processes in place to monitor incidents of excessive use, and methods to address these with the consumer.
- b) Question and Answer style services are likely to operate in way where significant spikes in service usage may not be foreseeable and could be considered irregular in the context of the service type. In this example, the threshold at which a provider may implement checks, or contact a consumer will be substantially different, as the average consumer behaviour will also be different in this context. For example, an average user may ask between 1 and 5 questions over the course of an evening and receive the relevant answers; a potentially problematic user experience may be where the same amount and/or more was generated over the course of a number of minutes.

All things considered, the provider of the service should still have significant, robust checks and processes in place to mitigate the harm associated with any potential example of excessive use.

- c) In contrast, live interactive broadcast PRS (BPRS) may involve significant spikes in traffic / service use at critical times within or around broadcasts – during a live event, for example. While there are risks associated, these can be carefully managed within the operation and functionality of the BPRS.

Where the average user engagement may only be one or two votes, it is unlikely that a usage level or spend which is 100%, 150% or 200% higher than this average would be considered excessive within the context of these services, or to the average, reasonable consumer.

In this example, the Level 2 provider may have alternative, higher levels of user interaction thresholds which may constitute excessive use – this will likely be determined using data held by the provider. Nonetheless, the provider of the service should still have systems in place to monitor usage and processes to manage incidents of potential harm<sup>20</sup> or other irregular behaviour.

### **3. How to mitigate the risks associated with excessive use**

- 3.1. PhonepayPlus expects providers to take certain steps in order to mitigate the risks associated with excessive use. This expectation is in support of the Fairness Outcome at Section 2.3 of the Code, and specifically in relation to Rule 2.3.6 noted above.

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<sup>20</sup> This may include the provision of information before consumers engage with the service, such as warnings that callers should get the bill payer's permission before calling.

3.2. PhonepayPlus would suggest that providers put in place measures to enable consumer awareness and control of their usage – this supports Code outcomes and promotes confidence and trust in the PRS market. Some steps which providers could implement include the following examples:

- a) Issue spend reminders directly to the service user, as required in relation to virtual chat services and live entertainment services under special conditions<sup>21</sup>.
- b) Implement account purchase/deposit history access, as required in relation to the provision of remote gambling services by Special conditions<sup>22</sup> – this practice could be adopted for in-app purchases, for example.
- c) The inclusion of ‘shield’ pages within services consumed via the mobile internet, in the device’s browser. These ‘shield’ pages can be inserted at specified points (at every £10 spend, for example) and detail current cumulative spend and ongoing service costs.

3.3 This is not an exhaustive list, and providers may develop new methods to keep consumers informed of current usage and ongoing spend levels. Furthermore, whilst some of the examples noted above are mandatory for certain service types due to the aforementioned Special conditions notices, PhonepayPlus would recommend that a similar approach is taken to all services, with the aim of keeping consumers fully informed of all aspects relating to their purchases and service use.

3.4 Providers can also contact users directly in order to make them aware of current usage levels, where the provider’s internal systems and monitoring has flagged the account as exhibiting characteristics of excessive use:

- a) Rule 2.3.6 requires that providers must take reasonable and prompt steps to identify excessive use and make users aware of that usage and their associated spend.
- b) This can be done through phone calls for example; via email, where the address is known through a linked-account; or other methods of communication appropriate to the means of access to the PRS
- c) Whichever ways are used to measure excessive use – whether it is based on an average user over a set period of time; or frequency of purchasing products or services; or the observance of a noticeable, irregular incident; or other notable scenario – PhonepayPlus recommends that the provider of the PRS should not continue to bill the user, or offer access to the service until the user has acknowledged their usage and associated spend level to the provider directly. The purpose of this recommendation is to mitigate against any financial harm resulting from the excessive use. It is recognised that where such steps would create unfair circumstances for the users of, or participants in, the relevant service then it may be more appropriate to rely on alternative safeguards and if relevant provide redress at a later point.

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<sup>21</sup> Details on our website: <http://www.phonepayplus.org.uk/for-business/special-conditions>.

<sup>22</sup> As at same website.



- d) PhonepayPlus would suggest that such a response can be obtained via phone call, SMS, email, or acknowledgement through an active field within the service/website, etc. A record of any acknowledgement should be kept by the provider in a secure and tamper proof environment (for a recommended period of 6 to 12 months depending on the nature of the service and the level of ongoing engagement by consumers) in order that it can respond effectively to any potential investigation in due course. It may be appropriate for such records to be recorded and maintained by an independent third party.

#### 4. Managing examples of excessive use

- 4.1. Rule 2.3.6 has as its objective the achievement of fairness for the consumer by informing them of their usage – how much they have spent on the service. While there may be circumstances in which a claim for redress is made, this is a separate matter. Nothing in Rule 2.3.6 changes the requirements found under the outcome of complaint handling (i.e. rules under 2.6 of the Code).
- 4.2. Providers may contact some users who use a PRS a great deal more and spend significantly higher amounts than the average in that user group, but who are still satisfied with the service. Such consumers are aware of the associated charges and are in control of their usage. In instances such as these, the provider need take no action as noted at paragraph 2.5 above, but a failure to contact such users may still constitute a breach of Rule 2.3.6. Evidence of successful communication should be collected and stored for a reasonable period<sup>23</sup> for future reference in the event of an investigation.
- 4.3. Some users, having been contacted by a provider of a service may not have been fully aware of the costs associated with the service, or there may be examples of unauthorised use. PhonepayPlus expects that the provider will endeavour to resolve the issue with the consumer directly. Where a resolution cannot be achieved, the provider should give the consumer PhonepayPlus' contact details, as per the requirements of Rule 2.6.5, along with any requisite information on Alternative Dispute Resolution (ADR) schemes to which the provider is associated.

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<sup>23</sup> A reasonable period is likely to be 6 to 12 months depending on the nature of the service and whether there is ongoing consumer engagement.



## GENERAL GUIDANCE NOTE

### Lower cost services

#### Who should read this?

All Network operators and providers involved in the provision of lower-cost premium rate services to consumers.

#### What is the purpose of the Guidance?

To assist networks and providers by clarifying PhonepayPlus' expectations in relation to lower-cost premium rate services, especially with regard to registration, pricing transparency, undue delay, complaint handling, and special conditions.

#### What are the key points?

Lower-cost services are those where the service charge is no more than 10p per minute. 0870, 0871, 0872 and 0873 numbers are always included within the definition of lower-cost services. The main issues for Network operators and providers to consider are:

##### *Section numbers*

- 1) Network operator and Level 1 provider duties before connecting services;
- 2) Level 1 and 2 provider exemptions from the PhonepayPlus Registration Database;
- 3) Service exemptions from the Registration Database;
- 4) Special condition requirements for some types of chat services;
- 5) Practical pricing in promotions;
- 6) Pricing in greetings;
- 7) Queuing and keeping consumers on hold;
- 8) Complaint handling;
- 9) Spending caps; and
- 10) Call recording and monitoring requirements.

## 1. Network operator and Level 1 provider duties before operation (due diligence and PhonepayPlus Registration)

1.1 The objective of due diligence is to ensure the identity and suitability of potential providers to offer premium rate services ('PRS') to consumers is established. If you have any doubt about your status under the [PhonepayPlus Code of Practice](#), information can be found in the General Guidance Note on '[Definitions of those involved in providing PRS](#)'.

1.2 Under the [PhonepayPlus Code of Practice](#), Network operators and Level 1 providers must (amongst other things):

**3.1.1** *ensure that PhonepayPlus regulation is satisfactorily maintained by;*

- (a) *taking all reasonable steps in the context of their roles, including the adoption and maintenance of internal arrangements to ensure that the rules set out in Part Two are complied with and the outcomes achieved in respect of all premium rate services with which they are concerned, and;*
- (b) *carrying out their own obligations under the Code promptly and effectively and*
- (c) *taking all reasonable steps to prevent the evasion of, and not to undermine, the regulation of premium rate services, and*
- (d) *taking all reasonable steps to ensure that consumer complaints are resolved quickly and fairly and that any redress is provided quickly and easily;*

**3.3.1** *perform thorough due diligence on any party with which they contract in connection with the provision of premium rate services and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances.*

1.3 In the context of lower-cost services, such as those provided on 087x ranges, the burden of due diligence is lighter than on other premium rate numbers, which reflects the lower risk to consumers that derives from factors such as the reduced capacity for financial detriment, and the dominant types of service provided being data capture or enquiry lines which are ancillary to the main business of the provider concerned. Accordingly, we consider the outcomes (above) to be met if Network operators and Level 1 providers:

- Bring PhonepayPlus' Code of Practice to the attention of the next party in the delivery-chain only (i.e. not the whole delivery-chain to the consumer);
- Verify the identity of the provider and retain the provider's address and contact information;
- Make arrangements in their contracts to be able to withhold payment to clients for a period of 30 days from the date of a consumer's connection, unless PhonepayPlus instructs such payments to be withheld for longer;
- Ensure that the next party has either assigned responsibility for customer service to another party or has sufficient arrangements in place itself; and
- Ensure that, if the connection is provided directly to a Level 2 provider (and not to an intermediary), and is relating to a category of service that requires adherence to special conditions, then that provider has in place such arrangements as to comply with the conditions.

## 2. Level 1 and Level 2 provider Registration

- 2.1 PhonepayPlus has exempted providers who only provide lower-cost services from the requirement to register with PhonepayPlus found at paragraph 3.4.1 of the [PhonepayPlus Code of Practice](#). For the avoidance of confusion, if a provider makes other higher-rate premium rate services available as well as lower cost services, then they must adhere to the Code and register their organisation and relevant services.
- 2.2 Network operators with clients who provide only lower-cost services are still responsible for due diligence on those clients and their services, and for ensuring that levy payments are made.

## 3. Level 2 provider - service registration and number checker

- 3.1 PhonepayPlus has exempted providers of lower-cost services from the requirement to register their services. However, if a provider offers services which are subject to special conditions in order to operate, they must register their organisation (whether that is a company or sole trader) and any such services.

## 4. Level 2 provider: Adherence to special conditions

- 4.1 Some lower-cost services are required to adhere to special conditions, which PhonepayPlus sets out in Notices to industry, in order to operate:

### 3.11.1

*Where PhonepayPlus is satisfied that there is or is likely to be a risk of:*

- a) *a significant level of consumer harm; or*
- b) *unreasonable offence to the general public,*

*arising from a particular category of PRS (a “High Risk Service”), it may impose conditions (“special conditions”) for the purpose of ensuring compliance with the Code’s outcomes. The conditions which may be imposed are the conditions set out in the Code Annex 2: Special Conditions and any related conditions which are necessary for the proper functioning of those conditions.*

- 4.2 For more information on special conditions, and how they are activated, read Section Four of the statement on the 13<sup>th</sup> edition of the Code of Practice. However Level 2 providers of PRS that must adhere to special conditions should supply such evidence setting out how they comply with the relevant conditions to parties providing them with a connection.

## 5. Price information on promotions

5.1 The Code states that Level 2 providers must ensure that:

### 2.2.1

*Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*

5.2 The general rule is that promotions for lower-cost services should state pricing information clearly, prominently, and in close proximity to the call to action. For more information on this, please see the General Guidance note on "[Promotions and promotional material](#)".

5.3 Where it is **not practical** to include pricing in promotions, it is acceptable to provide pricing information immediately on connection. If a provider has any doubt about the practicality of including pricing information, they should contact PhonepayPlus for further guidance.

## 6. Price information on connection

6.1 Callers who regularly use the same lower-cost service can become frustrated by hearing the same pricing message repeatedly. Therefore, when it is reasonable to assume that a consumer is the same repeat caller and can be identified by a unique number – such as a MSISDN (mobile number) – rather than a geographic number, (which may be shared within a household), providers of lower-cost calls only have to issue pricing information on the first three occasions, and then again on every fifth occasion. If more than six months have elapsed since the last call was made from the MSISDN, then the price information cycle referred to above should be started again.

6.2 Pricing information can be stated by an operator immediately on connection, or preferably, included in the greeting message. Where this introduction is not prolonged, this information can be provided, if necessary, in the chargeable portion of the call; long introductions in the chargeable portion of the call can constitute an undue delay. For more information, see the General Guidance Note on '[The avoidance of undue delay](#)'.

## 7. Queuing or keeping consumers on hold

7.1 If consumers are held in a queue while they wait for an operator to become available, they should be given a suitable indication of the length of the likely delay. They will then be in a position to make an informed decision as to whether to remain on the call, or to try again another time.

7.2 Where providers believe that a delay is likely to occur, they should consider implementing processes to ensure that consumers will understand right from the outset how long the delay is likely to be.

7.3 This could be done in a number of ways, for example:

- Stating an estimation of the length of the delay (in minutes).
- Telling the caller they have been placed in a queue and where they are in relation to others in the queue.

- 7.4** Alternatively, providers could offer to call the consumer back at the company's expense, when an operator becomes available. We understand that, in unique circumstances (for example, an extreme weather event, or other emergency), providers may experience delays to a service and will not have had time to prepare a response. In these cases, it may be sufficient to include a general pre-call announcement, explaining the delay but without an accurate estimate of the wait.
- 7.5** However, we would expect this to be the exception to a service's operation, not the rule. While we do not intend to specify the exact extent to which the estimate is accurate (e.g. to the nearest minute), we will certainly expect providers to ensure that consumers are able to make an informed decision as to whether to stay on the line.
- 7.6** We understand that a number of factors affect the delivery of a service, and that consumers' expectations of different services may vary. For individual complaints that relate to undue delay only, we would be likely to deal with this in the first instance using a Track 1 procedure<sup>24</sup> which would allow providers 30 days to address complainants and provide redress where relevant. The provider must be able to provide evidence that:
- There was no delay;
  - The consumer was accurately informed of the delay and consented to it; or
  - There were other factors that made the delay justifiable (see below)

If such evidence cannot be provided then they will be expected to refund the consumer for the delayed part of the call and to evidence to PhonepayPlus that they have taken measures to prevent the same harm from occurring in future.

- 7.7** In the case of a Track 2 procedure, the Tribunal will be asked to consider various factors, including the following:
- Might consumers reasonably expect a high level of demand from other callers and, therefore, be prepared to accept a more lengthy delay? For example, when tickets to a major concert become available for the first time;
  - Were there extraordinary events that precipitated a sudden surge in demand? For example, a flood that prompted a high volume of calls to an insurance claims line;
  - How important is that call to the consumer, and how long would they reasonably be expected to wait? For example, a local health service providing information and support to patients;
  - Is there choice in the market? Could consumers choose to look to other providers to provide a better service?
  - Was there an extraordinary internal event that affected call wait times? For example, was there a higher-than-average number of staff away sick at the time of the call in question?

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<sup>24</sup> As defined by paragraph 4.3 of the [PhonepayPlus Code of Practice](#).

## 8. Handling complaints

### *'Basic rate' Call Charges requirement*

- 8.1** Since 13 June 2014, regulations introduced by the Department for Business, Innovation and Skills (BIS)<sup>25</sup> apply a limit to the cost to consumers accessing customer helplines. The regulations do not demand that companies or organisations provide a helpline, but where they do provide one paragraph 41 of the Regulations prohibits customer helplines charging consumers at any more than basic rate.
- 8.2** This precludes any charging beyond basic rate for post-contract calls (i.e. consumer contact about a product already purchased, whether charged via PRS or not, or to cancel a contract). For the avoidance of doubt, this does not preclude charging beyond basic rate for general consumer enquiries, data capture, or for technical support.
- 8.3** BIS has produced guidance in relation to the Regulations, which can be accessed via the gov.uk website<sup>26</sup>. PRS providers should pay particular attention to Section J of this guidance.

### *What about PRS that provides technical support?*

- 8.4** BIS guidance sets out that this need not come under Regulation 41, provided it is clear to the consumer that the line exists to provide technical support for a product already purchased (e.g. a laptop, tablet, software, machinery, white goods or other electronics), with that technical support being charged separately from the original purchase via the cost of the call.
- 8.5** Technical support lines which carry a premium rate charge must not provide the facility to complain about a product already purchased.

### *What about 087 services which provide something other than a consumer complaint facility?*

- 8.6** Where an 087 number is used to provide a PRS (such as chat, conference call facilities, data capture – i.e. receiving an order and/or payment for a product from consumers who call, or other forms of entertainment and information) its use will be compliant with the Regulations as long as no consumer complaint facility is provided on the 087 number.
- 8.7** However, since 13 June 2014 providers of premium rate numbers are no longer permitted to use any other 087 or other premium rate number, to receive complaints about the premium rate service.
- 8.8** PhonepayPlus recommends that Level 2 providers who use 087 numbers do the following:
- a) Review their current services against the BIS Guidance in order to ascertain their likely compliance with the Regulations.
  - b) Take appropriate steps to alter any services which are not compliant, particularly in respect of complaint handling arrangements for 087 services, or transfer services to a compliant number range.
  - c) Ensure that premium rate services continue to operate in full compliance with outcome 2.6 of our Code relating to 'complaint handling', and relevant rules, using suitable number ranges for complaints handled via the telephone.

<sup>25</sup> Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

<sup>26</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf)

- 8.9** PhonepayPlus also recommends that Level 1 providers and networks that operate and provide numbers for the service types outlined above note the Regulations and conduct appropriate due diligence and risk control to ensure they are not facilitating unlawful practices through the operation or provision of numbers.

*How PhonepayPlus will deal with complaints*

- 8.10** For individual cases that relate to undue delay only, we will be likely to deal with them in the first instance using a Track 1 procedure<sup>27</sup> which would allow providers 30 days to address complainants and provide redress where relevant, as set out in more detail at paragraph 7.6 above.
- 8.11** For compliance issues relating to pricing and transparency, we will contact providers immediately.
- 8.12** For more information on our expectations in relation to complaint handling please see General Guidance Note on the '[Complaint-handling process](#)'.

**9. Service spending caps**

- 9.1** Unless a lower-cost service is required to adhere to a special condition which requires a spending cap, there is no spending limit on lower-cost services.

**10. Call recording and monitoring**

- 10.1** Unless a lower-cost service is required to adhere to a special condition which is to the contrary, there is no need to record or monitor calls. If a call is recorded or monitored, then the service should state this information immediately following connection. For more information, please see the General Guidance Note on '[The conduct of live services](#)'.

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<sup>27</sup> As defined by paragraph 4.3 of the [PhonepayPlus Code of Practice](#).



## GENERAL GUIDANCE NOTE

### Method of exit from a service

#### 1. Developing a method of exit from a service

- 1.1. The PhonepayPlus Code of Practice (the “Code”) requires that there is a clear method of exit from a service, as set out at paragraph 2.3.11 of the Code. This states the following:

*2.3.11*

*Where the means of termination is not controlled by the consumer there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.<sup>28</sup>*

- 1.2. There may be many ways for a consumer to exit a service – these can be as simple as terminating a phone call by replacing a receiver or selecting a relevant on-screen button, to sending an SMS instruction, closing a webpage or uninstalling a mobile application. Whatever method is used, it must be clear, simple and free to perform – this enables the consumer to stay in control of their spending.

