

Code 15 Guidance note – Fairness Standard

The Fairness Standard aims to ensure that consumers are not misled into using phone-paid services. It recognises the importance of ensuring that consumers are treated fairly and equitably throughout their experience of phone-paid services (including during service promotion, point of purchase and when providing consent to charges) and have confidence that this is the case.

This guidance note sets out the PSA's expectations and provides more detail on how phone-paid service providers (network operators, intermediary providers and merchant providers) can comply with the Fairness Standard and Requirements. This guidance provides more detail on:

- treating consumers fairly
 - by not using misleading marketing
 - by providing services without undue delay.
- excessive use
- point of purchase
 - multi-factor authentication
 - consent to charge.

If you have any queries about the guidance set out in this note or want to discuss your approach to compliance with the Fairness Standard, please email us at compliance@psauthority.org.uk.

Treating consumers fairly

Requirement 3.3.1 requires providers to treat all consumers of PRS fairly and equitably. There are many ways in which a consumer could be treated unfairly including through misleading marketing, not providing the service on offer, undue delay and charging without consent.

In relation to ICSS, some examples of unfair treatment include (depending on the facts of the case):

- an ICSS providing connection to organisations that typically have call wait times that either do not allow reasonable time for consumers to resolve their queries before the £40 service charge call cut-off point, or extend beyond that point
- making an ICSS accessible to consumers when the organisation in which it connects to is closed.

Providers should ensure that their services are marketed to consumers fairly to prevent them from being misled, or potentially misled in any way (Code Requirement 3.3.2).

Promotional material should always accurately describe and represent the service on offer. Only factual statements should be made about services. It is also important that promotions do not omit, or make insufficiently clear or prominent, information that is likely to affect a consumer's decision to purchase a service. For example:

- promotional material for a competition service should make it clear that winning is not a certainty and the chances of winning should not be exaggerated
- promotional material for a virtual chat or live entertainment service should make it clear that meeting or dating in person is not possible (where the service is not peer-to-peer dating)
- a false sense of urgency should not be created, for example through use of countdown clocks
- promotional material should make it clear whether a service is free of charge or not. For example, the word free should not be used in the name or branding if the service is not free.

Examples of non-misleading statements might include:

- "enter for a chance to win £1000 in cash" ✓
- "fantasy chat line for entertainment purposes only" ✓
- "connection service operated by [xx] connecting you to PSA" ✓
- "offer ends at midnight on [include date]" ✓

Examples of misleading statements might include:

- "you've won £1000" ✗
- "hook-up with local people in your area now" ✗
- "click to call PSA customer services now" ✗
- "hurry time is running out!! 30 seconds left" ✗

The Code requires providers to not use any marketing technique, language or imagery which misleads or has potential to mislead the consumer into believing the service on offer is associated with or provided by another phone-paid provider or any other public or commercial organisation when it is not (Code Requirement 3.3.3). This requirement applies to all providers regardless of the services being offered, however, it is particularly significant for providers of ICSS. For example:

- promotional material for services which connect consumers to other organisations (ICSS or directory enquiry services) must:
 - ensure any search engine marketing is clear that the service is a connection or directory enquiry service and not use key words or optimisation techniques that may mislead consumers into believing the service is associated with the organisation or organisations to which the service connects

- make the true nature of the service abundantly clear and clearly and prominently state who is providing the service (see Transparency Requirement 3.2.3)
- not use potentially misleading URLs for example by including the name of the organisation or organisations being connected to within the domain name
- only use logos and imagery associated with the merchant provider and the service and not use logos or imagery associated with the organisation or organisations to which the service connects
- not use terms such as “customer service” “helpline” and “contact number” as this has potential to mislead consumers into believing the ICSS is the direct contact number for the sought-after organisation
- not display addresses and maps purportedly showing the location of the sought-after organisation as this also has the potential to mislead consumers into believing that this is the official website or contact number for the sought-after organisation.
- promotional material for competition services which may be offering prizes such as electronic gadgets or shopping vouchers should:
 - use the merchants/services own branding and not the branding of the manufacturer or shop that a voucher is for
 - not imply that the competition is affiliated with a certain manufacturer or shop where it is not factually the case.

Using third-party marketing providers

Merchant providers are responsible under the Code for the marketing of their services, including where they choose to use third party marketing partners.

Use of marketing partners can increase the risk of consumers seeing misleading promotions. This can be because there are often multiple parties involved in the process which can make it more difficult for the merchant to have control over the marketing practices that partners may employ. We recommend merchants have quality control processes in place (such as final editorial sign-off or contract clauses) to ensure any potentially misleading promotions are not published.

Merchant providers need to ensure in all circumstances, including where they are using third-party partners, that promotional material accurately describes the service being offered.

Merchant providers will need to ensure when they use third-party marketing partners that ultimate control over promotional material rests with the merchant. They need to be able to ensure that material that does not meet the requirements of the Code is not published or may be taken down immediately if necessary.

Undue delay

Once a consumer has chosen to engage with any type of phone-paid service, the service should either offer prompt engagement with the service itself, or the service content purchased should be promptly delivered (Code Requirement 3.3.4).

Factors that constitute undue delay include:

- queuing systems – a voice-based service that employs any variation of a queuing system that prevents (either deliberately, or otherwise) a consumer from immediately engaging with that service
- long introductory messages - for voice-based services we recommend introductory messages do not exceed 30 seconds in length.

Any pre-recorded services should not be designed to keep the consumer on the line and unreasonably prolonged, to avoid this:

- keep instructions as simple as possible
- keep menu facilities short and concise
- keep sentences short and avoid long pauses
- avoid promoting other services within intro messages.

