

GENERAL 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 the Phone-paid Services Authority's 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 Phone-paid Services Authority website at www.psauthority.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 the Phone-paid Services Authority 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 the Phone-paid Services Authority 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.
- The Phone-paid Services Authority 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 the Phone-paid Services Authority 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/>).