#### 2. Use of the ‘STOP’ command

- 2.1 The most common, familiar and easily implemented system for consumers to exit a mobile-based service is through the use of the ‘STOP’ command. This command should be recognised through both the capitals variation of ‘STOP’ and the lowercase variation of ‘stop’, and any combination thereof.
- 2.2 With regard to how the ‘STOP’ command can work well in meeting consumer expectations, we consider it best practice that consumers should be able to text ‘STOP’ to the mobile shortcode the service was initially requested from, or from which it is receiving (chargeable) messages, in order to stop the service. This is a natural reaction to receiving a message, where there is some consumer awareness of the ‘STOP’ function.
- 2.3 While the Code does not stipulate which mechanism for termination is used by a PRS provider, PhonepayPlus considers the ‘STOP’ command is the best option available in most cases. This is in part based on consumer awareness and behaviour in reaction to PRS engagement. Therefore where a PRS provider does build a different solution, that must be communicated in a way that interrupts the natural reaction of some consumers. Failing to do so may lead to consumer frustration where their attempts to exit the service do not work first time.

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<sup>28</sup> There is a separate requirement to inform the consumer of a method of exit from a contract found in the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013*.

- 2.4 Where we discover that separate shortcodes for requesting a service and opting out from it are being used, then consideration will be given to a provider's motive for doing so. Any actions which are likely to confuse consumers may potentially fail to meet the fairness outcome, at section 2.3 of the Code.
- 2.5 For the avoidance of doubt, we would always expect the consumer to be able to text 'STOP' to the same shortcode from which they are being billed.
- 2.6 While there is a good understanding that texting 'STOP' to a service will result in the service stopping, there will be occasions where a consumer may not be aware of the 'STOP' command. In such circumstances, consumers may text 'please stop', 'stop texting me' or other variations containing the word 'stop'.
- 2.7 We accept it is not always possible to recognise these variations immediately when a consumer wishes to exit. However where a consumer has legitimately tried to cancel a service and failed (either because they have mis-typed 'STOP', or because they have texted some other variation), then once this becomes clear to the provider, best practice would be for consumers to be retrospectively refunded for any charges subsequent to their first clear attempt to opt out, and immediately removed from the service.
- 2.8 Where providers would like to use an alternative mechanism to exit a service and choose to give clear instructions as to how it works within promotional material, then they are strongly advised to contact PhonepayPlus before beginning promotion or operation. In these circumstances, we would consider representations on a case-by-case basis. Providers should be aware that, even if the use of a command other than 'STOP' was designed as an effective mechanism, relevant service shortcodes would still have to respond to the 'STOP' command in addition to any other exit trigger words relied upon by the provider. This is based on consumer behaviour and the need for a service to respond to clear and common form requests to exit the service (i.e. the 'STOP' Command), whether or not the consumer's chosen means of making such a request is the primary mechanism for exiting the service.
- 2.9 Providers of text marketing or other forms of electronic marketing should note that this document does not reference opting out from marketing. Providers should refer to the General Guidance Note on 'Privacy' for further information.

### **3. Instances where a consumer is subscribed to more than one service operating on the same shortcode**

- 3.1. A consumer may be concurrently subscribed to more than one premium rate service using the same access shortcode. The consumer will have opted into the services by texting keywords, which allow the provider to differentiate between the services on a single shortcode (known commonly as 'shared' shortcodes).
- 3.2. Where a consumer is subscribed to more than one service on a single shortcode, PhonepayPlus advises that the following actions would be acceptable, where the consumer sends a single 'STOP' command:

- To unsubscribe the consumer from all services they are subscribed to on that shortcode.
- To send the consumer a text which clearly states that they are subscribed to multiple services, and informs them that they have been unsubscribed from the last service they opted into, and that they can unsubscribe from all services by replying with the words 'STOP ALL'. As soon as the consumer replies with 'STOP ALL', they should be unsubscribed from all services on that shortcode. An example of a text that informs consumers compliantly would be the following:

*You txted STOP. You're subscribed to [X] services on this code, and we stopped [insert name]. To stop other services, txt STOP again or STOP ALL.*

#### **4. Potential limitations to using 'STOP' command**

- 4.1. As referred to earlier in this document, PhonepayPlus recognises that there are certain forms of technology that make a 'STOP' command difficult, or impossible, to put into effect. An example of this is MMS shortcode usage for service delivery.
- 4.2. The cost of replying to an MMS message can often be considerably higher than the standard cost of sending a text and PhonepayPlus believes this would disadvantage a consumer wishing to exit a service. Providers should consider supporting the 'STOP' command on a free or low-cost text shortcode and make sure that the consumer is advised of this means of exit at relevant points, including prior to the commencement of the service, within the initiation message and in any spend reminders. If use of 'STOP' command is not possible for technical reasons or where this solution presents a disproportionately high cost, alternative easily accessible and economical means of exiting the service must be in place and must be clearly communicated to the consumer.
- 4.3. In circumstances that warrant use of an alternative, effective option for exiting a service, an example solution would be to provide a fixed-line phone number that a consumer could call to exit the service. Promotional material should be abundantly clear when explaining the simple and effective method of exit from the service, unless otherwise obvious.

#### **5. Apps**

- 5.1. Services which are consumed through an application installed on a mobile device also offer additional content which can be paid for within the app environment – this can be via operator billing, PSMS or another payment mechanism.
- 5.2. For app-based services involving PRS billing options, the STOP command may not be the most appropriate means of exit. Any app using PRS billing must have a clear and unambiguous method of stopping any payment, and a clear and simple method of removing the application from the device, if desired by the user. This information must be clearly detailed within the app,

and must be easily accessible, simple to understand and to implement.

- 5.3. In addition, PhonepayPlus suggests that app-based services which build upon an on-going customer relationship and associated account provide a means for the consumer to track and review their cumulative spend. For further information in this area, please refer to the Guidance on 'Enabling consumer spend control'.

## **6. The SKIP command**

- 6.1. PhonepayPlus has implemented a set of Special conditions applicable to recurring charitable donation services. This includes the option to make the 'SKIP' command available to donors.
- 6.2. For further information on using the SKIP command, please see the relevant Special conditions. For the avoidance of doubt, the SKIP command may only be used for charitable donation services provided by UK charities that are registered with the Charity Commission, the Northern Ireland and Scotland equivalents.
- 6.3. Where the SKIP command is available to users, the STOP command must also be available and effective when used.

## GENERAL GUIDANCE NOTE

### Privacy

#### Who should read this?

All Network operators and providers involved in the provision of premium rate services to consumers.

#### What is the purpose of the Guidance?

To assist networks and providers by clarifying PhonepayPlus' expectations by way of the fulfilling the following Rules of the [PhonepayPlus Code of Practice](#):

##### **2.4.1**

*Level 2 providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy.*

##### **2.4.2**

*Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with the opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a PRS, the Level 2 provider of that service must be able to provide evidence which establishes that consent.*

#### What are the key points?

This Guidance is set out in two parts:

- Part One – Consent to marketing;
  - When does Guidance on privacy apply?
  - The right to privacy
  - Verifying consent for soft and hard opt-in – PECR and rule 2.4.2 of the Code
    - Soft opt-in
    - Hard opt-in
- Part Two – General formatting for marketing;
  - Format for marketing SMS
  - Format for marketing via WAP link
  - When a consumer texts 'STOP'
  - Assumed withdrawal of consent
  - How does the Telephone Preference Service (TPS) apply?

## **PART ONE – CONSENT TO MARKETING**

### **1. When does Guidance on privacy apply?**

- 1.1** Providers should refer to this General Guidance Note on privacy when communicating with consumers ('marketing') – whether by electronic or non-electronic means. This Guidance Note does not apply to communications that take place during the delivery, or provision, of a service.
- 1.2** Marketing covers a wide range of activities – not just the offer for sale of goods and services, but also the promotion of an organisation's aims and ideals. Accordingly, communications that promote charitable donations, or promote a political ideal, and are related to a premium rate service, are also included within the scope of this General Guidance Note.

### **2. The right to privacy**

- 2.1** Mobile phones can provide a personal connection to an individual (rather than to a household) – a connection that many individuals strongly feel should be protected from unwanted communications. Yet, it has never been easier to reach a high number of individuals with a simple database and a connection to a communications network. PhonepayPlus receives regular complaints from consumers about PRS marketing which they have not opted in to receive and, as such, feel intrudes upon their right to privacy.
- 2.2** Consumers have a fundamental right to privacy – enshrined in law, through both the Privacy and Electronic Communications Regulations 2003 ('PECR') and the Data Protection Act 1998 ('DPA'). In the UK, the Information Commissioner's Office ('ICO') is the body charged directly with enforcing PECR and the DPA. We work closely with the ICO in order to define what constitutes acceptable and auditable consent to marketing. We may refer cases to the ICO, when appropriate, but will also deal with invasions of consumers' privacy through rule 2.4 of the [PhonepayPlus Code of Practice](#).
- 2.3** For the purposes of rule 2.1 of the Code PECR's provisions on consent apply only to marketing of premium rate services via electronic communications. PECR's provisions therefore do not apply to such marketing where non-electronic communication methods are used. However, where personal data is processed for the purposes marketing through non-electronic methods, such processing will be subject to the requirements of the DPA (which includes consent).
- 2.4** In terms of PECR it provides for two forms of consent; 'hard opt-in' and 'soft opt-in'. The former involves explicit consent to marketing, which may extend to consumers giving consent for third parties to promote to them directly. The latter involves the implicit provision of consent to market when a consumer negotiates a purchase from a company. That company can promote other similar products and services it supplies (subject to conditions being met, as set out below), but such implicit consent cannot extend to third parties.

- 2.5** In practice PhonepayPlus will enforce the right to privacy through rule 2.4.2 of the Code. However, we may also use rule 2.1 of the Code in respect of PECR and/or the DPA where we consider it appropriate to do so. In respect of the application of rule 2.4.2, whilst the Code does not itself define consent, we consider that for both electronic and non-electronic marketing, both hard opt-ins and soft opt-ins (where it meets the requirements of paragraph 22(3) of PECR), will be acceptable forms of consent. Providers should note that rule 2.4.2 contains additional requirements relating to marketing that must be satisfied where relevant.
- 2.6** PECR requirements for soft and hard opt-ins can be summarised as follows:
- Where there is no explicit consent, the marketer may evidence consent to marketing by obtaining the individual's details through a sale, or negotiations for a sale, and the individual must have been given the opportunity to refuse such marketing, when their details were collected (soft opt-in);
  - Marketing materials provided following a soft opt-in must relate only to that marketer's products or services and only concern similar products to the individual's initial purchase, or area of interest (e.g. it would not be appropriate to promote adult services to someone who had only previously purchased ringtones);
  - Soft opt-in consumers must be given a simple means of opting out at the time of initial purchase, and in each subsequent promotion; and
  - Where the soft opt-in conditions are not met a positive action signifying consent must be obtained from consumers after clear information about the intended activity has been provided. For example, where the individual's details are to be passed to third parties, they must be clearly informed of this, and positively confirm their acceptance ('hard' opt-in).
- 2.7** While it is not mandatory to use hard opt-in for consent to marketing which is not from third parties (i.e. where soft opt-in applies), providers are encouraged to wherever possible seek hard opt-in consent.
- 3. Verifying consent for soft and hard opt-in for the purposes of rules 2.4.2 and 2.1 (in relation to PECR) of the Code**

*Soft opt-in*

- 3.1** Where a provider markets to a consumer using a soft opt-in obtained during a sale or negotiations for a sale, we consider there is less potential detriment, although not an absence of detriment, than where a provider charges the same consumer. As such, we do not consider that the need to provide auditable verification of opt-in is as great as with charging. However, this is subject to the following criteria:
- The consumer was given a clear opportunity to opt out of marketing on each occasion, and was opted out of all future marketing, if they exercised this option. An example would be a promotional SMS that contains the words "to stop future marketing reply STOP".



- 3.2** If this criterion is met, we will look at any complaints on a case-by-case basis. Low levels of complaints, which might suggest any unsolicited marketing is a result of mistaken entry of mobile numbers into websites, or a similar error, may be dealt with informally.
- 3.3** However, where consumers complain about unsolicited marketing in significant volume, or in any volume about marketing which contains no opt-out facility, PhonepayPlus will examine such complaints on a balance of probability, unless the provider can provide auditable proof of opt-in, in the same way as that set out for charging in Part One of this General Guidance Note. For the avoidance of doubt, the retention of a record of an IP address, or MSISDN (mobile) number, used to browse a website will not be sufficient in these circumstances.

*Hard opt-in*

- 3.4** In order to reach a greater number of consumers, a provider may trade or purchase consumers' personal data. In these circumstances, further protection is necessary because the connection between the consumer and the business they first interacted with, and subsequently with the provider who is now marketing to them, is remote and indirect.
- 3.5** Sharing of data in these circumstances include any transfer – including renting, or trading or even disposing free of charge. A third party is any other, distinct legal person – even in the same group of companies or partners in a joint venture.
- 3.6** For this reason, promotions designed to gain a hard opt-in must draw each consumer's attention specifically to the issue of consent, and that consent must involve a positive step beyond mere purchase of the service by the consumer, to be valid.
- 3.7** For example, if one provider wishes to purchase a marketing list from an unrelated provider, then evidence of a hard opt-in for each number on that list should be obtained.
- 3.8** When obtaining consent via a website, using a pre-checked tickbox is not sufficient for this purpose.
- 3.9** In this context, a compliant example is an empty box that a consumer must tick in order to consent. Next to this, a clear explanation should be made of how the data will be used in future. If this explanation is not clear enough, then the hard opt-in is likely to be invalid.
- 3.10** A good example of compliant consent is: "I want to hear from companies X, Y and Z so that they can send me offers to my phone. Please pass my details onto them so that they can contact me."
- Where this text is placed next to an unchecked box which the consumer checks, and where there is a robust and independent audit trail of the data which supports the consumer having provided their consent, then it is likely this would be regarded as compliant.
- 3.11** A hard opt-in can also be obtained via a conversation. However, a recording of the conversation, or of key-presses during the call, should be retained to provide robust verification.

- 3.12** Providers using marketing lists should ensure that each number marketed to has a valid opt-in, gathered no more than six calendar months ago. Providers should ensure that they can robustly verify (see the whole of section 5 of this General Guidance Note) each and every consumer's opt-in, and ensure that none are currently suppressed. Please note that, where a hard opt-in is used to market to consumers who have not previously purchased from a provider, or been in 'negotiations for a sale', then we will expect opt-in to be robustly verifiable in the event of any complaints, no matter how small or large the scale; this is in contrast to the approach to soft opt-in set out at paragraphs 5.1-5.3 of this General Guidance Note.

## **PART TWO – GENERAL FORMATTING FOR MARKETING**

### **4. Format for marketing SMS**

- 4.1** When marketing via SMS, providers should follow this format to minimise any risk of invading privacy. The message should begin 'FreeMsg'.
- 4.2** The message should state contact information of the initiator of the message (not any affiliate or publisher). This can be in the metadata of the SMS (so, if consumers can text back to the shortcode on which the communication was sent, then this is likely to be sufficient). The message should also include a means of refusing future marketing. A best practice example of a message compliant with these guidelines would be: "FreeMsg: to receive more guidance on privacy contact us on 0845 026 1060, to end marketing reply STOP" [116 characters].

### **5. Format for marketing via clickable link**

- 5.1** 'Binary' messages which contain clickable links may be restricted by technology to a set number of characters. Alternatively, a clickable link can be inserted into a standard SMS message. Given the need to inform consumers clearly and accurately about the service, we would advise, as best practice, that a standard SMS message should be used where PRS is being marketed.

### **6. When a consumer texts 'STOP'**

- 6.1** When a consumer sends 'STOP'<sup>29</sup>, or other word as notified to the consumer as a valid marketing opt-out contained in the marketing message, then all marketing must cease. For more information, see the General Guidance Note on '[Method of exit from a service](#)'.
- 6.2** When a consumer texts 'STOP' in connection with an ongoing paying commitment – be it for a subscription, or as an element in a virtual chat service – the consumer must not receive any further charge. For more information, see the Service-Specific Guidance Note on '[Subscription services](#)'.

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<sup>29</sup> Providers can consider other suitable opt-out methods, where appropriate. These must be equally robust and clearly communicated to the user.

**6.3** However, in this circumstance, the provider may still send marketing messages. If, at this point, the consumer then sends 'STOP' (again), then all marketing must cease. If a consumer sends 'STOP ALL' at any point, then consent for all contact has been removed. At this point, the mobile number should be suppressed. Suppressing a number does not mean deleting it – it means recording the fact that no further messages should be sent. If a number is deleted, it could be received from a third party, then marketed to again, which would be in breach of the rules. For this reason, providers should store the date of suppression, as well as the number.

## **7. Assumed withdrawal of consent**

**7.1** Consumers' recollection of giving their consent to be marketed to deteriorates over time, and what could have been an interesting promotion immediately after their initial contact, could much later constitute an intrusion. On this basis, we advise that marketing should happen soon after consent is given, and that no consumer should be marketed to more than six months after the date of their last consent<sup>30</sup>. There may be some types of service which can legitimately market longer, such as services centred around a specific date in the annual calendar, such as a consumer's birthday or Valentine's Day, or the start of a new football season. However, the consumer will need to be clearly informed upon consenting to marketing that they may be marketed to the next year/season.

## **8. How does the Telephone Preference Service (TPS) apply?**

**8.1** The TPS applies to domestic fixed line numbers and allows consumers to register their telephone numbers for a prior indication that they do not wish to be contacted by telephone for marketing purposes. This means that, if a company is marketing a premium rate service by telephone, they should cross-refer their database to the TPS. If the date of the TPS preference declaration post-dates their consent (only relating to a soft opt-in, not to a hard opt-in), then their number should be suppressed. If the consent was provided after the TPS preference declaration, then they can be marketed to. The TPS does not apply to the sending of MMS or SMS messages, but does apply equally to telephone calls made to mobile and landline telephone numbers.

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<sup>30</sup> This is shorter than the duration suggested by the ICO, which recommends 12 months. However, six months is a more appropriate length of time for the mobile market because this matches the length of time a telephone number must be quarantined before it is recycled by a Mobile Network operator.

## GENERAL GUIDANCE NOTE

### Promoting Premium Rate Services

#### Who should read this?

All Networks operators and providers involved in the provision of premium rate services (PRS) to consumers.

#### What is the purpose of the Guidance?

To assist Network operators and providers when creating and using promotional material, and / or assessing the quality of third party promotional material for PRS prior to its use. The guidance clarifies PhonepayPlus' expectations in relation to various outcomes and rules within PhonepayPlus' Code of Practice that concern promotions or promotional material.