If there is an expected delay in service delivery such as delivery of an e-ticket, then consumers should be clearly informed within promotional material and receipts when they will receive what they have purchased.

Excessive use

By “excessive use” we mean any potential incident(s) of high or sustained repetitive usage in excess of the range of usual behaviour or normal use. What constitutes excessive use can vary depending on the context and the characteristics of the service in question. Excessive use is often closely linked to, or results in, significant consumer spend, which could occur over a short period of time (e.g. one weekend) or over a longer sustained period (e.g. a number of years). Excessive use of phone-paid services can lead to "bill shock" and might also result in significant distress for the user; financial detriment; possible dissatisfaction with phone-paid services and subsequent reputational damage to the industry. Excessive use or spend could also potentially be linked to a consumer’s vulnerability (see Vulnerable consumer Standard guidance for further information).

Identifying excessive use

Indicators of excessive use of phone-paid services may include:

- higher than average spend
- higher than average use

- a noticeable, irregular incident, e.g. multiple identical purchases or unusually high spend or use in a short period of time or in short bursts.

Merchant providers need to understand what typical use of their services looks like, so that they can spot any irregular activity. It is recommended that providers monitor average user engagement across a defined period or billing cycle. Once the average spend/use levels are established, the PSA suggests that any use/ spend which is over 100% higher than that average may be considered potentially excessive.

The PSA recommends using the modal average to calculate average user spend. 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. 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 the PSA to discuss alternatives.

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.

Taking the service type into account

What may constitute excessive or problematic levels of service use can vary depending on the service type and context in which the service operates. The following examples may assist providers to establish consumer spend levels that are appropriate to the context and service type:

- competition services and other games with prizes are 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.
- remote gambling services are highly likely to attract consumers who may be at risk of using services excessively. Usage level or spend which is less than 100% higher than average could be considered excessive in this context.
- significant and unforeseen spikes in service usage could also be seen in virtual chat services or gaming/in-app purchase(s) where a user sends repetitive and/or other message requests persistently and within a short space of time.
- live interactive broadcast phone-paid services can involve significant spikes in traffic / service use at critical times within or around broadcasts. Where the average user might only vote once or twice, it is unlikely that a usage level or spend which is 100% higher than this average would be considered excessive in this context. In this example, the merchant provider may have alternatives, higher levels of user interaction thresholds which may constitute excessive use – this will likely be determined using data held by the provider.

Informing consumers

Where potential excessive use is identified, providers should take reasonable and prompt steps to make users aware of that usage. For the avoidance of doubt, the issuing of receipts alone, as required by Code Requirement 3.2.12, while helpful as a prompt, is not sufficient to meet this Requirement. The PSA recommends:

- this can be done through methods of communication appropriate to the means of access to the phone-paid service
- this should be done as soon as possible after the event that led to the communication and in any event as soon as reasonably possible and no later than five days after the event has been identified
- that if the consumer fails to respond promptly to communications from the provider the provider of the phone-paid service 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.
- the PSA 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 the relevant period set out in the data retention notice) 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.

Where a consumer appears to have been using a phone-paid service excessively, but it is established through successful communication with the consumer that they are aware of the associated charges, in control of their usage, and satisfied with the service, then no further action is required. Evidence of the communication should be collected and stored for a reasonable period.

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. It may be useful to maintain a separate list of such recognised high-use individuals, albeit with a degree of observation of their spend and usage levels if appropriate.

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. The PSA expects that the provider will endeavour to resolve the issue promptly, easily and fairly with the consumer directly, in line with the Customer care Standard and Requirements (see Customer care guidance for further information).

Point of purchase - consent to charge and multi-factor authentication

In Code Requirement 3.3.6, informed consent means that the consumer has all the key information they need to decide whether to make a purchase or not (see also Transparency Requirement 3.2.2). Explicit consent means that the consumer takes positive action to agree to a charge.

The PSA would generally regard the consumer's consent as being informed if it can be demonstrated via genuine, easily auditable records, that a consumer has seen all the key information that is likely to influence their decision to purchase the service. Providers should be able to demonstrate that such records show genuine consumer consent and have not been tampered with in any way since they were created. The provider should be able to provide the PSA with raw opt-in data (access to records, rather than Excel sheets of records which have been transcribed) and real-time access to this opt-in data on request. This may take the form of giving the PSA password-protected access to a system of opt-in records.

For **services accessed fully or in part via an online gateway, subscriptions (including recurring donations) and society lottery services** the Code requires **multi-factor authentication** to be used to establish and demonstrate informed and explicit consent (paragraphs 3.3.7 and 3.3.8).

The Code sets out clearly that stage one of multi-factor authentication can be achieved by one of the following:

- consumer selected password-controlled account
- secure PIN loop system which is initiated and confirmed by the intermediary provider
- on-screen PIN which is initiated and controlled by the intermediary provider or network operator
- consumer-controlled mobile originating short message service (MO SMS) – the consumer sends an SMS with a keyword to a shortcode
- for recurring donations, a phone call between a person acting on behalf of a charity and a consumer or through face-to-face engagement with a consumer as part of which the consumer is required to enter at least two details into a secure online environment.

Where stage one multi-factor authentication is achieved through consumer selected password-controlled account (Code paragraph 3.3.8(a)), it would be acceptable to use existing third-party verified accounts via an electronic identification protocol, such as Facebook or Google sign-in buttons, within the purchasing environment. The webpage enabling use of the verified account must be hosted by the intermediary provider or network operator.

Where stage one multi-factor authentication is achieved through a secure PIN loop system (Code paragraph 3.3.8(b)), the function may be undertaken by an independent third party on behalf of the intermediary provider. Where a network operator contracts directly with a merchant provider, the function may be undertaken by the network operator.