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## CONSULTATION RESPONSE

FOR

## GUIDANCE DEVELOPMENT

BY

## ASSOCIATION FOR INTERACTIVE MEDIA AND ENTERTAINMENT

(AIME)



## AIME (WWW.AIMELINK.ORG)

AIME is the UK based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and entertainment industries - where consumers interact or engage with services across converged media platforms, and may pay for those services or content using a variety of micropayment technologies including premium rate services.

We uphold our Code of Ethics and Core Values to create an environment of consumer trust and industry confidence within which our members' commerce can grow. We are committed to furthering the interests of Interactive Media and Entertainment through the regular exchange of information and communication throughout the value chain, effective engagement with regulators and legislators and the presentation of a successful industry image to consumer and business media.

We are the only UK trade association with membership across all elements of the interactive media and entertainment value chain. Our membership represents in excess of 80% of annual industry PRS revenues.

AIME promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience should be perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

## MEMBER INPUT

AIME welcomes the opportunity to respond to PhonepayPlus Consultation on its Guidance Consultation reflecting five pieces of Guidance

To assist AIME in providing a comprehensive input to PhonepayPlus, AIME researched its Members in the following manner;

- Written input from Members
- One-to-one discussions

AIME Members who operate in the PRS markets are broadly split into five categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks, Fixed line L1 and L2 providers
- Mobile Networks, Mobile L1 and L2 providers
- Broadcasters
- Charities and Charity enablers
- Industry Support companies

AIME sought responses from Members from all of the represented PRS industries, but we experienced a low response to this consultation and we speculate that this is due to timing, the number and size of



recent consultations, the level of detail that was required to be reviewed in a limited time and that most AIME members are experienced in the market.

## GENERAL

1. AIME welcomes the opportunity to respond to the Guidance Consultation as we have strongly supported the concept of comprehensive guidance to the industry to ensure the outcomes of the Code are maintained. Guidance is particularly relevant for new market entrants, where the potential for inadvertent consumer harm is high, but also acts as a reference for L1's and L2's to turn to when queried by their clients or when setting up new services
2. While we appreciate that a significant amount of effort is placed into authoring guidance, our general comments to improve the applicability of this guidance are as follows:
  - a. Industry participants had the recent opportunity to discuss extensively the Consumer Vulnerability Guidance as it was being authored. As a result, the guidance was informative, phrased for easy assimilation by industry, and took into consideration the commercial operating environments of providers, enhancing its credibility. We recommend that this process is replicated across other guidance notes with a target to review two guidance notes per month for applicability to ensure currency.
  - b. Some of the guidance notes refer to what the PPP Tribunal's opinion will be for a particular issue. As previously discussed, this style of authoring is problematic. First, PPP cannot predict the view of an independent body that will take into consideration the specifics of a given case. Of course, these instances can be rephrased to say instead, that this is PPP's view, and we have made these edits or highlighted the areas needing change in the Guidance documents). Second, we believe that negative references are the wrong way to present a Guidance Note that should explain how to achieve compliance, rather than state what happens when compliance is not achieved. We request re-authoring of these areas of the Guidance notes under consultation and all future Guidance when scheduled for review. The guidance on Advice Services is a good example of positive and constructive guidance. While we appreciate that some Guidance Notes are updates from previous versions, we believe that every review of Guidance should be an opportunity to establish if the tone is correct for the target audience.
  - c. Related to the above, we have found the tone of some guidance to be threatening, which discourages reading. Therefore undermining the purpose of guidance. Where possible, we would encourage a review of the style of authoring and enlist the participation of industry expertise to re-author where applicable using good examples as detailed above.

- d. Some Guidance Notes appear to have (sometimes extensive) duplication, which reduces readability. If there are relevant code provisions to be mindful of, then these should be referenced once at the top of the section allowing the body text to concentrate on how to achieve the code provisions. This will also reduce the length of the relevant Guidance Notes.
  - e. Since the original Guidance was developed in 2011, the emergence of the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013* ("CCR") has prompted a review of how a premium rate provider establishes a distance sale contractual relationship with the consumer. Premium rate regulation benefits from providers ensuring they also comply with CCR. But, CCR (if followed) also provides protection to the trader. Guidance notes will benefit from overt cross reference to CCR. Previously established recommendations from PPP will also need to be modified to ensure that Guidance does not undermine the trader's protection when establishing a contract. We have highlighted where the guidance needs to be changed.
3. We have found areas where the recommendations in the Guidance, although optional, are disproportionate and put the merchant selling via PRS at a significant disadvantage over other forms of payment. While we agree that enhanced consumer protection is needed due to the relatively frictionless payment method that PR payment provides, we feel that overly ambitious recommendations (especially those that put restraints on businesses) will increasingly discourage new businesses from considering PR charging alongside other payment mechanics. Perhaps PPP is already noticing this effect with providers seeking individual compliance advice to blunt those restraints. This trend is mentioned in the consultation document.