#### What are the key points?

The rules set out in the PhonepayPlus Code of Practice cover a range of different elements around promotion. The main issues covered in this guidance are:

##### *Section numbers*

- 1) Desired outcomes – establishing confidence in PRS with high quality promotions
- 2) Transparency in promotions
- 3) Pricing information
- 4) Promoting on radio broadcast
- 5) Freemium models and using the word 'free' in promotions
- 6) Promoting via the internet
- 7) Misleading promotions
- 8) Inappropriate promotions
- 9) Direct marketing to a consumer's mobile phone
- 10) Using affiliate marketing
- 11) Fundraising for charity using premium rate services

## **1. Desired outcomes – establishing confidence in PRS with high quality promotions**

- 1.1** Consumers want to purchase digital and non-digital products and services quickly and easily. The PRS industry offers a great opportunity to discover such products and services and purchase them making payment via their phones, putting the charges onto their landline or mobile phone bill. One of its strengths is the speed and ease with which consumers can make a purchase, and yet consumers in a fast moving world still want to know what they are getting from the product or service, how much it costs, and how the payment will work.
- 1.2** This guidance will enable those in the PRS industry to consider the following issues:
- How to offer consumers information transparently and what information is important from the consumer's perspective
  - How to treat consumers fairly and equitably from first contact throughout the consumer experience
  - How to avoid causing harm and offence (avoiding inappropriate promotions)
  - How to prepare consumers so they are able to ask for help or raise complaints when issues arise (increasing brand awareness and equipping consumers to raise complaints effectively)

## **2. Setting out key information and promoting transparently**

- 2.1** There is a vast range of different types of PRS. Each of these may need to give slightly different information to a consumer within their promotions, in order to ensure consumers have all the information they would reasonably need before purchasing.
- 2.2** In addition, there are a range of different types of promotional material, ranging from promotions that are self-contained (such as a print-based advert, inviting a consumer to call or text an access number), to promotions that have a number of components that lead a consumer toward a purchase. An example of this would be a text message with a link to a mobile website, where the consumer subsequently makes purchases using a secure payment method. In this latter case, there would be a number of steps between the first promotion and a purchase. This results in a number of stages at which a provider can act to ensure consumers were aware of all information necessary to make a decision to purchase, prior to any purchase.
- 2.3** Because of this complexity, PhonepayPlus recommends that providers familiarise themselves with the entire contents of this Guidance and especially the parts relevant to the promotional mechanics they use. However, as a basic starting point, the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- Cost
- Brand information
- Product or service information
- How it is delivered or used
- How it is paid for – one off payment, recurring charges, etc.
- How to get help where necessary

#### Services accessed across multiple devices

- 2.4** In cases where a consumer participates in a service, or receives content, via one device, but is billed for the service via another device, it should be clear to the consumer they will be charged in this way. Confirmation of a purchase should be sent to both the device that delivers the service and the device to which the charge is attributed.

#### Virtual currency

- 2.5** Premium rate services that invite consumers to purchase a form of virtual currency should be absolutely clear as to the service(s) in which this currency can be used, and as to whether unused currency carries an expiry date. Where services automatically ‘top up’ a consumer’s virtual currency account once all the currency has been spent (with another PRS charge to the consumer), this should be clear to the consumer, prior to purchase.

#### Cross-promotional activity

- 2.6** From time to time, providers may insert promotions for other services within service messages to a consumer who is already engaged with a PRS. These promotions may appear within messages that carry a PRS charge, or within free reminder or access messages.
- 2.7** Where this happens, consumers will sometimes become confused as to which part of a message relates to the promotion, and which part relates to the service with which they are already engaged. This can cause them to miss spend reminders, or other information that would inform them about the service they are engaging with already. In order to build consumer trust we set out the following expectations as a guide to compliance in this area:
- Promotions within reminder or service messages should ensure that the promotional material is placed after the information concerning the service the consumer has already subscribed to.
  - In addition, the promotional part of the message should be clearly flagged as being separate from the other information with the message. To do this effectively, we would strongly suggest that the words ‘ADVERT’ or ‘PROMO’ are inserted directly before the promotional part of the message.



### 3. Pricing information

**3.1** 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 information in the PhonepayPlus Code of Practice is rule 2.2.7, which states the following:

#### **2.2.7**

*In the course of any promotion of a premium rate service, written or spoken or 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.*

**3.2** As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code, number or call to action for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged. Examples of unclear descriptions would include the following:

- 'premium rate charges apply',
- '100ppm',
- '1.50 GBP'
- '50p/min'

**3.3** PhonepayPlus strongly recommends the price should be expressed in conventional terms, such as '50p per minute', '£1.50/msg' or '£1.50 per text'. PhonepayPlus accepts there may be different conventions, based upon the amount of space available (for example, in a small print ad, or a single - SMS - promotion); however, pricing should remain clear. Variations on this, such as charges being presented in per second formats, or without reference to a '£' sign (where the rate is above 99p), may breach the [PhonepayPlus Code of Practice](#).

**3.4** We consider it best practice to inform the consumer of the price at every stage of a promotion, where it is technically possible to do so, but not to do this would not necessarily be considered a breach of the PhonepayPlus Code of Practice. In the case of banners and clickable links (both of which take a consumer to a website when they are clicked on), and push notifications (which immediately directs the consumer to a website without them first clicking), we accept that there may be no practical way of informing the consumer of the price at that stage. In such cases, provided the consumer is then redirected (without charge) to a website or other promotional mechanic where they are clearly informed of the price prior to making a purchase, this is unlikely to breach the [PhonepayPlus Code of Practice](#).

Network access charges

- 3.5** The overall charge to a consumer for calling a PRS will often exceed the actual cost of the PRS (known as the Service Charge) advertised by the provider or promoter. This can be for one of two reasons:
- Because most networks, both mobile and fixed, levy supplementary charges on voice-based calls, referred to as an Access Charge.
  - The possibility exists that consumers could incur data charges when downloading content to a mobile device, or when browsing a mobile internet site.
- 3.6** While consumers may have a general awareness that calls from mobile phones and some landline networks may cost more than others, or that they may incur data charges if they do not have a data-inclusive contract with their Mobile Network Operator, it is necessary to include information in the promotional material, stating these possibilities to consumers. In the case of the first three cost types in the table below, we have set out two viable options. However we would recommend that providers use the longer form of wording wherever it is possible to do so.

<i>Cost type</i>	<i>Example wording</i>
<b>Standard per minute PRS</b>	“Calls cost [x]p per minute plus ‘network access charge’” or “Calls cost [x]p per minute plus your phone company’s access charge”
<b>Standard per minute PRS where duration is known</b>	“Calls cost [x]p per minute and should last no more than [x] minutes, plus ‘network access charge’” or “Calls cost [x]p per minute and should last no more than [x] minutes, plus your phone company’s access charge”
<b>Single drop charges</b>	“Calls cost [x]p plus ‘network access charge’” or “Calls cost [x]p plus your phone company’s access charge”
<b>Premium rate texts</b>	Wording to cover: Cost per text/download; clear statement of how many texts need to be sent to complete the task (if more than one, state how many). Include “ <i>standard rate charges may apply to messages sent</i> ” if applicable.
<b>Interactive red button services</b>	Cost per use (prior to pressing red button), including a statement, if appropriate, that network extras may apply

### Prominence and proximity

- 3.7** Pricing information needs to be put where consumers will easily see it, not where it is hard to find. This is because the price ought to be part of what attracts consumers into making a purchase. The rules in our Code are there because consumers want this information so they can choose what they buy and how much they pay for it. It is likely to be judged as 'prominent' if the information is clearly visible when a consumer makes their purchase and triggers the payment. Both the font size and use of colour are important to establishing prominence, and information on this is found at paragraphs 3.12 to 3.15 of this guidance.
- 3.8** 'Proximate' is a key term within 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 pricing information being proximate is when it is provided immediately before or above the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion.
- 3.9** 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 the following examples of bad practice in promotions:
- Pricing information is placed 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 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.
- 3.10** For both web and mobile web, if ordering a service entails activating a button (or similar function), the labelling of the button should make the obligation to pay absolutely clear, for instance by using only the phrase 'pay now'. This wording on the button should be easily legible. A failure to label the button in this way may result in the provider not complying with the law (Regulation 14 (4) of the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013. Note that consumers are not bound by orders for services which do not comply with this legal requirement and may be entitled to a full refund.
- 3.11** Lack of prominence, or proximity, also takes place in print, where, as online, the price is provided in small print elsewhere on the page from the call to action. As with online advertising described in the paragraph directly above, 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. As before, in such cases, a PhonepayPlus Tribunal is likely to uphold a breach of [PhonepayPlus' Code of Practice](#) for lack of pricing prominence.
- 3.12** In some cases, PhonepayPlus accepts that prominence may take precedence over proximity. An example would be a print or web page which clearly and prominently stated that all numbers/shortcodes/other access codes on the page cost £X/£X per minute or Xp/Xp per minute. In this case, there would be no need for there to be an individual price in close proximity to all the numbers/shortcodes/other access codes on the page. However, we stress that examples of prominence and proximate being mutually exclusive in this way are rare, and

that providers who have any doubt should contact PhonepayPlus before they begin to provide services.

### Font size and presentation

- 3.13** Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, ‘close examination’ will differ for the medium, for example a static webpage, a fleeting TV promotion, in a print publication, or on a billboard where you may be at a distance or travelling past at speed.
- 3.14** The use of colour (see immediately below) also needs to be considered, as this could affect the need for close examination, regardless of font size.

### Use of colour

- 3.15** There are a number of instances when the combination of colours used in promotional material reduces the clarity of information and the ease with which it can be seen. Providers should take care to ensure that the colour combinations (including black on white) used for the presentation of the price do not adversely affect the clarity.
- 3.16** In addition colours should not be diluted inappropriately – for example, the slight colouring of white text with other colours – so that lettering appears to stand out slightly less against a different colour background. Shadowing small text can equally reduce the level of visibility or legibility of text.

## **4. Radio broadcasting and promoting PRS**

- 4.1** Those promoting PRS on the radio should ensure that pricing information, and any other key information, is clearly and plainly spoken in close proximity to the PRS being promoted. Providers ought to consider the following when developing such promotional campaigns:
- Where a PRS is advertised during on-air commercial slots, pricing and other key information should be provided on every occasion the commercial airs.
  - Where a PRS is advertised during a radio programme, PhonepayPlus accepts that there is no need to mention the price every time the PRS is mentioned. However, the price should be mentioned in close proximity to the service at least once during the average listening time for that radio station (e.g. if a radio station knows that the typical length of time listeners tune in is 25 minutes, pricing and other key information should be mentioned, in close proximity to a promotion, at least once every 25 minutes). Radio broadcasters may be asked to provide evidence of their average listening time as part of an investigation by PhonepayPlus.

- Where a radio station broadcasts wholly or principally in a foreign language, it may be acceptable to provide pricing and other key information in that language, rather than English. However, we would recommend that providers contact PhonepayPlus for further advice before beginning a promotion of this type.

## 5. Freemium models and use of the word ‘free’ in promotions

**5.1** The word ‘free’ is understood to be a powerful advertising hook, and it is for this reason that care is required to make sure any offer is set out clearly and effectively when using such language.

**5.2** The PhonepayPlus Code of Practice aligns with requirements in the Consumer Contracts Regulations with both seeking to protect consumers by requiring transparency of key terms and pricing information prior to any paid-for service being purchased and used by a consumer<sup>31</sup>. The relevant provisions in the Code include the following:

### 2.2.1

*Consumers of PRS must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*

### 2.2.7

*In the course of any promotion of a PRS, written or spoken or 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.*

### 2.3.1

*Consumers of PRS must be treated fairly and equitably.*

### 2.3.3

*Consumers must not be charged for PRS without their consent. Level 2 providers must be able to provide evidence which establishes that consent.*

**5.3** These measures are particularly important where core or foundational services are marketed with the emphasis on ‘free’ access or use.

**5.4** PhonepayPlus considers it appropriate for the purposes of the Code<sup>32</sup> to promote the free element of any service, provided the following is also true:

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<sup>31</sup> See paragraphs 3.7 to 3.12 of this guidance above.

<sup>32</sup> Providers should be aware that there may be rules of other regulatory bodies that apply and therefore we recommend that legal advice is sought accordingly.

- The promotion should clearly state what is and isn't free – i.e. any use of the word 'free' (or variations) must be clearly qualified in a way that is immediately visible, understandable, and proximate;
- The consumer must be in no doubt when they opt into a service as to the nature of any premium rate elements and when charges may be initiated, and be given a clear method of exit before charging commences.

### Freemium models

- 5.5** 'Freemium' is a business model based on establishing a large reach by offering services to consumers for free, with interest in the product or service driven by its quality and effectiveness. The idea is that 100% of users gain the benefit of the core service that is free. The business then makes revenue from a smaller percentage of users who pay for additional premium services or features associated with the free element.
- 5.6** Freemium is also understood in contrast to other revenue generation schemes, including advertising within a free newspaper or online search engine or social network. There may be an element of freemium business in social media offerings, such as creating the option to share virtual gifts at cost for example, but advertising as a means of monetising an otherwise free service is not 'freemium'.
- 5.7** Furthermore, a game or subscription-based service that costs money may promote itself by offering free access to one level or free access for a set period of time. This is not 'freemium' as the free service is not generally available for ongoing use after the free element is used up or expires.
- 5.8** There are particular risks associated with freemium businesses that may lead to circumstances where Level 2 providers need to take extra care when engaging their consumer base. Failure to communicate key terms or offers properly in these circumstances may lead to non-compliance with the Code.
- (i) A lack of understanding of the freemium business model may lead to a form of auto-enrolment being established without consumers being properly informed and prior to proper consent being obtained for charges;
  - (ii) The distinction between the core free element and premium rate services may be negligible leading to poor consumer understanding as to when a purchase is being made;
  - (iii) Increased pressure on revenue generation or sales of premium rate products based on low demand or changes to business plans may lead to promotions being developed and launched without appropriate scrutiny of their impact on consumers or of compliance standards.



- 5.9** Given the customary operation of freemium services, it would be inappropriate for free content and service usage to be locked for any particular users until a premium rate purchase is made. Where a provider is taking the deliberate step to remove all freemium services, it must give consumers the option to exit the service without making further use of the paid-for service operated in future. If this requires the consumer to take any positive steps to remove apps downloaded on to their devices, clear instructions should be given and charging should not commence where consumers have not given their consent.

Restricted free access or use, such as free-trials

- 5.10** Where the business model is not freemium but simply a free-trial, charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service is at an end. Charging should not commence sometime after this point, where the consumer may be likely to have forgotten their initial opt-in to the free element. It is good practice to alert the consumer at the point at which the free-trial ends and the paid-for service begins, even where transparent information was provided at the outset.

Promotional tools using the word ‘free’ or its variants

- 5.11** As the web is now the dominant form of advertising for PRS, websites offering PRS may seek to ensure their site appears at, or near, the top of a list of search engine results. One way of doing this is to ensure a website promoting premium rate services contains the metatag ‘free’ (or variations) in order to attract the ‘crawler’ software used by search engines.
- 5.12** Where a metatag, such as ‘free’, is used, this should be an accurate descriptor of the products and services offered to consumers. Where none of the content on the actual website it relates to is actually free, such use of inaccurate metatags may trigger investigations into misleading advertisements. Such advertising may be found in breach of the Code (and the law):

**2.3.2**

*PRS must not mislead or be likely to mislead in any way.*

PRS promotions presented within free online services or apps

- 5.13** A Level 2 provider may choose to rely on marketing their paid-for services in third party apps or other free apps it operates that are not otherwise related to PRS at all. The promotional material relating to PRS must be clearly distinguishable from any free content offered within the app, and clearly indicate charges apply to the promoted service<sup>33</sup>. It is recommended that in-app banner advertising does not lead directly to PRS access, such as the instantaneous dialling of an 09 number. Instead, consumers ought to be redirected to a promotion of the PRS giving sufficient information to comply with the Code provisions set out above.

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<sup>33</sup> We would recommend that providers take extra steps to ensure that such promotions are not inappropriately placed (for example in children’s apps) to avoid a breach of paragraph 2.5.6, 2.5.7 or 2.5.8 of the Code.

## 6. Web-based promotion of PRS

- 6.1** Web-based promotion is arguably now the most dominant area of PRS promotion, especially for mobile-based PRS, both in terms of market share and innovation. Increasingly, PRS is promoted on websites and social networking brands, such as Facebook and Twitter, and consumers are often invited, or required, to enter their mobile phone number in order to access content. Below we clarify expectations around web-based promotion, in terms of likely compliance with the PhonepayPlus Code of Practice.
- 6.2** Once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see section 2 of this Guidance), or click on a link to another webpage. The PhonepayPlus Tribunal is likely to take the view that scrolling up or down to read key terms and conditions, or requiring the consumer to click on a link to view them, is in breach of rule 2.2.7 of the PhonepayPlus Code of Practice.
- 6.3** PhonepayPlus recognises that there are risks associated with web opt-in which are separate from promotion – i.e. proving a consumer’s consent in an independently auditable way. For more information on how an opt-in, to either charging or future marketing, can be proven in a way that is acceptable to PhonepayPlus, please refer to the two separate General Guidance Notes on [‘Privacy’](#) and [‘Consent to charge’](#).
- 6.4** PhonepayPlus is also mindful of other guidance relating to the use of check-boxes for the purposes of obtaining consent. While the action may be distinct, the concept of consent and the process by which it is obtained and audited are very similar whether it is for consent to charge or consent to market. In relation to the latter, the Information Commissioners Office (ICO) has issued guidance relating to Privacy and Electronic Communication Regulations 2003.
- 6.5** PhonepayPlus recommends the use of unchecked boxes where consent is being obtained as this holds less risk for providers when seeking to prove a consumer’s intentions. When obtaining consent for marketing, for example, the following wording may be presented:  
*“I want to hear from companies X, Y and Z so that they can send me offers to my phone. Please pass my details onto them so that they can contact me.”*
- 6.6** Where this text is placed next to an unchecked box which the consumer checks, and where there is a robust and independent audit trail of the data which supports the consumer having provided their consent, then it is likely this would be regarded as compliant.
- 6.7** However, it is important to not only be able to prove consumer consent to marketing for PRS, but also make the process of opt-in, where a consumer enters their number, as transparent as possible. With this in mind, PhonepayPlus recommends that, where consumers are required to

enter their mobile phone number online, transparency can be achieved by structuring the page as outlined below:

- A brief statement that confirms where any service content (e.g. an IQ test result or horoscope) will be displayed (e.g. mobile handset, next screen, etc.);
- A brief summary of the key terms and conditions. For example, subscription services should state that it is a subscription service and the full cost of participating in the service.

**6.8** Whenever multiple webpages are presented as part of an opt-in sequence PhonepayPlus would expect all key terms and conditions, pricing and any subscription information to be included on the page containing the point-of-sale.

#### Promotion through social networking sites

**6.9** Where social networking sites (e.g. Facebook, Twitter, etc.) have been used to promote PRS, PhonepayPlus has noticed that personal data (which is available elsewhere on the social networking site) is sometimes manipulated in order to make promotional statements that are misleading. Use of such promotions is likely to lead to an investigation by PhonepayPlus.

