

Clarity of information to be provided to consumers via text messages following mobile number entry into online promotions

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This compliance update seeks to clarify the requirement for pricing and other key information in SMS (or other forms of text messages such as binary or MMS) sent to a consumer's mobile phone following the consumers mobile number being entered into a website.

Background

There have recently been discussions involving the Phone-paid Services Authority (PSA) and providers concerning the application of the Privacy and Electronic Communications Regulations (PECR) to text messages sent to consumers following the entry of their details into a website.

Some providers have stated that they understood PECR would prevent any such message from containing any information which could be construed as offering a transactional proposition to the consumer – even though that text message is part of the flow used to opt in to a service. Such information would include the cost of the service, the name of the service and other key information.

In order to limit the risk of consumers being inappropriately marketed to via unsolicited SMS (or other forms of text messages), the practice adopted by some providers within the phone-paid services industry in recent years has been to trigger a text message to a consumers phone where they have entered their number onto website with that text message which omits the cost of the service, the name of the service and other key information.

This practice has been applied to both text messages containing a pin or a keyword (which the consumer either entered into a website or text back to a short code), and to messages which the consumer replied to in order to agree a transaction.

The interpretation adopted by various providers within the industry arose from the concern that the consumers' mobile number could be entered into a website without their consent by someone else - so subjecting the consumer to unsolicited marketing.

In recent years, there has been significant growth in the use of websites that offer phone-paid transactions, and user payment mechanics whereby the consumer enters their mobile number into the website to trigger a text message. Many of the websites concerned are 'co-registration' sites. Co-registration sites provide space for a number of transactional and marketing propositions from a wide range of companies and organisations and are not operated exclusively by a provider of phone-paid services.

These developments have led to an increase in the number of services being promoted on websites which do not provide adequate pricing and other key information.

The 14th edition of the PSA Code of Practice (“the Code”)¹ sets out that consumers must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made. The cost and other key information must be prominent, clearly legible, visible and proximate to the means of access to the service. However, we are aware that some providers have experienced difficulty in complying with the Code rules regarding transparency and pricing and fairness, particularly in circumstances where they do not control the website on which their product is promoted.

Issues

With the increased use of ‘co-registration’ sites by providers offering phone payment as an option for digital purchases, it is clear that some providers would prefer to include pricing and other key information in text messages generated as a result of consumer interactions with a website, in order to be clear about the cost of the service at all stages of the consumer journey.

Where consumers are not presented with satisfactory information during their purchase journey, there is a significant likelihood that they will fail to understand that there is a cost involved in signing up to the service. It is apparent that some providers within the phone-paid services industry have been relying on the above understanding and therefore have not included pricing and other such key information in any such messages they have sent, which when coupled with poor or non-existent information on a website has created significant consumer confusion and harm.

PSA expectation

Following discussions between the ICO and the PSA, the PSA is issuing this compliance update to clarify the position with regard to the application of PECR, in light of the evidence of considerable consumer harm. The ICO has advised that whilst they will continue to consider any issues which arise on a case-by-case basis, they recognize that the purpose of the text message communication in question is to confirm the terms of the purchase/contract that the consumer is entering into. Consequently, in the ICO’s view, this would make the text message akin to a service message as opposed to a promotion.

As a consequence, this update gives notice that where consumers receive text messages for the purposes of confirming purchases which they have initiated by entering their number into a website (whether ‘co-registration’ or otherwise), we will expect these messages to clearly inform consumers of the pricing and other key information. The wording of the text message should be factual, make clear the context in which it is sent (as a confirmatory step to an online purchase) and deliver only the key service information without any attempt to promote additional products or services.

Next Steps

We strongly recommend that providers of phone-paid services ensure the following information is included in their text messages:

¹ Guidance notes on Promoting PRS and Digital Marketing provide further advice in support of the Code requirements around pricing and transparency.

- the context for which the message has been sent
- clear pricing information
- the name of the provider operating the service and contact details
- any other key factual information that is likely to influence the consumer's decision to complete the transaction.

In order to ensure compliance with the Privacy and Electronic Communications Regulations 2003 (PECR) providers should be aware that:

- no response to any such text message is not sufficient to indicate consent to further contact.
- If a person does not respond, they should not be prompted or sent further messages – any messages of this nature are likely to stray into marketing.
- Where the sign up is never completed, any data linked to that sign up should not be retained or used.
- If you are receiving complaints about unsolicited contact and/or particular website data entry mechanisms look to be generating a higher level of incorrect applicants then you should re-assess your approach.