With regards to the rest of the guidance notes detailed in the Annex A to the consultation document, we have the following response in table form:

**Annex A Table**

Title of Existing Guidance	Initial PhonepayPlus Determination	AIME Commentary
Application-based payments	Retain current guidance	Agree with proposal and review again after one year
Consent to charge	Retain current guidance	Suggest a review once the Primary Authority has issued its guidance on CCR
Complaint handling	Retain current guidance	Work in 2016 and the addition of ADR will require a review of this guidance
Definitions	Retain current guidance	Agree with proposal and review again after one year
Digital marketing and promotions	Update Guidance	Agree with proposal and propose review every year

Title of Existing Guidance	Initial PhonepayPlus Determination	AIME Commentary
Due diligence, risk assessment, and control (DDRAC)	Retain current guidance	Review Dec 2016 to ensure current
Enabling consumer spend controls	Update Guidance	Agree with proposal
Lower cost services	Retain current guidance	Agree with proposal
Method of exit from a service	Update Guidance	Agree with proposal
Privacy	Retain current guidance	Review Dec 2016 to ensure current in light of EU changes
Promoting premium rate services (PRS)	Retain current guidance published following 2015 consultation	Review Dec 2016 to ensure current
The avoidance of undue delay	Retain current guidance	Requires a review in light of recent adjudications
Advice services	Update Guidance	Agree with proposal
Children's services	Retain current guidance	
Competitions and other games with prizes		AIME does not agree. (same position as in May 2015). As competitions are driving calls to PPP and Consumer Contracts Regulation (CCR) sits close with PPP Code, this guidance requires a review as soon as possible.
Consumer credit services	Retain current guidance	Review Dec 2016 to ensure current
Method of exit from a service	Retain current guidance	AIME suggests a review to ensure it is current and in line with CCR
Directory Enquiry (DQ)	Retain current guidance	We believe that the learning from compliance updates should be built into guidance to provide a single source of information
Employment services	Retain current guidance	Agree with proposal
Subscription Services	Update Guidance	Agree with proposal
Virtual Chat Services	Retain current guidance	Agree with proposal

## ANNEX B1 ADVICE SERVICES

This guidance is comprehensive and provides the correct advice to providers to help them remain compliant. We have made comments on the use of “all” when referring the information within promotional material as some promotional methods do not permit the comprehensive information required and in any event, repeating less relevant information could create clutter, distracting from the most important information. The emphasis should be on ensuring the consumer is fully informed prior to their financial commitment (or at least very early on in a call) and this may not be necessary on every promotional step.

### 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](#). 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:

**Commented [RJM1]:** Web link needed

**Commented [RJM2]:** While we agree that the user must be fully informed, this places a lot of information into a promotion that may cause clutter. As a minimum, the information should be made available to the consumer e.g. in accessible terms or in the initial part of the call.

- 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).

## 2. Qualifications to provide advice

2.1. 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 should 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 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.

**Commented [RJM3]:** Dependant on the promotional material it is not always possible to explain this level of detail in every promotion. It should be clear that the consumer is fully informed prior to any financial commitment or at least in the early part of the call, but requesting this detail in ALL promotional material is problematic.

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, in line with 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 nonpractising) 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>2</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. Following on from these guidelines, it is likely that a counselling service will comply with the Special conditions, if the following conditions are met:

#### *One-off counselling services:*

##### 5.3.1. 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.

#### 5.3.2. 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.

#### 5.3.3. Repeated/addicted callers:

- a) All reasonable steps should be taken to prevent consumers becoming 'addicted' callers<sup>3</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.

#### 5.3.4. 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>4</sup>.

#### 5.3.5. 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.

#### 5.3.6. 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.

5.3.7. 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.