**6.10** For example, consumers should not be invited to participate in a premium rate service on the grounds that their social networking friend (e.g. 'John Smith', whose connection to the consumer would be publicly displayed on the social networking site) has challenged them to an IQ service, when 'John Smith' has never participated in the service.

#### Viral marketing

**6.11** Viral marketing can be defined as marketing where a potential consumer is invited, or offered an inducement, to forward the marketing onto friends or contacts in order to ensure the marketing reaches the maximum possible number of people.

**6.12** The most common form of viral marketing seen with regard to PRS is where consumers are either invited, or incentivised, to forward a promotional SMS, multimedia messaging service (MMS) or binary message to others; less common is a form of marketing where consumers are invited, or incentivised, to input the mobile numbers of others on a provider's website. The risk with both these mechanics is that those who have been forwarded marketing by other consumers will see this as unsolicited, and/or an invasion of their privacy.

**6.13** Providers should be clear that, where PhonepayPlus receives complaints regarding the forwarding of viral marketing, it will still regard this as the provider's responsibility. However, we would suggest the risk can be mitigated by taking the following steps:

- To include sufficient warning, especially on any websites used for the promotion, that anyone to whom a promotion is being forwarded should be interested in the PRS on offer;

- To take steps to ensure that the full name (i.e. first name and surname) of the consumer who has forwarded a promotional SMS, MMS or binary message (e.g. “John Smith thought you would be interested in this”) is provided at the start of it;
- To state words to the effect in any promotional SMS, MMS or binary message to be forwarded that “if you have received this message in error, then please ignore it”.

**6.14** Lastly, where PRS services are promoted through ‘Twitter’, we would strongly recommend that any access codes provided within the ‘tweet’ are accompanied by clear pricing and other key information, where the ‘tweeter’ is an employee of the provider, has clear links to the service or may otherwise financially benefit from the service.

**6.15** Wherever viral marketing develops or is used as part of a campaign, providers must consider how consumers are accessing the service. The provider must then consider its ability to present key information, including pricing information, to ensure the consumer understands their obligation to pay. For absolute clarity, providers are warned against solely relying on the viral marketing tools themselves given the lack of control held over those publishing or forwarding the promotional material.

## **7. Misleading promotions**

**7.1** If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, a key term or condition likely to affect a consumer’s decision to use the service. Rule 2.3.2 of the Code states the following:

### **2.3.2**

*Premium rate services must not mislead or be likely to mislead in any way.*

**7.2** PhonepayPlus expects that all promotions must be prepared with a due sense of responsibility to consumers, and promotions should not make any factual claims that cannot be supported with evidence, if later requested by PhonepayPlus to do so.

**7.3** For subscription services, no promotion, with particular emphasis on SMS- or MMS-based promotion, should state or imply that the consumer will be making only a one-off purchase.

**7.4** An example of this would be a service that advertised itself as an ‘IQ test’ or ‘love match’, where the consumer was then invited to text or click to obtain more in-depth results, only to find that these results carry a further charge, or enter the consumer into an unexpected subscription.

## 8. Inappropriate promotions

8.1 Rules 2.5.6 and 2.5.7 of the Code state the following:

### 2.5.6

*Level 2 providers must ensure that their services are not promoted in an inappropriate way.*

### 2.5.7

*Level 2 providers must use all reasonable endeavours to ensure that promotional material is not targeted at or provided directly to those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful.*

8.2 In determining whether promotional material or content are likely to be inappropriate, PhonepayPlus will seek to take a pragmatic approach. We are aware of the need to balance innovation in promotion to as large an audience as possible, with the need to prevent consumers, especially children, from seeing or receiving inappropriate material. Examples of where promotions might be considered inappropriate include, but are not limited to, the following:

- Inappropriate services being advertised in children's publications (such as live chat, chat and dating, virtual text chat services, or other services where usage is restricted to over-18s).
- Inappropriate imagery or language/text in children's publications (e.g. sexual, violent, or adult images or language).
- Targeted promotions (e.g. text messages) which are inappropriate to the consumer's previous opt-in. For example, a consumer who had previously taken part in a competition, or subscribed to a football score update, should not be sent adult promotional material or promotions for adult services.
- Promotional material that directly or indirectly takes advantage of vulnerability (e.g. an illness, bereavement or financial difficulty) or vulnerable groups (e.g. children, older people, people with learning difficulties, those who have English as a second language) without appropriate protections for the vulnerabilities.

## 9. Direct marketing to a consumer's mobile phone

9.1 PhonepayPlus' previous research has indicated that consumers take greater caution with marketing sent directly to their mobile handsets than they do with other promotions in general. Their biggest concerns can be summarised as follows:

- They are concerned they will be charged as soon as they open a message, and so sometimes consumers do not open a message, even to opt out of future marketing.

- Where a message contains a clickable link (i.e. an SMS, MMS or, most often, a binary message containing only a link to a mobile website, which the consumer has to click in order to access it) or a push notification, then consumers are worried that they will be charged as soon as they click on the link.
- They have the perception that there is no easy way of opting out of future marketing. For further detail around marketing opt-in, please see the General Guidance Note on '[Privacy](#)'.

**9.2** In order to alleviate these concerns and build consumer trust we set out the following expectations as a guideline to compliance in this area:

- Where promotional text messages (SMS, MMS or binary) contain a link or a 'push' to a mobile website, and there is a charge beyond normal network data rates for accessing that website, then the consumer should be informed of this charge before they click on the link.
- Similarly, promotional messages containing a link to a mobile website should not contain any information which would be likely to mislead a consumer.
- Promotional text messages should make it clear if a reply to them will result in a consumer incurring a PRS charge.
- Where consumers are sent text messages which promote a PRS and do not carry any charge, then the consumer should be clearly informed, either within the title of the message or in the first words of the message itself, that the promotional message is free. A PhonepayPlus Tribunal is likely to regard the words 'FreeMsg' as acceptable to do this.

## **10. Controlling risk when using affiliate marketers**

**10.1** Rule 2.5.7 of the Code (inappropriate promotion) refer to usage of 'reasonable endeavours' by Level 2 providers. While other rules governing promotion do not specifically refer to reasonable endeavours, we accept that a Level 2 provider will often subcontract promotion to affiliates (who are not required to register with PhonepayPlus).

**10.2** In these circumstances, PhonepayPlus recognises that the Level 2 provider, while retaining responsibility for the promotion under the PhonepayPlus Code of Practice, may not have immediate, day-to-day control of each individual action that an affiliate takes. However, the use of affiliates to market PRS products on a provider's behalf does carry a greater risk than marketing which is under the direct, day-to-day control of the provider. For further detail around affiliate marketing, please see the General Guidance Notes on 'Digital Marketing' and 'Due Diligence Risk Assessment and Control'.



## 11. Fundraising for charity using premium rate services

11.1 Providers should ensure that all promotional material used for fundraising clearly states the following:

- The total sum per premium rate donation which will be paid to the beneficiary. Where the amount varies between Network operators, we recommend that the minimum likely amount is used.
- Where the donation is passed through to the charity intact without any deductions for VAT or revenue share (admin fees charged separately are ignored by this Guidance), then the promotion can carry the message that 100% of donations are passed through to the beneficiary.
- Promotions should also state:
  - The identity of the beneficiary; and
  - Any restrictions or conditions attached to the contribution to be made to the beneficiary.

11.2 PhonepayPlus recommends the use of charity mobile shortcodes for donations, which are **70XXX** numbers; although we do recognise that there may be circumstances where they cannot be sourced.

11.3 Where providers are looking to have a competition element as part of their service, it is recommended that they seek independent legal advice and refer to the Service- Specific Guidance Note on 'Competitions and other games with prizes'. Please note that charity mobile shortcodes cannot be used for services that have a competition element.

11.4 Where PRS is used by registered charities to operate 'Recurring Donation Services'<sup>34</sup> (RDS) there are Special conditions that apply. These requirements are clearly set out in a Notice of Special conditions found on the PhonepayPlus website<sup>35</sup>.

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<sup>34</sup> Recurring donation services are defined as: "Premium rate services that are solely for the purpose of donating money on a recurring basis to a charity or charities registered with the Charities Commission of England and Wales, Northern Ireland, or Scotland."

<sup>35</sup> Details on our website: <http://www.phonepayplus.org.uk/for-business/special-conditions>.

## GENERAL GUIDANCE NOTE

### The avoidance of undue delay

#### Who should read this?

All Networks operators and providers involved in the provision of premium rate services to consumers.

#### What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations by way of the following:

- Clearly explaining the factors that might constitute undue delay once a consumer has chosen to engage with a premium rate service (including what undue delay might look like with regard to the different service types); and
- Offering advice on how undue delay can be best avoided.
- Web/instant messaging (with messages being exchanged via the web or a form of instant messaging service, but charged via premium rate).

The obligation on providers to avoid undue delay is set out in paragraph 2.3 of the PhonepayPlus Code of Practice, which states:

#### **Rule 2.3.4**

*Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.*

#### What are the key points?

The main issues for providers to consider are:

- Except in exceptional circumstances (see section 4 below), service introductory messages should not exceed 30 seconds in length for any type of service. Providers should contact PhonepayPlus where they believe they have a valid reason for a longer message.
- Generally, queuing is not permitted on any type of service (exceptions are made for the use of the 'eavesdrop' facility and for 'lower-cost services', as well as for 'emergency situations' – all of which are set out in the document).
- 'Holding' or delaying consumers from reaching key information is not permitted on any service.
- Any products purchased through a premium rate service must be delivered in a timely fashion, where it is possible to do so.

## 1. What constitutes undue delay

- 1.1 Once a consumer has chosen to engage with any type of premium rate service, the service should either offer prompt engagement with the service itself, or the service goods purchased should be promptly delivered (pay-for-product services), where this is possible.

The following (a-e) is a list of the different ways that services might find themselves operating under undue delay:

### (a) Queuing (applicable to all live services)

- 1.2 A live service that employs any variation of a queuing system that prevents (either with intention, or otherwise) a consumer from immediately engaging with that service is likely to be considered to be operating under undue delay.
- 1.3 While providers may argue that the employment of a call queuing system is of benefit to consumers – if it spares the consumer the frustration or expense of having to redial a service, for example – compliance with the PhonepayPlus Code of Practice requires that no premium rate service be designed specifically to operate in this way. This includes services that may have been programmed to inform callers of their position in a queue.
- 1.4 If a temporary queuing system must be employed by a service (i.e. it can be proven by a provider that there was no other option available at that time), then the queuing should be:
- Kept to an absolute minimum; and, critically,
  - It should not be the ‘norm’ – meaning that the service must not have been designed in such a way as to allow call queuing as normal practice, but rather, there were circumstances at a particular point in time that made it absolutely unavoidable (refer to section 4 below for an explanation and example).
- 1.5 There are some instances of call-queuing systems being permanently acceptable. The ‘eavesdrop’ facility (see section 3 below) that is sometimes employed by live 1-2-1 chat and live psychic/tarot services is one, typically promoted on TV and/or on a live internet stream. Please also refer to the section ‘Services operating on lower-cost numbers’ (section 5 below), as live services operating on these number ranges also permit call-queuing.

### (b) Problems with pre-recorded services

- 1.6 We are aware of some pre-recorded services that have been designed with the intention of keeping the consumer engaged with a service for either as long as possible, or for an ‘unreasonable’ length of time.

- 1.7 For example, a consumer might call a premium rate number in order to gain a key piece of information as per the service’s promotion, only to be held back (i.e. kept ‘on hold’) from hearing it for several minutes. During this time, the consumer might hear either vaguely relevant, or perhaps completely irrelevant, information, before eventually reaching the key piece of information they had been waiting for, and expecting to hear, much earlier in the call.
- 1.8 Some pre-recorded services are also known to include lengthy promotions for other services, before the key service information is heard by the caller.
- 1.9 Providers should note that, if there is no valid reason to hold back a consumer from gaining the key service information on a premium rate service, whether intentionally or by design, then any such service is likely to be considered to be operating under undue delay. Callers should be able to reach the promoted service, or its key service information, simply and without delay, once they have chosen to engage with it.

**(c) Overly long service introductory messages (applicable to all service types)**

- 1.10 Introductory messages are those that are heard by callers immediately upon connection to a premium rate service. They give information, such as the cost of the service per minute and the name of the provider providing that service. It should be noted that introductory messages do not include service ‘menus’, which are covered separately in ‘d) Problems with live and pre-recorded services using a ‘menu’ facility’, below.
- 1.11 Long introductory messages can often lead to consumers being unduly delayed in reaching the service they have chosen to engage with. Examples of this type of delay include:
- Introductory messages that contain more information than that which is required under the PhonepayPlus Code of Practice – for example, service introductory messages that give out postal addresses and/or customer service telephone numbers, or perhaps services that choose to give over- complicated service instructions that consumers cannot skip through.
  - The recorded human voice within the introductory message, taking long pauses in between sentences, resulting in the message becoming overly long and purposely drawn-out (well over a minute long in many instances).
  - The use of recorded ringing tones on connection (i.e. excessive recorded ringing that charges the caller).
  - The promotion of other services within the introductory message, either relevant or otherwise, which consumers are not given the option to skip through.
- 1.12 Except in ‘Unavoidable, exceptional and emergency circumstances’ (see section 4 below), we do not believe that any service introductory messages should need to last longer than 30 seconds in length for any type of service. Any services currently in operation that have

introductory messages lasting longer than 30 seconds should therefore consider altering them so as to fit within this guidance.

- 1.13 Providers who believe they have a valid reason for using introductory messages that are longer than 30 seconds – for example, providers operating pay-for-product services or PIN entry services – should contact PhonepayPlus to discuss the services on their individual merits.
- 1.14 Generally, when a consumer dials a service, they should hear the relevant regulatory messages required for that service category upon connection, directly followed by either immediate connection to the service itself (for example, connection to an operator), or connection to a service menu (where a service employs such a facility).

**(d) Problems with live and pre-recorded services using a ‘menu’ facility**

- 1.15 Service menus are often heard by callers after they have heard the service introductory message. They typically offer the caller a variety of options within the one service, which can be selected and engaged with – for example, “press ‘1’ for ‘weather updates’, press ‘2’ for ‘local news updates’, press ‘3’ for ‘sports updates’”, etc.
- 1.16 Services that use a menu facility should ensure that the information and descriptions contained within each option are kept as brief and relevant as possible. We are aware of instances where some services offer very long and drawn-out descriptions at the beginning of each separate menu option selected by a caller, with the apparent intention of holding the caller on the line for much longer than is required. Providers are advised that this should be avoided, and that any service menus currently operating in this way should be altered / shortened in length. We believe that all menu options should be concise and relevant. Any providers of the opinion that the menu options within their services that are currently in operation cannot be shortened, for whatever reason, or are unsure of exactly what is being asked of them, should contact PhonepayPlus to discuss.

**(e) Products not being delivered in a timely fashion (pay-for-product, including SMS)**

- 1.17 Services that sell goods or products through the use of premium rate services as their payment mechanism must ensure that those products are delivered promptly where it is possible to do so, once a consumer has chosen to engage with the service. An example of where this may not be possible might be a situation where tickets have been purchased for an event and those tickets were not due to be printed until several months afterwards. We would expect consumers to be clearly informed within the service promotional material of the expected timeframe for delivery.
- 1.18 Where digital services are concerned, we would expect ‘products’ to be delivered promptly, unless there is a staggered delivery system being used. Providers should note that, in the

event of an investigation, we may ask for evidence of delivery dates and times, as well as any other relevant information.

## **2. Calls made outside of service hours or to services that may have expired**

- 2.1 This scenario applies either to services that are only available at certain hours of the day, or to services that have a shelf-life – examples include services that perhaps employ live operators who are unavailable 24 hours a day, competition services that have reached their expiry date or services that are no longer available.
- 2.2 Although not compulsory to do so, providers may wish to add a short message to their service for callers that call ‘out of hours’, which contains the hours of operation or the reason for the service’s unavailability, where any of the above scenarios are relevant. It may be preferable for consumers to be given a reason for their call not being connected, so as to avoid any potential for confusion.

## **3. Use of an ‘eavesdrop’ facility**

- 3.1 An ‘eavesdrop’ facility is that which allows the consumer the opportunity to listen in on the live call taking place between an operator and another consumer, while waiting to speak live with the same operator (i.e. listening in on the call(s) taking place in front of them, while they are effectively waiting in a queue).
- 3.2 Eavesdrop’ is typically used in conjunction with live 1-2-1 chat and psychic/tarot services that operate on TV, the internet via a live stream or via a 3G mobile handset (i.e. services that are operator-based and allow for the live visuals to be viewed in conjunction with live audio of the conversation between operator and consumer).
- 3.3 This is something that is permitted, provided that consumers are informed in advance (i.e. a consumer must not be advised that they are being put through to speak with a live operator, only to be put through to the ‘eavesdrop’ facility). Instead, it should be made abundantly clear to the consumer that the on-screen operator is already on a call. The consumer is then able to make the choice of either staying on the line listening in, until such time as the on-screen operator is free to take their call, choosing another menu option (where there is such a facility on the service), or choosing to hang up and try again later.
- 3.4 We are also aware of some ‘eavesdrop’ services that only allow the caller to listen in on the operator’s side of the conversation, meaning that the caller’s side of the conversation cannot be heard. This is not permitted – providers should note that callers selecting an ‘eavesdrop’ facility must be able to hear both sides of a conversation taking place between an operator and a caller at all times.

3.5 Services using an 'eavesdrop' facility should also ensure that callers are aware that their live conversations may be 'eavesdropped' on by other callers.

#### **4. Unavoidable, exceptional and emergency circumstances**

4.1 PhonepayPlus may allow some flexibility to the consideration of undue delay in circumstances that might be deemed as being either 'unavoidable', or 'exceptional', in nature (i.e. an emergency, which had the effect of causing undue delay to consumers). An example might be the first day of an occurrence of a natural disaster, which has caused an airport and various helplines operating on live premium rate numbers to receive hundreds, or thousands, more calls than would have normally been accounted for. In a circumstance such as this, it is clear that a service is unlikely to have been able to function as normal on that day.

4.2 Any separate instance of an 'unavoidable', or 'exceptional', circumstance which a provider claims caused their service to operate with a delay to consumers, would be judged on its own merits, where brought to the attention of PhonepayPlus.

#### **5. Services operating on lower-cost numbers**

5.1 Many of the requirements are different for lower-cost numbers (including 0870/1/2/3) – providers should refer to the General Guidance Note on '[Lower-cost services](#)' for full advice.

5.2 If consumers are held in a queue while they wait for an operator to become available, they must be given a suitable indication of the likely delay. They will then be in a position to make an informed decision as to whether to remain on the call, or to try again another time. Where providers believe that a delay is likely to occur, they should consider implementing necessary processes to ensure that consumers will understand right from the outset how long the delay is likely to be. This could be done in a number of ways, for example:

- Stating an estimation of the length of the delay (in minutes).
- Telling the caller they are placed in a queue and where they are in relation to others in the queue.

5.3 Alternatively, providers could offer to call the consumer back at the company's expense when an operator becomes available. We understand that, in unique circumstances (for example, an extreme weather event, or other emergency), providers may experience delays to a service and will not have had time to prepare a response. In these cases, it may be sufficient to include a general pre-call announcement, explaining the delay, but without an accurate estimate of the wait.



- 5.4 However, we would expect this to be the exception to a service's operation, not the rule. While we do not intend to specify the exact extent to which the estimate is accurate (e.g. to the nearest minute), we will certainly expect providers to ensure that consumers are able to make an informed decision as to whether to stay on the line.
- 5.5 We understand that a number of factors affect the delivery of a service, and that consumers' expectations of different services may vary. Where a service is investigated, it is likely that we would seek answers to the following questions:
- Might consumers reasonably expect a high level of demand from other callers and, therefore, be prepared to accept a more lengthy delay? For example, when tickets to a major concert become available for the first time;
  - Were there extraordinary events that precipitated a sudden surge in demand? For example, a flood that prompted a high volume of calls to an insurance claims line;
  - How important is that call to the consumer, and how long would they reasonably be expected to wait? For example, a local health service providing information and support to patients;
  - Is there choice in the market? Could consumers choose to look to other providers to provide a better service?
  - Was there an extraordinary internal event that affected call wait times? For example, was there a higher than average number of staff away sick at the time of the call in question?

## SECTOR SPECIFIC GUIDANCE NOTE

### Advice services

This Guidance seeks to equip PRS providers offering advice services to comply with the Code and any relevant requirements set out in Special conditions<sup>36</sup>. The Guidance is split in to five sections:

- Section 1: Introduction to advice services
- Section 2: Qualifications to provide advice
- Section 3: Professional advice services
- Section 4: Legal advice services
- Section 5: Counselling services

#### 1. Advice services

- 1.1. Various forms of advice can be provided via a premium rate service (PRS). No matter what the nature of the advice, it must be provided in a responsible and appropriate manner.
- 1.2. Users must be informed clearly and in an entirely transparent manner, from the outset, of what the service offers and any relevant qualifications, skills and/or experience that operators hold which enables them to provide reliable, trustworthy and accurate advice.
- 1.3. For the purposes of the PhonepayPlus Code of Practice (the 'Code'), advice services have been separated into two distinct categories:
  - a) those which can be considered 'professional advice services', which can only be offered by those who hold required, recognised and up-to-date professional/academic qualifications; and
  - b) other services which offer advice on topics which do not require extensive periods of study, formal academic qualifications and/or post-qualified experience.
- 1.4. Professional advice services are subject to additional restrictions and controls in the form of [Special conditions applicable to Professional Services, including Counselling](#)
- 1.5. When determining whether or not an advice service will be subject to Special conditions, it should be considered whether, in relation to that specific topic or area, there is:
  - a) An individual regulatory authority that sets a standard which regulated individuals or entities must meet – for example the Solicitors Regulation Authority (SRA);
  - b) A widely acknowledged membership body/bodies which publishes a set of criteria for practitioners and/or issues accreditation to recognised academic courses – for example, the British Association for Counselling and Psychotherapy (BACP).

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<sup>36</sup> See the PhonepayPlus website: <http://www.phonepayplus.org.uk/for-business/special-conditions>

## 2. Qualifications to provide advice

- 2.1. Advice services should be established to offer advice that is reliable, trustworthy and accurate. Qualifications are sometimes considered necessary to establish sufficient expertise in order that the advice given may be to a standard expected by consumers. All promotional material should detail and explain the source of information by which the advice is being given – be that through recognised qualifications, relevant experience, or other legitimate and appropriate sources. Additionally, in the promotional material or at the beginning of the service, the consumer should be made aware of the following:
- a) Any relevant and current professional qualification of a person supplying advice and the professional body by whom that person is accredited;
  - b) Why that qualification is relevant (if not immediately obvious), and the status of that qualification; and
  - c) Any relevant experience of the person(s) or organisation supplying the information or advice.
  - d) Even where operators have no relevant qualifications, the source of the advice being given should be made clear to the consumer.

## 3. Professional advice services

- 3.1. PhonepayPlus defines professional advice services as those which involve the provision of specialist advice to consumers by one or more qualified professionals. These are persons whose occupations require knowledge and skill obtained through extensive study and specialised training (e.g. doctors, lawyers, vets, accountants, financial advisers etc.) and who may be members of a relevant professional body.
- 3.2. Operators of professional advice services should have relevant, current and appropriate qualifications. Evidence of such should be provided upon request. Those giving advice should have a membership with the relevant professional body, where there is one – for example, solicitors giving legal advice should hold an unconditional practising certificate from the Law Society.
- 3.3. Professional Indemnity Insurance must be in place to cover the service and the operators providing consumers with advice.

## 4. Legal advice services

- 4.1. As with all PRS, legal advice services<sup>37</sup> must comply with the PhonepayPlus Code, and in addition, the obligations set out within the applicable Special conditions. Whilst we do not set our own expectations as to the professionalism of how advice is promoted and agreed, or the quality of the advice or the qualifications of those providing it, we do draw on such expectations as set out by relevant professional bodies. Further to this, we have included Guidance below which mirrors expectations set out by the SRA concerning the provision of legal advice.

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<sup>37</sup> Legal advice services involve “the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes”. This definition is derived from section 12 of the Legal Services Act 2007 (which itself provides a broader definition of ‘legal activity’).

4.2. It is likely that a legal advice service will be considered compliant with the relevant Special conditions if the following points are met, developed in part with reference to guidance issued by the SRA:

4.3. Qualifications:

4.3.1. Services staffed by solicitors (for the avoidance of doubt, this provision does not relate to services staffed by barristers, trainee solicitors or legal executives).

- a) Solicitors giving advice should hold a valid practicing certificate from the Solicitors Regulation Authority.
- b) We draw providers' attention to the requirements of the Solicitors Regulation Authority, in particular that providers can demonstrate that they deliver services competently, that they have the resources and skills to carry out clients' instructions, and that they have in place an adequate system of supervision. Special condition PROF 1 requires providers to comply with these rules.
- c) Where legal advice is being offered, we recommend that a provider hold sufficient evidence of the competence (including relevant experience) of its operators. Where a service is promoted as specialising in a particular area of law – for example, employment or housing law - we would only expect evidence of competence in that specialism.
- d) We recommend that solicitors with less than three years' qualified experience are supervised at all times by solicitors of at least three years' qualified experience.

4.3.2. Services staffed by operators other than solicitors:

- a) We recommend that where this type of service is aimed at members of the public, providers be in possession of a recognised Quality Assurance mark covering the areas of practice to which the service relates.
- b) The areas of legal advice being offered should be clearly stated. Please note that the term 'lawyer' is not sufficiently precise for these purposes.
- c) We draw providers' attention to Special conditions PROF 4 and PROF 5 which require certain operators to hold a formal qualification and be members of an appropriate professional body, and require an appropriate structure of supervision to be established.
- d) Services staffed by operators other than solicitors that either (i) do not concern specific areas of the law in which the operators are competent to advise; and/or (ii) promote to vulnerable consumers and/or (iii) do not clearly state in promotional material the qualifications or experience of the operators may be found to breach the Code of Practice and/or Special conditions for Professional Advice services.

4.3.3. Advice concerning barristers:

- a) The Bar Standards Board states that a barrister (practising or non-practising) is not permitted to provide legal services directly to the public, unless they have a full practising certificate, have undertaken the required public access training and are registered with the Bar Council as a public access practitioner. For more information about the public access rules, please contact the Bar Standards Board.

- b) Practising barristers are permitted to provide the reserved legal activities (as defined in the Legal Services Act 2007) listed in their practising certificates as issued by the Bar Standards Board. The Bar Standards Board rules do not restrict non-practising barristers from providing certain legal services, however, they are precluded from carrying out any reserved legal activities and holding themselves out as a practising barrister.
- c) Non-practising barristers are barristers who have not been issued with a practising certificate by the Bar Standards Board and/or have not been authorised to carry on reserved legal activities. For further details on the issuing of practising certificates and the definition, and undertaking, of reserved legal activities, please contact the Bar Standards Board.
- d) Providers who wish to employ barristers to staff legal advice services aimed at the general public or to industry are strongly advised to seek advice from the Bar Standards Board before beginning the service.

4.3.4. Other requirements:

- a) Providers must show evidence of Professional Indemnity Insurance, which fully covers the service offered.
- b) Consumers should be made aware of other, free of charge, legal advice that may be available to them, either before, or upon using, the legal advice service.

## 5. Counselling services

5.1. Counselling services must comply with the relevant Special conditions before they can operate, in addition to the requirements of the PhonepayPlus Code of Practice.

5.2. Counselling services are defined as follows, and are a sub-set of professional advice services:

*Counselling services involve calls usually made in order to seek advice in relation to a personal situation; for example, for marital, emotional, relationship and other personal problems. These services may refer callers to a body or organisation specialising in an area most relevant to the caller's need.*

*Such services can involve one-off sessions or involve a programme of therapy offered over a given period. An ongoing relationship with an individual counsellor is not central to such services. Services of this nature may involve consumers who are vulnerable, either in terms of the characteristics of their circumstances.<sup>38</sup>*

5.3. Whilst we do not set our own expectations as to the professionalism of how advice is promoted and agreed, or the quality of the advice or the qualifications of those providing it, we do draw on such expectations as set out by relevant professional bodies. Further to this PhonepayPlus has drawn on guidelines published by BACP in order to remain consistent with the widely accepted approach to the provision of counselling services, when offered via PRS.

<sup>38</sup> Definition of counselling services is taken from the Professional advice and counselling services Notice of Special conditions (<http://www.phonepayplus.org.uk/for-business/special-conditions>)

- 5.4. BACP launched and implemented its new *Ethical Framework for Counselling Professionals*<sup>39</sup> on **1 July 2016**. While this does not result in any changes to our Special conditions framework, we advise PRS providers to consider these BACP developments for themselves.
- 5.5. PhonepayPlus has identified two new concepts within the new Ethical Framework as being of relevance to PRS providers:
- 5.5.1. First, BACP has added a new mandatory duty to take action to protect clients where exploitation or unsafe practice is observed.<sup>40</sup> Therefore, where supervision is in place as required by the Special conditions framework, PRS providers must have a system in place to respond and take action when any exploitation or unsafe practice is observed.
- 5.5.2. Second, there is a new duty of candour – the need to promptly inform clients about anything important that has gone wrong when the counsellor has been working with the client.<sup>41</sup> This means that a candid discussion needs to be arranged by the PRS provider with the client, regardless of the level of knowledge or understanding of the client about what has gone wrong. PhonepayPlus considers such discussions ought to be free of charge and facilitated by a call organised by the PRS provider or, if the matter is dealt with during a call to the PRS number by the client, with a refund being provided for that particular call.
- 5.6. Following on from the BACP guidelines in general, it is likely that a counselling service will comply with the Special conditions, if the following conditions are met:

#### One-off counselling services

##### 5.6.1. Qualifications:

- a) Operators should hold a formal qualification, at diploma level or equivalent, and should be members of an appropriate professional body.
- b) Evidence of any training in relation to counselling over the telephone should be provided upon request.
- c) As with other advice services, details of relevant qualifications should be provided in promotional material.
- d) If operators are to be giving advice on a particular topic (e.g. eating disorders), then such operators should have appropriate and relevant experience. Evidence of such experience should be made available upon request.

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<sup>39</sup> This is found on the BACP website: [http://www.bacp.co.uk/ethical\\_framework/](http://www.bacp.co.uk/ethical_framework/)

<sup>40</sup> Found in the Good Practice section (para. 11) of the *Ethical Framework*.

<sup>41</sup> Found in both the Commitment section (para. 6b) and Good Practice section (para. 47) of the *Ethical Framework*, the latter of which stipulates actions to be taken to resolve any identified issues requiring candour from the counsellor.

#### 5.6.2. Supervision

- a) An appropriate structure of supervision should be demonstrated, including supervision of the standard of the service at management level; oversight of operators; supervision for operators which is readily available, whether they are working in a call centre or in isolation; and regular group supervision.
- b) In line with the BACP, we would recommend that supervision occurs for a minimum of 1.5 hours per month.

#### 5.6.3. Repeated/addicted callers:

- a) All reasonable steps should be taken to prevent consumers becoming 'addicted' callers<sup>42</sup>.
- b) Evidence of steps taken by providers may be required by PhonepayPlus, to evidence and support provider's claims to compliance with Special Condition PROF 6, in the event of investigation into a complaint or other potential issue or concern relating to a counselling service.

#### 5.6.4. Maximum call duration:

- a) The duration of a call to this type of service should not last longer than 20 minutes, as per the [Notice of Specified Service Charges and Durations of Calls](#)<sup>43</sup>.

### Ongoing counselling services

#### 5.6.5. Qualifications:

- a) Operators should hold a formal qualification, at Diploma level or equivalent, and should be members of an appropriate professional body.
- b) Evidence of any training in relation to counselling over the telephone should be provided upon request.
- c) As with other advice services, details of relevant qualifications should be provided in promotional material.
- d) If operators are to be giving advice on a particular topic (e.g. eating disorders), then such operators should have appropriate and relevant experience. Evidence of such experience should be made available upon request.

#### 5.6.6. Supervision

- a) An appropriate structure of supervision should be demonstrated, including supervision of the standard of the service at management level; oversight of operators; supervision for operators, which is readily available whether they are working in a call centre or in isolation; and regular group supervision.

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<sup>42</sup> 'Addicted' callers refer to those that may become noticeably dependent on the counselling service in an unhealthy way. PhonepayPlus considers providers of counselling services via PRS that are qualified are in a position to identify such callers and respond in an appropriate way.

<sup>43</sup> Found on the PhonepayPlus website: <http://www.phonepayplus.org.uk/~media/Files/14th-Code-of-Practice/Notice-of-Specified-Service-Charges-and-Durations-of-Calls-July-2016-final.pdf>



5.6.7. Maximum call duration

- a) The duration of a call to this type of service should not last longer than one hour, where a pre-arranged schedule has been confirmed in writing, in advance.

5.6.8. Number of sessions

- a) Counselling services should be carried out over a limited number of sessions, with the agreement of the counsellor and the consumer, with a review being carried out at the end of every four sessions.
- b) Arrangements should be made for a non-premium rate means for a potential consumer to set up an agreement with a counsellor. A written agreement, to be entered into by the consumer and the counsellor, should be signed by both parties prior to the commencement of premium rate counselling sessions.

This agreement should set out:

- the cost of the calls;
  - the length of the sessions;
  - how many sessions could, or will, be held prior to review;
  - why this number of sessions is appropriate; and
  - the benefits that the number of sessions will provide to the consumer.
  - Following the agreed number of sessions, a review should be carried out and any further agreements reached should be made in writing. In the event of a dispute, PhonepayPlus may generally ask to see such an agreement, while accepting that the interaction between counsellor and consumer is confidential.
- c) The consumer should be provided with this written information in a durable form.

## SECTOR SPECIFIC GUIDANCE NOTE

### Children's services

#### Who should read this?

Any providers that are planning to offer services that are aimed at, or are likely to appeal to, children. Under PhonepayPlus' Code of Practice, children are defined as people under the age of 16.

#### What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of children's services, which PhonepayPlus defines as those premium rate services (PRS) which, either wholly, or in part, are aimed at children, or could be reasonably expected to be particularly attractive to children.

#### What are the key points?

The main issues for providers to consider are:

- Children are defined as people under the age of 16.
- Promotional material should state that the bill-payer's permission is required and should specify whether any age restrictions apply.
- Children's services should not advertise or promote direct appeals for children to part with money.
- Promotional material should not encourage children to use other premium rate services or the same service again.
- Children's services should not involve competitions that offer cash prizes or prizes readily converted to cash.

#### 1. Requirements

- 1.1 All promotional material in relation to children's services should clearly indicate that the bill-payer's permission is required and should specify whether any age restrictions apply.
- 1.2 Children's services should not advertise or promote directly to children with appeals to buy or donate. Any service found to be doing so could be found to be in breach of paragraph 2.3.9 of the PhonepayPlus Code of Practice. Similarly, promotional material should not encourage children to use other premium rate services or the same service again. Providers should be aware that children can often be considered as vulnerable consumers, and so should take steps to ensure that they are not taken advantage of. Appropriate promotional material should be used at all times. For more information on promotions, please see the General Guidance Note on 'Promotions and promotional material'.

- 1.3 Providers should view and consider the Notice on caps, thresholds and actions published on our website in accordance with section 3.12 of the 13<sup>th</sup> Code<sup>44</sup>. Services aimed at, or which could be reasonably expected to be particularly attractive to children, must terminate by forced release when a maximum of £5 (inclusive of VAT), or in the case of a subscription service a maximum of £5 (inclusive of VAT) per month, has been spent.
- 1.5 Furthermore, in any given month, such services that are aimed at, or which should have been expected to be particularly attractive to children, must not charge more than £20 (inclusive of VAT) over a single monthly billing period. This restriction is placed on individual services and does not prevent young people accessing different services and making separate purchases beyond the £20 limit. We encourage service providers operating these types of services to engage with parents to help communicate the available safeguards available in the market to protect consumers from unexpected high bills.
- 1.6 Children's services should not involve competitions that offer cash prizes or prizes readily converted to cash.

## 2. Determining whether a service is targeted at children

- 2.1 In determining whether a PRS has been targeted at children, or is likely to be particularly attractive to them, PhonepayPlus will consider each incident on a case-by-case basis. In doing so, the following factors are likely to be considered:
  - Data which indicates how many readers, viewers, or listeners of a publication, broadcast, or other media where the service is promoted, are children;
  - The style, content, and composition of the promotional material (i.e. does it contain factors likely to make it particularly attractive to children, or which would suggest children had been targeted?).

### The role of Sector Specific Guidance

Service Specific Guidance does not form part of the Code of Practice; neither is it binding on PhonepayPlus' Code Compliance Panel ('the Tribunal'). However, we intend it to help providers understand how compliance with the Code might be achieved.

Providers are not obliged to follow this Guidance but, in the event of an investigation, a Tribunal will adjudge whether the alternative actions that providers took delivered compliance with the Code. We recommend that those looking to radically depart from this Guidance contact PhonepayPlus in reasonable time ahead of launching the service.

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<sup>44</sup> The first such Notice was published on 26 March 2015 ahead of the launch of the 13<sup>th</sup> Code – it can be found on our website here: <http://www.phonepayplus.org.uk/~media/Files/14th-Code-of-Practice/Notice-of-Specified-Service-Charges-and-Durations-of-Calls-July-2016-final.pdf>

## SECTOR SPECIFIC GUIDANCE NOTE

### Competitions and other games with prizes

#### Who should read this?

Any providers that are planning to run competition services or games with prizes. Some examples of competition services would be:

- Lotteries;
- Other games with prizes;
- An entry mechanism into a draw;
- Information about prizes and how to claim them;
- Reverse-billed auctions.

#### What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of competition services. This Service-Specific Guidance Note also alerts providers to other regulatory and/or legal restrictions that relate to competition services.

#### What are the key points?

The main issues for Network operators and providers to consider are:

- Consumers should be made aware of how the competition operates.
- Consumers should be fully aware of all information that is likely to affect their decision to participate.
- Promotional material should not mislead consumers.
- Further information should be made available to consumers upon request.
- Providers must ensure that the service is conducted in a fair manner.
- In the case of competitions, providers must ensure that there is an element of skill attached to the entry mechanism.

## 1. Consumers must be fully informed

### 1.1 All promotional material should provide clear details as to how the competition operates.

Consumers must be made aware, before entering into the service, of any information that is likely to affect their decision to participate. Clear terms and conditions should include, but are not limited to:

- Information on any restrictions on number of entries or prizes that can be won;
- The incremental cost and the full cost of participation, where this is known;
- An adequate description, including the quality, of all prizes and other items being offered, and a clear list of the numbers of each prize on offer;
- Information on any restrictions placed on the availability of those prizes being offered;
- Where the prize consists of vouchers, either the value of a single voucher, or the total value, should be stated;
- The closing date and time of the competition, except in instances where there are only instant prize winners. Please note that, if no time is provided, the service is presumed to close at midnight on the day of the competition.

### 1.2 There are limitations as to the available space for certain promotional mechanics (e.g. SMS/WAP) and/or other space limited media. For promotional SMS texts (160 characters), we would expect to see the important terms and conditions (i.e. those that directly affect an individual's decision to participate) included in the body of the text.

### 1.3 As a Binary SMS message, there are usually only 30 character spaces available in a WAP-push message, restricting still further the amount of information able to be displayed. Reference should be made to the shortcode in either the body and/or preferably the title of the message with the words "FREE MSG". The embedded link as contained in the message, when activated, should take the end user to the Landing Page where the required consumer information should be displayed.

### 1.4 Providers should also note that, competition service may need to comply with Special conditions **if** it employs a form of subscription service of over £4.50 in any seven-day period. Please see the Service-Specific Guidance Note on '[Subscription services](#)' and details on Special conditions, which are available on the PhonepayPlus website at [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk).

## **2. Promotional material should not mislead consumers**

**2.1** Any promotional material in relation to competitions services must not:

- Imply that items that can be claimed by all, or a substantial majority, of participants are prizes;
- Exaggerate the chances of winning;
- Suggest that winning is a certainty; or
- Suggest or imply that consumers can only use a premium rate service in order to participate, where a free, or significantly cheaper, alternative entry route is available.

## **3. Further information should be available on request**

**3.1** If the following information is not included in any promotional material, it should, where applicable, be available to consumers upon request:

- How and when winners will be informed;
- How winner information may be obtained;
- Any criteria for judging entries;
- Any alternative prize available;
- The details of any intended post-event publicity;
- Any supplementary rules

## **4. Services should be conducted in a fair and equitable manner**

**4.1** Providers should ensure that all correct entries have the same chances of winning. Prizes should be awarded within 28 calendar days of the closing date, unless a longer period is clearly referred to in the promotional material.

**4.2** Providers should not change the closing date, or withhold prizes, on the grounds of an insufficient number of entries, or where entries are deemed to be of inadequate quality.

**4.3** If there is any subjective assessment in the selection of the winning entries (e.g. tie- breakers) and/or awarding of prizes in a competition open to the public, then judging should be by a person or persons independent of the provider and any of the intermediaries involved, or by a judging panel including at least one independent member. For the avoidance of doubt, independence is defined here as being an individual who has no commercial interest in the competition or associated premium rate service concerned.

**4.4** Unless stated, no competition service may offer specific prizes that are also offered by other competitions (also known as 'prize pools').

**4.5** Consumers should not be subject to any costs in order to claim prizes once draws have been made. For example, those services which require consumers to pay telephone or postal costs

to claim prizes are likely to contravene the law. This remains the case whether or not the consumer has made an earlier separate payment to enter the competition. An example would be where consumers are required to pay to enter a prize draw, promoted as a competition service offering a chance to win, and are subsequently required to call a non-free telephone number or send a stamped addressed envelope to claim the prize they are said to have won.

- 4.6** The *Unfair Commercial Practices Directive* (as transposed into UK national law through the *Consumer Protection against Unfair Trading Regulations 2008*) provides that where promotional material creates a “false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact... taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost”, this constitutes a banned practice. The European Court of Justice has now confirmed that traders cannot require consumers to bear any cost in order to claim a prize, including where the cost is de minimis compared with the value of the prize or where such cost does not financially benefit the provider, such as a stamp. Consequently, we would strongly suggest that providers seek legal advice before running PRS prize claim competitions.
- 4.7** Where it appears to PhonepayPlus that the law has been contravened in relation to PRS services and promotional material it will consider whether this issue can be appropriately dealt with as part of the enforcement of its Code of Practice, or should be referred to the Office of Fair Trading (or successor body). If PhonepayPlus decides to enforce its Code of Practice in respect of this issue, it is likely that it will conduct a Track 2 procedure investigation and raise a breach of the Outcome of Legality (paragraph 2.1) in addition to other potential breaches of the Code.

## **5. Element of skill and free route of entry**

### **5.1** *Element of skill – The Gambling Act 2005*

- In order for a competition not to be deemed as a lottery under the Act, the test at section 14(5) of the Act must be satisfied. Providers must be able to show that the entry mechanism has an element of skill, judgement or knowledge that can reasonably be expected to either:
  - Deter a significant proportion of those who wish to enter from doing so; or
  - Prevent a significant proportion of those who do enter from winning a prize.
- PhonepayPlus accepts that this test has been difficult to interpret and would recommend that any provider wishing to set up such a service should seek legal advice as well as advice from the Gambling Commission (0121 230 6666 / <http://www.gamblingcommission.gov.uk/>)



## 5.2 *Free route of entry*

- The distinction between a free draw and a lottery is that no one is required to pay over and above the normal rate to enter into a free draw. The route of entry will be free if the participant does not have to pay any premium rate charge for entering the competition (e.g. entering a free draw by post, or by telephone where the standard network rates apply)
- Where a prize draw promotion requires consumers to incur a premium rate charge in order to enter a prize draw competition, and that entry entitles the consumer to enter another prize draw for free PhonepayPlus expects such information to be made abundantly clear to consumers to ensure the promotion does not fall foul of Rules 2.2.2 and/or 2.3.2 of the Code. In addition, in order to avoid the two prize draws being considered to be for example a single prize draw with two linked elements, and thereby a lottery, promotional material should make it clear that the service consists of two separate draws and that charge incurred by the consumer relates solely to the initial draw.

**5.3** If either the 'element of skill' or 'free route of entry' barriers exist, then the service will be deemed a competition, and not a lottery. Providers should note that a lottery requires a licence to operate. For more information on obtaining a licence, please seek advice from the Gambling Commission (0121 230 6666 / <http://www.gamblingcommission.gov.uk/>).

## SECTOR SPECIFIC GUIDANCE NOTE

### Consumer Credit

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#### Who should read this?

As at October 2014, PhonepayPlus notes that the primary providers of consumer credit services in the premium rate services ('PRS') market are **credit brokers**, and so this guidance note is primarily addressed to them.

However, this may change over time and any firm providing (or considering providing) PRS consumer credit services, whether recorded or live, ought to consider this guidance carefully. For example, if a debt management firm wishes to use PRS in relation to its business.

Credit broking is defined in article 36A of the *Regulated Activities Order*<sup>45</sup> and described further in the Financial Conduct Authority (FCA)'s *Perimeter Guidance Manual*<sup>46</sup>.

Providers should note that credit broking is not limited to the broking of regulated credit agreements. It also includes (with some exceptions) the broking of agreements which are exempt from regulation, unless the customer is a limited company or large partnership.

#### What is the purpose of the Guidance?

The purpose of the guidance is to assist providers of PRS consumer credit services in operating and promoting services that are compliant with our Code of Practice.

So this Guidance may help providers when:

- designing the business model for their service
- developing and operating the service mechanics,
- drafting the scripts used on premium rate calls in a compliant way,
- training staff, including call operators,
- planning and creating compliant websites, promotional material and campaigns
- developing a customer care service in conjunction with the main service,
- coordinating refunds for consumers, including those required under legislation.

#### What is found in this guidance?

- How to develop a business model that is compliant with our Code.
- What to consider when promoting consumer credit services to increase consumer confidence in your service and avoid posing problems for vulnerable consumers.
- What our expectations are in terms of notifying consumers about their right to a refund where services are not provided or a credit agreement is not entered into.

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<sup>45</sup> See article 36A4 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544.

<sup>46</sup> The Perimeter Guidance Manual (PERG) in the FCA's Handbook describes the various regulated activities, and credit broking is covered by PERG 2.7.7E.

- What practical steps to take in order to meet our requirements that providers notify PhonepayPlus when a consumer credit service is launched.

### **PhonepayPlus and Financial Conduct Authority regulation**

PRS consumer credit services are regulated by PhonepayPlus in respect of the way premium rate services are promoted, operated and/or charged.

Credit brokers operating such services are also likely to be engaged in a regulated activity for which they need permission from the Financial Conduct Authority (FCA) and so will be subject to FCA regulation including its high-level Principles for Businesses and detailed conduct requirements set out in its Consumer Credit sourcebook (CONC).

In particular, Principle 6 requires firms to pay due regard to the interests of customers and treat them fairly, and Principle 7 requires information to be clear, fair and not misleading.

In drawing up this Guidance, we have liaised closely with the FCA to ensure that the guidance is aligned with their rules and principles, and we include cross-reference to relevant FCA rules and guidance.<sup>47</sup>

We recommend that providers familiarise themselves with the consumer credit rules, and any associated information, published by the FCA<sup>48</sup>.

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<sup>47</sup> There are also FCA rules in relation to use of premium rate telephone services by debt management firms and other debt advisers, at CONC 2.6 and 3.9.

<sup>48</sup> See the FCA website relating to consumer credit - <http://fca.org.uk/firms/firm-types/consumer-credit>

## 1. Business models – service development

- 1.1. Providers must consider and ensure compliance with all six outcomes found in Part 2 of our Code. These outcomes have been established following consumer research and reflect what customers of any given service look for in the promotion and operation of those products or services. Providers should pay particular attention to the following four outcomes:
- *Legality* – The services are operated in a way that complies fully with all applicable UK legislation. Such services are also required to comply with FCA rules
  - *Transparency and Pricing* – Information which may influence the consumer’s decision to purchase or engage with a consumer credit service, especially a credit broker, is provided clearly and prominently
  - *Fairness* – Consumers, and in particular vulnerable individuals, are treated fairly and equitably
  - *Complaint Handling and Redress* – In light of the fact that not all credit applications are successful, it is important to ensure the consumer knows if they are entitled to claim a refund and any claim process is easily accessible.

### *Legality*

- 1.2. Rule 2.1.1 of the Code states: “*Premium rate services must comply with the law*”. This repeats the wording of the Outcome itself and is a provision with far-reaching impact. To meet this obligation, providers need to develop business models that comply with the law, taking legal advice where necessary.
- 1.3. For example, credit brokers must comply with section 155 of the Consumer Credit Act 1974 (CCA) which entitles the consumer to a refund of brokerage fees less £5 if a credit agreement is not entered into within six months of an introduction to a source of credit. Consumers are also entitled to a refund if they cancel a contract entered into by distance means (eg telephone or internet) within 14 days.
- 1.4. In addition to complying with the law, providers carrying on a credit-related regulated activity should ensure they comply with FCA rules including in its consumer credit sourcebook (CONC).<sup>49</sup>

### *Fairness*

- 1.5. The Code states at rule 2.3.1: “*Consumers of premium rate services must be treated fairly and equitably.*” This is a high level outcome that enables PhonepayPlus to assess in the round whether a service is treating consumers fairly.
- 1.6. PhonepayPlus will enforce its Code where providers fail to treat consumers equitably, which is also likely to be demonstrated where the provider appears not to have complied with

<sup>49</sup> CONC contains rules and guidance that apply generally to consumer credit firms, but with specific sections on credit brokers in CONC 2.5 (conduct of business and unfair business practices), CONC 3.3-3.6 (financial promotions and communications), CONC 3.7 (disclosure of status), CONC 4.4 (fees disclosure), CONC 4.5 (commission disclosure) and CONC 5.4 (suitability and affordability).

relevant FCA rules and principles around treating customers fairly. For example, CONC 2.5.8R(7) states: “A firm must not unfairly request, suggest or direct a customer to make contact on a premium rate telephone number.”<sup>50</sup>

- 1.7. With the above considerations in mind, PhonepayPlus takes the view that PRS calls can be used for the operation of credit broking services but only in limited circumstances where it meets a test of fairness.
- 1.8. A key factor in determining whether providers are treating consumers fairly is the question of how many premium rate calls, and the duration of those calls, consumers are required to make to access the service, or are encouraged to make, or are offered.
- 1.9. When considering compliance with the PhonepayPlus Code, especially rule 2.3.1, the test of fairness is unlikely to permit multiple calls to a PRS line to be necessary. We would expect the service to be capable of being provided to customers using one telephone call, with such a call not exceeding 15 minutes in order to apply for credit. We suggest that where 15 minutes is not considered sufficient time, then the provider should consider using a call service number that is charged at no more than ‘basic rate’ for the entire call.<sup>51</sup>
- 1.10. If providers are unclear whether the call duration will always last under 15 minutes, it is strongly recommended that the call length is carefully monitored and where calls reach 15 minutes in length, or are likely to do so, the provider should offer to call the consumer back to continue the call or provide the consumer with a call service number that is charged at no more than ‘basic rate’ at that time for future engagement with the service.<sup>52</sup>
- 1.11. Providers should take steps to manage the consumer’s expectations in relation to what the service can offer, and the process by which the consumer may be introduced to relevant potential lenders.<sup>53</sup> If this is done properly, consumers should not need to make repeat calls to the provider to check on the status of the application.
- 1.12. As such, we strongly recommend that providers give to consumers the details of timescales for potential lenders to make contact to further an application for credit, and they should avoid encouraging the consumer to call again unless there is a clear reason for the consumer to do so and it is in their interests to do so. If a further call is required, this should

<sup>50</sup> CONC 2.5.9G(2) states that an example of unfairly requesting, suggesting or directing a customer to a premium rate number is likely to be to do so in relation to a customer wishing to complain about the firm’s service or to request a refund.

<sup>51</sup> BIS define ‘basic rate’ as a rate “*equivalent to standard geographic rates (e.g. 01/02/ 03 numbers) or mobile rates, or free to call*”.

This is consistent with CONC 2.5.8R(8) which states that a firm must not conduct a telephone call with a customer who has called on a premium rate number for an unreasonable period, and CONC 2.5.9G(3) states that it is unlikely to be reasonable for it to be necessary for a customer to make more than one telephone call exceeding 15 minutes to a firm to apply for credit. Where a longer call is required, the firm should ensure the call is not made on a premium rate telephone number.

<sup>52</sup> This is consistent with CONC 2.5.9G(4) which states that it is unlikely to be reasonable to request, suggest or direct a customer to call the firm repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

<sup>53</sup> This is consistent with CONC 3.7.3R which requires disclosure of status and, the nature of the service provided.

last no longer than 5 minutes in duration and should be made to a call service number charged at no more than 'basic rate'.

- 1.13. Where it is claimed that any second or further call to a PRS line is part of an "additional" service, providers must consider carefully what value is being added and ensure it is in the interests of the consumer for an additional fee to be paid. Consumers must be provided with a clear benefit that they fully understand before making a further call or calls.
- 1.14. Such a practice is unlikely to be considered by a Tribunal as treating consumers fairly and equitably unless the provider is confident that they have met the following conditions:
  - The second call provides demonstrable added value to the consumer in progressing their loan application that is in line with the likely cost of the call (i.e. the added value of the service cannot only be marginal if the added cost of the call will be more than marginal);
  - The added value could not reasonably have been provided in the first call;
  - The consumer is clear about the benefit they will derive and the costs they will incur from any subsequent calls to a premium rate number once they have made their first call;
  - The consumer is not encouraged into making a second or subsequent call;
  - The call does not last more than 5 minutes;
  - In addition, the call is as short as possible to deliver any added value (in line with rule 2.3.4 around undue delay), and does not for example request any information which was previously provided to the service in previous calls, and which does not need to be repeated. An example would be personal details which should not have to be given again if the consumer has been given a reference number for an operator to check their file on a provider's database.
- 1.15. In the event of an investigation where complaints have been made about a service operating with multiple calls being made by consumers, we would expect providers to provide us with comprehensive call recordings and other evidence to support any assessment as to the reasons for such calls being made.
- 1.16. Where there would be any unfairness in requiring the customer to pay a premium rate charge for the content of the call, the provider must use a call service number that is charged at no more than 'basic rate'.
- 1.17. Where the above guidance has not been followed, providers are likely to be in breach of rule 2.3.1 of the PhonepayPlus Code by failing to treat consumers "*fairly and equitably*".

### *Vulnerable consumers*

- 1.18. Where the promotion of the service results in it taking unfair advantage of vulnerable consumers, PhonepayPlus may also consider the evidence to see if there is a breach of rule 2.3.10 of the Code. This provision states: “*Premium rate services must not seek to take advantage of any vulnerable group or any vulnerability caused to consumers by their personal circumstances.*”
- 1.19. PhonepayPlus is mindful that many consumers of PRS consumer credit services are likely to be vulnerable.<sup>54</sup> For example, a consumer may be vulnerable because they have limited credit choices – this could be because they are unable to obtain a loan from mainstream lenders, or to do so on normal terms and conditions, or because they believe this to be the case.<sup>55</sup> Or they could be vulnerable because of mental capacity limitations or for other reasons.
- 1.20. It is important that providers do not take advantage of vulnerable consumers for example through promotions that are aggressive, misleading or targeted at those with low credit ratings, through a lack of clarity about their service offering or cost, through keeping them longer on the call than is strictly necessary or through making it difficult for them to obtain a refund where they are entitled to one.

## **2. Promoting consumer credit services**

### *Transparency and Pricing*

- 2.1. With the PRS model, the consumer pays an upfront cost regardless of whether they are successful in obtaining a loan. Because of this, upfront transparency around the service offering and cost will be a central factor in determining whether the service is treating consumers fairly and equitably.
- 2.2. The Code states at rule 2.2.1 “*Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*”
- 2.3. Rule 2.2.2 states: “*All written information which is material to the consumer’s decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernible.*”

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<sup>54</sup> The FCA’s report “*Consumer credit and consumers in vulnerable circumstances*” (April 2014) defines a ‘vulnerable consumer’ as “someone who, due to their personal circumstances, is especially susceptible to detriment”.

<sup>55</sup> CONC 3.5.7R requires a representative APR if a financial promotion indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted.



- 2.4. This means that promotional material must be accurate, clear and easy to understand – and that this must be clear before the decision to purchase, which in this case means before the consumer calls the premium rate number.<sup>56</sup>
- 2.5. The below paragraphs indicate some of the information that is material to the consumer's decision to purchase, and as such where promotions lack these details the service may be found in breach of the Code.

*Role of the service provider*

- 2.6. A key first piece of information for the consumer is what the role of the provider is, i.e. what the service is that the consumer is being offered. The consumer may for example believe that they are dealing with a lender when in fact they are dealing with a broker, i.e. an intermediary who will put them in touch with a lender. If the provider is acting as a broker/intermediary, rather than as a lender, then we would expect this to be made clear in promotions, on the website landing page and in the first phone contact with the consumer, so that the consumer can make an informed decision as to whether they wish to pay a premium rate charge for an intermediary service.<sup>57</sup>

*Cost of the service*

- 2.7. The cost of the premium rate phone call (price per minute) must be made clear to consumers in all relevant promotions and at the start of the call. This charge is likely to fall into the 'total charge for credit' and so must be included in the annual percentage rate ('APR'), and in the total amount payable, in advertising – where triggered – and in pre-contract credit information and the credit agreement.<sup>58</sup>
- 2.8. Consumers should also be informed of the likely cost of the credit that they are seeking. PhonepayPlus considers this to be key information that must be provided in compliance with rule 2.2.2 of the Code.<sup>59</sup>
- 2.9. If an APR is shown in promotional material, it must be accurate and representative of agreements expected to result from the promotion.<sup>60</sup>
- 2.10. PhonepayPlus also strongly recommends that consumers should be informed of the typical acceptance rate – i.e. the percentage of applicants over the last 3 months who have had their application accepted – for the type of loan they are seeking.

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<sup>56</sup> This is consistent with CONC 3.3.9G which states that a firm should in a financial promotion or communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute, the likely duration of calls and the total cost a customer would incur if the customer calls for the full estimated duration.

<sup>57</sup> Similarly CONC 3.3.10G makes clear that financial promotions and communications must not conceal or misrepresent the identity or name of the firm, and must not state or imply that a firm is a lender where this is not the case.

<sup>58</sup> Again CONC 4.4.2R requires the broker to disclose to the lender the fee, if any, for its activity payable by the customer for the purpose of enabling the lender to calculate the APR.

<sup>59</sup> It is relevant information for consumers deciding whether to engage with the PRS provider acting as a broker who charges fees through the calls that are made.

<sup>60</sup> See definition of 'representative APR' in the FCA's Glossary of terms.

- 2.11. Providers should state their trading name in promotional material. Only one trading name should be used by the provider, to ensure consumers are not misled into thinking the broker has referred them on when in fact they have simply transferred the caller to another department in the same firm.
- 2.12. Also, the use of multiple trading names can lead to confusion for consumers who may be dealing with a number of different parties to obtain consumer credit, or financial and debt management advice all at the same time.
- 2.13. The trading name must not be misleading and reduce the transparency as to the true nature of the service offered by the provider. Trading names must not mislead consumers into thinking a broker is in fact a lender.<sup>61</sup>
- 2.14. Providers should promote the total maximum cost of the call to consumers before they access the service in addition to the numeric cost per minute
- 2.15. Services should not be promoted using a statement that loans are guaranteed where this is not the case, or unduly emphasise the speed with which loans can be guaranteed.<sup>62</sup> Where promotions give information relating to the potential success offered by a credit broker, any assertions should be made with reference to accurate and up-to-date acceptance rates.
- 2.16. If the service is live, providers should promote to consumers their full postal address and the hours when the service is in operation before they access the service.

#### *Misleading promotions*

- 2.17. Rule 2.3.2 of the Code states: “*Premium rate services must not mislead or be likely to mislead in any way*”. Consumers can be misled in a number of ways, either by being informed about something related to a service which is not accurate or provides a false impression of the service, or by failing to inform a person of something which then renders other statements misleading or likely to be interpreted in a wrong way.<sup>63</sup>
- 2.18. While promotion material cannot present all the terms and conditions associated with the service, those terms and conditions should be developed in such a way as to reduce complexity and remove onerous or unfair terms. The promotional campaigns and statements must then accurately reflect the product or service, and be in-keeping with the terms and conditions.
- 2.19. Consumers must be able to understand the true nature of a service before making a call or paying for the service via PRS. If the promotion is made over the phone at no cost to the consumer (i.e. via telemarketing), the description of the service must not be misleading and the calls ought to be recorded as evidence of what the consumer agrees and understands on that call.

<sup>61</sup> This is consistent with CONC 2.2.3R which requires firms not to carry on activities under a name which is likely to mislead customers about the status of the firm or the nature of its business, or in any other way.

<sup>62</sup> Providers should note that this triggers the requirement to include a representative APR under CONC 3.5.7R.

<sup>63</sup> This is consistent with CONC 3.3.1R which requires firms to ensure that financial promotions and communications are clear fair and not misleading.

#### *Personalisation of promotional material*

- 2.20. When personalising promotional material, the impact of such a method of advertising must be properly considered to ensure consumers are not misled. By sending a letter to a named individual at a personal or specified address, the recipient may be given the impression that some assessment of their eligibility for a loan has already been undertaken.
- 2.21. Where this is not the case, the promotion must make it clear that this is marketing material and the consumer must be given clear details of the service and what is offered, as well as the cost.

#### *Accuracy about the probability of obtaining a loan*

- 2.22. Consumer expectations must be managed – credit broking services may or may not test eligibility of an individual for a particular loan and therefore it is important that the true nature of the application process is reflected in promotional material and maintained throughout the call.
- 2.23. This means there is a necessity to avoid exaggerating claims of success or over-emphasising aspects of the service offered. To avoid this, providers may need to provide accurate acceptance rate figures even where it is not overtly positive information.

#### *Avoidance of undue delay*

- 2.24. Rule 2.3.4 of the Code states: “*Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged*”.
- 2.25. Where the broker is simply gathering contact details on behalf of potential lenders and the lenders themselves will undertake a test for eligibility, only that information necessary for the referral must be taken. To take more information prior to a transfer of data in such circumstances may increase the consumer’s expectations of success and will extend the length of the call unnecessarily.
- 2.26. Where questions are added to the script to simply give an impression of professionalism or thoroughness, but do not contribute to the application process itself, such additions are likely to be considered unjustifiable and unfair for consumers who call the PRS line to make the application.

### **3. Statutory refunds**

- 3.1. As noted above, section 155 of the Consumer Credit Act (CCA) entitles the consumer to a refund of brokerage fees less £5 if a credit agreement is not entered into within six months of an introduction to a source of credit. In addition, where the brokerage contract is entered into at a distance, the consumer is entitled to a full refund of any brokerage fees if they cancel the brokerage contract within 14 days after entering into it.
- 3.2. In light of the legislation, it is not a matter of consumers being dissatisfied with the service or not, but the upholding of consumer rights under the law.

- 3.3. PhonepayPlus considers that in order to comply with the letter and the spirit of section 155, providers may need to:
- Limit the total cost of calls to £5, or
  - Structure the service so that sufficient information is obtained to determine whether or not the caller is likely to proceed to take out a loan before the cost of the call reaches £5 (and refund the full cost less £5 upon request if the caller does not subsequently take out a loan within six months); and
  - In any event, make clear to the caller – both at the beginning of the service and in all promotional material – that they are entitled to a refund less £5 if they do not take out a loan within six months of the call, irrespective of the reason for this.
- 3.4. Our understanding is that if the consumer enters into a credit agreement, but withdraws from it within the 14-day period provided under the CCA, the agreement is treated as having never been entered into. This reactivates the consumer’s rights under section 155.
- 3.5. PhonepayPlus therefore recommends that credit brokers proactively notify consumers of their statutory rights at the appropriate time. This should take place regardless of any expressed satisfaction with the PRS call itself as the payment is for the brokerage service. In particular, if the provider is aware that the consumer has not entered into a relevant agreement within six months, or is unlikely to do so, the provider should consider proactively refunding the consumer.<sup>64</sup> In any event, the provider should remind the consumer of their statutory rights.<sup>65</sup>
- 3.6. Providers need to ensure that they have mechanisms in place to identify situations where section 155 applies. This may involve proactively approaching the consumer to establish whether an agreement has been entered into and/or having appropriate arrangements with lenders.
- 3.7. The PhonepayPlus Code states at rule 2.6.4: “*Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner.*” Providers must consider the complexity surrounding the brokerage arrangements put in place and the potential delay in agreements being offered or completed, and ensure the refund process is effective and easily accessible to consumers. The claim process must be clearly explained to consumers at the earliest opportunity.<sup>66</sup>

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<sup>64</sup> See CONC 6.8.5G which states that, in circumstances where individuals request refunds and the firm knows, or ought to know, that relevant agreements would not be entered into within six months, the firm should not make the individuals wait for the six-month period to elapse before making the refund.

<sup>65</sup> See CONC 6.8.4AR which states that if a customer has not entered into a relevant agreement within six months of the customer being introduced to a potential source of credit, the firm must – as soon as reasonably practicable after the expiry of the six-month period (and normally within five working days) – clearly bring to the customer’s attention the right to request a refund under section 155 and how to exercise this right.

<sup>66</sup> This is consistent with CONC 6.8.4R which requires credit brokers to respond promptly to a request for a refund.

- 3.8. Providers must not put any obstacles in the way of a consumer seeking to exercise their statutory rights, and must not mislead in any way as to the nature or extent of the consumer's rights under the law or the contract.
- 3.9. We understand that some providers may choose to go beyond their statutory obligations in offering refunds to consumers. They are of course free to do this and consumers may benefit from providers operating in this way. However, in offering their own refund policies, providers must also make it clear to consumers what their statutory rights are. Even if a statutory right is less generous than a company's own refund policies, consumers are more likely to have confidence in a statutory right than in a company's discretionary policy. Therefore they are more likely to pursue a refund when they know they have a statutory right to one and are not just relying on a company's goodwill.

#### 4. Notification to PhonepayPlus

- 4.1. PhonepayPlus has the power under paragraph 3.10.1 of the Code to "*require that particular categories of service must not be provided without its prior written permission*". It can also impose additional conditions on providers who seek prior permission where appropriate. Previously PhonepayPlus has imposed a detailed prior permission regime, containing a range of requirements on consumer credit service providers.
- 4.2. From **Thursday, 8 January 2015**, PhonepayPlus has phased out previously established additional conditions from the prior permission regime put in place for consumer credit services. Going forward, in the period leading up to the introduction of the new Code of Practice (13<sup>th</sup> edition), PhonepayPlus is maintaining the requirement for prior permission under 3.10.1. However, the only additional condition that is required is that consumer credit service providers notify PhonepayPlus of the following information when the service is launched:
- Name of the firm as registered with the FCA
  - Confirmation that the provider has the appropriate credit permission (if needed) from the FCA<sup>67</sup>
  - Confirmation of the PhonepayPlus registration details for both the organisation and the service, in the form of references provided by the Registration Database
  - Confirmation of the name and contact details of the primary contact at the firm with responsibility for compliance and regulatory affairs.
- 4.3. Such notification must be made in writing, and it must be received by PhonepayPlus within 48 hours of the service being made accessible to the public.
- 4.4. Notification can be made via email to [compliance@phonepayplus.org.uk](mailto:compliance@phonepayplus.org.uk).

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<sup>67</sup> Any such authorisation or permission given by the FCA does not constitute authorisation of the PRS itself, and PhonepayPlus may conduct investigations under the Code, and seek adjudications and / or sanctions as against the provider.

- 4.5. Where the notification is sent by post, the provider must ensure delivery to the PhonepayPlus office (1<sup>st</sup> Floor, Clove Building, 4 Maguire Street, London, SE1 2NQ) within the same time period. It is recommended providers who choose to notify using the postal option seek confirmation of delivery to ensure the process is completed satisfactorily.
- 4.6. The registration requirements found in Part 3 of the Code must also be met by the provider. Details given when registering both the organisation and the service with PhonepayPlus must match the details provided to the FCA.

## SECTOR SPECIFIC GUIDANCE NOTE

### Directory enquiry services

#### Who should read this?

Any providers that are planning to offer directory enquiry (DQ) services.

#### What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of directory enquiry (DQ) services, which are defined by PhonepayPlus as those premium rate services which provide the consumer with telephone numbers of other individuals, companies or services by searching one or more sources of information, based on information given by the consumer to the provider.

#### What are the key points?

The main issues for providers to consider are:

- Information provided by DQ services should be from legitimate and up-to-date sources.
- Providers of DQ services should take reasonable steps to ensure that the consumer receives the information the service advertises that it is offering.
- The obligation placed on any DQ provider, in being able to match or make available a listing through its data sources, is dependent on sufficient information being given by the consumer in the first instance.
- DQ services should not connect consumers to other, inappropriate premium rate services.
- Refunds should be provided to consumers, where necessary.

#### 1. Legitimate and up-to-date sources

- 1.1 All DQ services operating in the UK should use legitimate and current sources, in respect of the consumer information that is being provided.
- 1.2 In respect of information being provided in relation to individuals, companies or services outside of the UK, all information should be gathered from legitimate sources that are updated in accordance with the appropriate standards of the relevant country and/or jurisdiction concerned.
- 1.3 Where a DQ service does not provide information and/or connection for the generality of consumers in the UK, but rather a different, specific group, then promotional material should clearly state this, and clearly identify the specific group to which the service does apply.



## **2. Consumer to receive the information the DQ service advertises**

- 2.1 Providers should ensure that, where sufficient information has been given to them by a consumer, such a consumer is given the requested telephone number, and at no additional charge. Ordinarily, consumers should be given the requested number immediately. The exception to this is where consumers may be offered the chance to listen to an advert prior to receiving the number. Where this option is offered, the offer must be clear and succinct, and consumers must be able to opt out of listening to advertisements and be given the requested number immediately.
- 2.2 In instances where the consumer has accessed the service by a voice-call, the requested number should be verbally delivered to them (either by a live operator or by being generated electronically). In all other instances, any other communication format (inclusive of email, text message, etc.) can be used.
- 2.3 Prior to any further connection being made by the provider, the consumer should be clearly informed of the cost, and have the opportunity to opt out of the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at no additional charge.

## **3. Connection to other, inappropriate premium rate services**

- 3.1 DQ services should not connect consumers through to:
- Any premium rate service which is a chatline service;
  - Any premium rate services which is a sexual entertainment service; or
  - Any individual, business or organisation that the DQ service provider has an agreement or arrangement to share call revenue with.
- 3.2 DQ services can connect consumers through to a premium rate number, provided that number relates to business services.

## **4. Refunds to consumers**

- 4.1 Where a consumer has provided relevant information, but was not provided with the requested number, and where a complaint has been made to the provider and upheld, the provider should give a refund to the consumer for the full cost of the initial call made, and for any subsequent calls (such calls are limited to those made to the provider in respect of the initial request for information) and those made during the complaint process.
- 4.2 For more information in relation to consumer refunds, please see the PhonepayPlus *Investigations and Sanctions Procedures* and the section on refunds.

## SECTOR SPECIFIC GUIDANCE NOTE

### Employment, employment information and business opportunity services

#### Who should read this?

Any provider that is planning to offer employment, employment information or business opportunity services .

#### What is the purpose of the Guidance?

To help providers avoid their services being considered misleading under PhonepayPlus' Code of Practice.

#### What are the key points?

The main issues for providers to consider are:

- Premium rate charges should not be applied to services which find, or seek to find, persons employment. Section 6(1) of the Employment Agencies Act 1973 prevents the receipt of a fee, whether directly or indirectly, from any person, for finding him employment or for seeking to find him employment.
- Providers charging premium rates in relation to these employment services are likely to fall foul of this rule and, therefore, likely to be in breach of paragraph 2.1 of the Code of Practice (Legality).
- All reasonable steps should be taken to avoid misleading, or taking advantage of, vulnerable consumers. This includes jobseekers.

## 1. Types of employment services

1.1 These services fall into four categories, all of which carry different expectations:

*(i) Services offered by employment agencies and employment businesses*

- Subject to the exception in point 4 below, no charge can be applied to a service which finds, or seeks to find, employment for persons. If providers are found to be charging premium rates to such services, they are likely to be found in breach of paragraph 2.1 of the Code of Practice

*(ii) Services which give general advice about careers and employment, including self-employment*

- These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice. Those providing advice should also see Service-Specific Guidance on Advice services

*(iii) Services which give information about the providers own vacancies*

- These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice

*(iv) Services which seek to find work for performers and certain other workers in the entertainment field (except photographic and fashion models)*

- These services can charge for their services to work-seekers in respect of the occupations listed in Schedule 3 to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010) (“the regulations”), subject to various limitations and requirements set out in the Regulations.
- Providers should note that the use of PRS is likely to breach the Regulations where it takes the form of ‘up-front’ costs, unless the PRS charges relate directly to the entry of work-seekers into a job seeker or job search publication and various other requirements are satisfied, including the provision of a cooling off period. Providers are strongly advised to refer to the Regulations for further information, and seek legal advice accordingly.

## 2. How to avoid the service being considered misleading

2.1 Section 2.3 of the PhonepayPlus Code of Practice (Fairness) sets out a number of Rules to ensure consumers are treated fairly and not misled in any way. In particular, Rules 2.3.2 and 2.3.10 are relevant to employment and business opportunity services.

2.2 Providers should take all reasonable steps to:

- Ensure promotions correspond to genuine vacancies and/or opportunities, the existence of which should be fully substantiated on request;
- Not mislead a caller as to the conditions, necessary qualifications, availability or extent of any potential employment or business opportunity;
- Not make claims relating to earnings, unless the evidence that such earnings are currently and regularly attained by existing employees (or equivalent) is readily available;
- Clearly state any additional expenditure, including any investments, that may be required over and above the cost of the telephone call;
- State the type of work to be done and its geographical location;
- State the number of workers required;
- State the basis and level of remuneration and, where known, the level of earnings that may realistically be expected.

## SECTOR SPECIFIC GUIDANCE NOTE

### Subscription services

#### 1. Defining subscription services.

- 1.1 Subscription services are services which incur a recurring premium rate charge usually on a per week or per month basis until the user requests to end the subscription or exit the service.
- 1.2 As charges are recurring it is essential that consumers are made aware of all information that is likely to affect their decision to subscribe before they are charged.

#### 2. Making consumers aware of all relevant information

2.1 Promotional material should clearly and prominently state any information that is likely to affect an individual's decision to accept a future recurring charge. Providers must take reasonable steps to ensure this information is prominently available, before the consumer begins use of the service. Relevant information will likely include, but not necessarily be limited to:

- Confirmation that the service carries a recurring charge;
- Clearly highlight the obligation to pay a recurring charge by labelling activation buttons (or similar function) with an unambiguous phrase such as 'PAY £[X] A WEEK', or 'BUY NOW', with pricing information clearly and prominently presented in close proximity to the active field<sup>68</sup>;
- The total cost of the service (including any joining fees), any incremental charges and when, or how often, those charges will occur;
- An adequate description of what the service is offering in exchange for the recurring charge;
- Clear opt-out information (this is normally the 'STOP' command however other methods may be acceptable providing they are clearly communicated, simple and appropriate to the delivery of the service). For further guidance providers should read the General Guidance Note on 'Method of exit'<sup>69</sup>.

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<sup>68</sup> Providers are likely to be obliged to comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; for further information please refer to the PhonepayPlus compliance update regarding the Regulations published in June 2015:

<http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/ComplianceUpdates/03-June-2015-Compliance-Update.pdf>

<sup>69</sup> Guidance is published on the website at: <http://www.phonepayplus.org.uk/for-business/explore-our-guidance>

- 2.2 Consumers must be supplied with confirmation of the contract in a durable medium before charging occurs such as an initiation or confirmation message or confirmation via email to an email address previously provided by the consumer<sup>70</sup>.
- 2.3 Providers operating subscription competition services should also read the General Guidance Note on 'Competitions and other games with prizes'<sup>71</sup>.
- 2.4 Where a subscription service is promoted by a text message or other communication to a consumer's handset, the promotion should confirm the consumer has not been charged.
- 2.5 For more information on the promotion of subscription services, and advice on particular issues such as the use of the word 'free', please see the General Guidance Note on 'Promoting PRS'<sup>72</sup>.

### 3. Double opt-in

- 3.1 Double opt-in requires the consumer to confirm their initial acceptance of a charge. Obtaining robust consent to charge is required under rule 2.3.3 of the Code. By adding an additional step to confirm the transaction, consumers are likely to be more aware of that transaction and the charges associated with the service they are using. It is also likely to increase the data available to the PRS provider to evidence consent was obtained before the consumer was charged via the PRS.
- 3.2 Where a subscription service has a recurring charge of more than £4.50 in any given seven day period, providers are required to obtain a 'double opt-in' from the consumer following the initial sign up in the form of a positive, recorded and auditable response where the cost and name of the service has been clearly presented. This is a requirement of the [subscription services notice of special conditions](#)<sup>73</sup>.
- 3.3 We recommend that 'double opt-in' is also obtained from consumers entering subscription services that has a recurring charge of £4.50 and under after the consumer consents to the service but before they are charged for it.
- 3.4 An example of 'double opt-in' within a premium rate SMS flow would be a free to receive initiation message containing the same details as set out in paragraph 4.1 below which the consumer should positively respond to. Alternative means of achieving robust 'double opt-in'

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<sup>70</sup> Providers are likely to be obliged to comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; for further information please refer to the PhonepayPlus compliance update regarding the Regulations published in June 2015: <http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/ComplianceUpdates/03-June-2015-Compliance-Update.pdf>

<sup>71</sup> Guidance is published on the website at: <http://www.phonepayplus.org.uk/for-business/explore-our-guidance>

<sup>72</sup> Guidance is published on the website at: <http://www.phonepayplus.org.uk/for-business/explore-our-guidance>

<sup>73</sup> Notices of Special conditions are published on the website at: <http://www.phonepayplus.org.uk/for-business/special-conditions>

are possible and may vary depending on the service delivery platform. With changes in technology alternative means may also continue to develop. Where such alternative means are used, and robust evidence of consent to charge is available, it is likely that such services will comply with the Code.

- 3.5 Level 1 providers who operate within the mobile sector of the PRS market may wish to consider contractual requirements with a direct Level 2 provider client relating to sending an initiation message. This may be a useful way of ensuring that consumers have received the correct information about a subscription service, before incurring a charge. However, for the avoidance of doubt, sending a subscription initiation message does not replace a requirement for the consumer to be clear about the cost of a service, either in promotional material, or upon confirming payment in a payment mechanism, such as Payfortit.

#### 4. Spend reminders

- 4.1 PhonepayPlus has issued a Notice of caps, thresholds and actions in accordance with section 3.12 of the Code<sup>74</sup>. Providers of subscription services must send any consumer participating in the service a spend reminder, at no extra cost, once the consumer has incurred charges of £20.45, or each month, whichever occurs first. Spend reminders must be sent at each charge of £20.45 thereafter, or each month thereafter, whichever occurs first. For the avoidance of doubt, spend reminders must contain the following specific information:

- The name of the service;
- Confirmation that the service is subscription-based;
- What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
- The charges for the service and how they will or can arise;
- How to leave the service; and
- Level 2 provider contact details.

- 4.2 In certain circumstances it would be acceptable for a service message to also serve as the spend reminder message. For example if the billing cycle matches the frequency of the required spend reminder then the billing message could also contain all of the required spend reminder information (as set out above) rather than sending a separate free reminder message. In these circumstances the consumer is more likely to understand and not believe they have been charged twice, and as an ancillary benefit this would likely reduce bulk messaging costs for the provider.

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<sup>74</sup> The Notice is published on our website here: <http://www.phonepayplus.org.uk/~media/Files/14th-Code-of-Practice/Notice-of-Specified-Service-Charges-and-Durations-of-Calls-July-2016-final.pdf>



- 4.3 If the spend reminder message is a free message then 'freemsg' or similar should be stated somewhere within the text. Feedback suggests that stating 'freemsg' at the beginning of the message may lead the consumer to believe the message is spam and instead of reading the contents the consumer may simply delete it. Consistency in presentation of information is likely to improve familiarity with the service and confidence in the market.
- 4.4 In certain, limited, cases, the PhonepayPlus Executive will not pursue enforcement action in relation to the requirement on a provider of a subscription service to provide spend reminders as set out above in paragraph 4.1. However, these are currently limited to services that send alerts as to football or cricket matches (and/or results). This is on the grounds that the events leading to the information being sent, such as goal or wicket updates, are likely to be unpredictable, and the information contained therein easily verified later, and so unlikely to be falsified by a provider in order to create extra charging. Providers who wish to seek an exemption for any other service type should contact PhonepayPlus before they begin to operate a service.
- 5. Termination of the service**
- 5.1 Consumers must be free to leave the subscription service at any time and no service should imply anything to the contrary.
- 5.2 Where a consumer is subscribed to more than one service from the same provider and texts the 'STOP' command, providers should give the consumer adequate opportunity to clarify their intentions. The provider should determine whether the consumer wishes to terminate one, more than one or all of the services they are subscribed to. Providers found to be causing confusion to consumers wishing to leave subscription services may be found to have misled those consumers under paragraph 2.3.2 of the PhonepayPlus Code of Practice.
- 5.3 For more information on opting out of services, please see the General Guidance Note on 'Method of exit from a service'<sup>75</sup>.

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<sup>75</sup> Guidance is published on the website at: <http://www.phonepayplus.org.uk/for-business/explore-our-guidance>

## SECTOR SPECIFIC GUIDANCE NOTE

### Virtual chat services

#### Who should read this?

Any providers that do, or are planning to, offer virtual chat services, which are defined at paragraph 5.3.41 of the [PhonepayPlus Code of Practice](#):

*“Virtual chat services’ are not live conversation services but enable two or more users to exchange separate messages, whether by recorded voice, text or pictures, when engaged in the service.”*

#### What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus’ expectations around the use of virtual chat services, which are defined above.

In practice, virtual chat services will consist of messages exchanged either between two consumers, or between a consumer and an operator, and might be delivered on a variety of platforms, including the following:

- Voice-based (with messages being left in mailboxes of other registered consumers);
- Text-based (with SMS or MMS messages being exchanged);
- Web/instant messaging (with messages being exchanged via the web or a form of instant messaging service, but charged via premium rate).

Providers should note that whilst this Guidance may be relevant in part to “Any Questions Answered” (AQA) services, it is not intended to be uniformly applied to such services. AQA services can be defined as services operating on a mobile shortcode to which the consumer texts a question, and then receives a message in response which contains the answer. These questions can be about trivia, or sometimes for entertainment purposes – e.g. the compatibility of two individuals named in the consumer’s text.

Whilst AQA shares the same exchange of messages as text-based Virtual Chat, where consumers of AQA only receive one text (and charge) in response to each text they send then the spend reminders required by the Code and Guidance will not apply. Providers of AQA services should reference PhonepayPlus’ Compliance Update on AQA Services for more detailed expectations in relation to their product.

## What are the key points?

The main issues for providers to consider are:

- Providers should take reasonable steps to ensure that appropriate age verification processes are in place and that adult chat (i.e. that which could be defined as 'sexual entertainment') does not occur in non-adult chat platforms.
- Prior to incurring any text-based charge, consumers should be made aware of how the service mechanic works, what to expect in terms of the exchange of messages and the total cost for each message, including any charges for initiating the chat exchange. Consumers of a voice-based service should be provided with as much of this information as practical prior to calling, and where that is not practical the information should be provided promptly upon connection.
- Spend reminders should be sent to consumers once they have incurred a charge of £8.52 plus VAT, and at every charge of £8.52 plus VAT thereafter.
- Promotional material should be clear about whom the consumer will be exchanging messages with (i.e. service operators, or other consumers of the service).

## 1. Desired outcomes – what we believe good service delivery looks like

- 1.1 Consumers have various legitimate expectations when approaching virtual chat services, and these are dependent on the nature of the service, its user base, the mechanic by which messages are exchanged, and how the service is promoted. We believe these expectations give rise to certain outcomes:
- Chat service mechanics ought to be built around an exchange of messages, and not a format for charged promotional messages flowing from one-sided conversations that are operator-led
  - Consumers ought to have suitable and appropriate levels of control over the exchange of messages and the resulting charges associated with the service
  - Consumers need to be fully aware of all charges associated with the service and therefore providers should aim to keep the complexity of the charges to a minimum.
  - Where optional added-value features such as photo-messaging exchanges are available, and there are additional charges involved, these must be communicated clearly and prominently in relation to their promotion, especially where such features are promoted as part of the virtual chat experience
  - Where services are only consumer-to-operator based, or the opportunity to arrange consumer-to-consumer chat is not the exclusive form of virtual chat available, consumers must be made aware of any limitations such as the inability to arrange meetings in person or dates.

## 2 Age verification

- 2.1 Providers should take all **reasonable steps**<sup>76</sup> to ensure that no one under the age of 18 uses any virtual chat service which contains adult content, or is adult in nature. Initial age verification should take place prior to the consumer incurring a charge. Promotional material should clearly state that the service is only for individuals aged 18 and over. For virtual chat services delivered on mobile phones, it will usually be expected that the consumer is sent an initial text asking for their date of birth (which must be checked to ensure the consumer is over 18) before each individual service commences.
- 2.2 Alternatively, where a provider seeks to use a system for initial age verification of a mobile MSISDN (mobile number), which can then be applied across all its 18+ services once an initial check is made, providers will need to prove to PhonepayPlus upon request that the system is robust, auditable and tamper-proof. In addition, providers should ensure that they re-check age verification on MSISDNs every three months.
- 2.3 No consumer under the age of 16 is permitted to use any virtual chat services, whether the services contain adult content or not, and providers should take all **reasonable steps** to ensure that this is the case.

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<sup>76</sup> This is defined in detail in paragraphs 2.6 to 2.9 of this guidance below.

- 2.4** Operators determining a consumer's age should not use leading questions (e.g. "You are over 18, aren't you?"). Age verification methods should require the user to state their date of birth. Age verification is an ongoing duty and, if during the course of the service, the user gives any indication that they are under 18 (or under 16, in the case of non-adult virtual chat services), then the service should be immediately terminated. We would consider it best practice for providers to also place a bar on that consumer's number, or blacklist it, for six months to a year.
- 2.5** Providers should also take all **reasonable steps** to ensure that sexually explicit chat does not take place on non-adult virtual chat services. A failure to do so could likely result in a breach of paragraph 2.3.7 or 2.3.8 of the [PhonepayPlus' Code of Practice](#) (in the case of the latter this would likely arise where the services are used by those aged 16-17 years of age). Where non-adult virtual chat services are promoted, such promotions should only take place in media where the target readership is those 16 years of age and over.

*Reasonable steps*

- 2.6** What we mean by 'reasonable steps' is an expectation that all providers that are engaged in a virtual chat service take a proactive approach to the way their staff are trained and moderated to ensure compliance with the [PhonepayPlus' Code of Practice](#).
- 2.7** As a starting point, we would expect to see evidence of how individual operators are being trained in practice. Some of the mitigating steps that may help providers to achieve appropriate standards of compliance include:
- Signing up to PhonepayPlus' News Alerts to ensure they are being kept updated with adjudications and any new policy developments that might impact upon their business model.
  - Contacting PhonepayPlus to receive further guidance on the compliance of their service model with PhonepayPlus' Code of Practice.
  - Evidence of training taking place for relevant staff prior to them taking up responsibilities for monitoring and / or compliance checks
  - Having a training manual available, which is regularly updated and sets out some of the key 'triggers' and steps that individual operators are expected to take where underage activity is suspected.
  - We would consider it best practice that, where a provider successfully identifies 'underage use', the infringing MSISDN be forwarded to the appropriate Mobile Network Operator for further consideration.
- 2.8** No person employed as an operator for virtual chat services may be aged under 18. All such employees should be adequately trained to operate according to these and any other relevant conditions, and all relevant rules of the Code, before commencing operation.

**2.9** Virtual chat services that are sexual entertainment services<sup>77</sup> and require the user to be over 18 to participate should only operate on:

- *Mobile services* – shortcodes (voice or otherwise) beginning with 69, 79 or 89, which are the prefixes designated by UK mobile network operators for adult services;
- *Fixed-line services* – numbers beginning 0909, 0908 or 098<sup>78</sup>.

### **3. Message information and spend reminders**

**3.1** Consumers should be made fully aware of the total cost of using any virtual chat service prior to entering. This includes making the consumer aware of the number of messages that they are likely to receive in response to the messages they send.

**3.2** For example, if for every one message the consumer sends, three are received, promotional material should clearly state either:

- The total cost of all messages (e.g. Total cost per one message sent = £4.50); or
- The cost of each text message and the number of messages the consumer will receive (e.g. You will receive 3 replies at £1.50 per message for every 1 message sent).

**3.3** PhonepayPlus recommends it is best practice to do both of the above in order to provide complete clarity to consumers.

**3.4** PhonepayPlus has imposed certain actions and thresholds in relation to all virtual chat services under the relevant power found at paragraph 3.12 of the Code. Such services should, as soon as is reasonably possible after a consumer has spent £10.22<sup>79</sup>, and after each £10.22 spend thereafter:

- Inform the consumer separately from the service, or any promotion, that they have spent £10.22; and
- Inform the consumer of the cost per minute, or per message (whether charged for outgoing or incoming messages), of continuing to use the service.

**3.5** If the consumer continues to interact with the service, having received these clear spending reminders, then this can be considered a further opt-in to the service. If the consumer does not continue to interact, then the service should be<sup>80</sup> terminated (i.e. the consumer should not be

<sup>77</sup> Sexual entertainment service has the meaning set out in the Condition issued by Ofcom under section 120 of the Communications Act 2003 effective from time to time (as replicated in the Code).

<sup>78</sup> For more information on the appropriate number ranges, please see Guidance published by Ofcom: [http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering\\_Plan\\_Dec\\_2013.pdf](http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_Dec_2013.pdf)

<sup>79</sup> Price figures are inclusive of VAT.

<sup>80</sup> This requirement is true regardless of whether the service charges via mobile terminating (MT) text messaging or mobile originating (MO) text messaging, and consumers must be made aware of the payment mechanism being used.

charged further). Providers who wish to continue to send messages to a consumer who does not continue to interact should see section 6 of this Guidance below.

- 3.6** Spend reminders should be auditable, and evidence of a spend reminder being successfully sent should be available on request.
- 3.7** In the case of text virtual chat services, consumers must be made aware of the 'STOP' command, prior to incurring a charge within the service. For more information on the 'STOP' command, please see the General Guidance Note on ['Method of exit from a service'](#).

#### **4. Services should not mislead consumers**

- 4.1** Promotions for virtual chat services should not lead consumers to believe that they will be exchanging messages with other consumers, or that they may be able to meet other consumers by using the service, unless that is the case.
- 4.2** Use of words such as 'meet' and 'date' may be deemed misleading if the consumer does not, in fact, have the opportunity to meet any other users or operators of the service. Operators should not indicate to consumers that a meeting can take place, where this is not a function of the service. Where a consumer does request a meeting, expectations should be managed correctly and operators should inform the consumer that the purpose of the service is for 'fantasy chat' only.

#### **5. Services that use instant messaging**

- 5.1** Services that use an instant messaging mechanic (i.e. where the consumer is participating in chat via an instant messaging service, such as Imo or WhatsApp, but being charged via their mobile device) should make sure consumers are fully aware of how the service works.
- 5.2** Prior to incurring a charge, the consumer, in addition to other guidelines in relation to virtual chat services, should be clearly and prominently informed as to:
- Whether the service uses virtual currency and credits as a form of payment;
  - The incremental charges that they will incur for using the service;
  - The likely total cost of using the service, if this is fixed; and
  - How they will be charged, and whether an automatic top-up charge applies.
- 5.3** Where the charging mechanic is subject to an automatic top-up (i.e. when the consumer has used all their credits, the service automatically issues an incremental charge to provide the consumer with more credits in order to continue with the service), the consumer should be made aware that this is how the service will work, prior to incurring a charge.



- 5.4 Providers should, where possible, inform the consumer through the instant messaging service that they have spent all their credits and that their account will be topped up via a premium rate charge.

## 6. Services which promote after a lull in interaction

- 6.1 Where a consumer does not continue to interact with a service after being informed that he or she has spent £8.52 plus VAT, then the service should be terminated (i.e. the consumer should not be charged further), as set out at paragraph 3.4 of this Guidance above, and stipulated under provisions introduced in accordance with paragraph 3.12 of the [PhonepayPlus Code of Practice](#).
- 6.2 Providers who wish to promote to consumers who have opted out of a previous interaction with a virtual chat service should regard any interaction after one month from the date of the last previous interaction as having resulted from a new promotion. At that point, any promotional text messages should contain all necessary promotional information once again (see section 3 of this Service-Specific Guidance Note).

## 7. Promotion of virtual chat services on adult broadcast services

- 7.1 Adult broadcast services are known to advertise virtual chat services alongside the promotion of adult sexual entertainment service lines inviting viewers to call onscreen 'babes'. As with any cross-promotion, there is scope for confusion related to the multiple terms and conditions presented on the one screen. These terms and conditions may be static or scrolling across the screen in some way. Providers who advertise in this way must take steps to remove any confusion, and ensure all key information is presented clearly and prominently.
- 7.2 Providers are encouraged to consider the cost and payment arrangements for the virtual chat service carefully, and to reduce any complexity where possible. This is because complex terms and conditions are much harder to present to consumers on screen. Indeed, the more complex the terms and conditions the greater the reliance on scrolling information, which is not as easy for consumers to read and digest.
- 7.3 Where providers do find it difficult to present all the key information on screen, it is advisable that further details relating to the cost of the service and how it operates are sent to the consumer free of charge prior to the paid-for service becoming operational and initial payment taken.
- 7.4 Any initial fee for initiating the exchange of messages with virtual chat services operators must be clearly presented in a static way, alongside any other charges levied during the call.

For example: **"Sign-up fee £2.00 and £1.02 per minute for the duration of the call"**.