5.3.8. 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 confirmation of this information in a durable medium.

**Commented [RJM4]:** This may confuse. It should say "The Consumer should be provided with this written information in a durable form."

## ANNEX B2 - DIGITAL MARKETING AND PROMOTIONS

### GENERAL COMMENTS:

This guidance is complex as it covers a lot of different practices. However, the duplication of the references to “misleading” and other parts of the code can be summarised in one paragraph.

The prejudgement of a Tribunal outcome, despite previous assurances that these would be removed from Guidance, is prevalent.

The guidance places PRS providers at a significant disadvantage to other forms of payment as inadvertent Code breaches through the acts of subcontracted parties carry significant penalties, not seen with the ASA regulatory model.

The tone of this guidance should be advisory towards ongoing risk assessment of the advertising environment, rather than threatening.

The promotion of free content in a chargeable environment is an established practice cross the internet (why pay to advertise if you cannot sell product or re-sell advertising?). The guidance is disproportionate in suggesting that the majority of content on an advertised site must be free. It is reasonable to expect some free content as a sampler with the rest of the content sold in a pricing transparent manner. We object to this current section of the Guidance.

We are disappointed that AIMEs Guidance on Affiliate Marketing was not referenced. Even though this guidance requires a review and update, a significant amount of industry guidance to enable due diligence and risk management is provided.

<http://aimelink.org/wp-content/uploads/2014/01/AIME-Interim-Guidance-Note-Affiliate-Marketing-Sep20131.pdf>

AIME does not support the notion that promotions that lead to the providers' service should contain the information regarding the service, how it operates and its cost. Given the existence of rogue affiliates, this is a dangerous practice to recommend as there are significant opportunities for affiliates and other pre-site landing pages to get these items wrong either unintentionally or in a deliberately misleading manner, causing additional issues for advertisers and consumers.

The Code requires “That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, **before** any purchase is made.” (emphasis added). This aspect of the Code outcome is best delivered by the provider, on their digital payment pages, or the payment intermediary, if a payment scheme is being used **immediately** prior to the purchase so the consumer is fully informed and can take the relevant purchase decision. If left to parties that are outside the direct control of the provider, consumer harm may follow. Annex 2.4, 3.3 and 4.4 require rewording.

AIME believes that it is the role of advertising to lead the consumer to the merchant's shop door; the role of the merchant's shop is to provide product and pricing clarity. Accurate clarity will mitigate the risk to consumers, limiting it to a misled journey rather than a misled purchase.

Our amendments and comments are detailed in the text below and we encourage a detailed overhaul of this document to improve its Guidance to the industry.

## 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) without causing ~~harm or~~ undue harm.

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
- [Affiliate referrals](#)

Although the above practices can be undertaken in a way that is legitimate there is still potential for consumer harm, 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 misleading:

- ☐ Typosquatting
- ☐ Clickjacking
- ☐ Likejacking
- ☐ Content locking

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 bad practices can be found in the Annex to this Guidance.

1.4 This Guidance also clarifies that it is the responsibility of providers to control [affiliate](#) marketing carried out on their behalf [through third parties \(often sub contracted Affiliates\)](#) 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.

1.5 Our principal concerns relate to three outcomes in the PhonepayPlus Code of Practice (the 'Code'): transparency, fairness and privacy.

- 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. The sending of unsolicited electronic communications ~~(spam)~~ is only permissible if the consumer has previously opted in to receive that communication or has not removed their opt-in during a previous sale or negotiations for a sale. unlawful. Any promotional material must be delivered appropriately appropriately, for the same or similar services when the consent was gained and with the consumers being able to withdraw that consent if they wish. ~~consent, which must be knowingly given and clearly identifiable.~~

**Commented [RJM5]:** This is incorrect. If the provider has gained an opt-in or soft opt-in, unsolicited communications is lawful. Please see ICO guidance on this matter and update this paragraph. Suggested changes within.

1.6 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

## **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 or further sub-contracted to affiliates. 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 above in an attempt to inflate their revenues by engaging misleading consumers to engage in with PRS services without their clear understanding and consent.

**Commented [RJM6]:** Charging without consumer consent is a different code breach.

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' previous Guidance

on Due Diligence and Risk Assessment and Control (DDRAC) 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 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 minimise consumer harm in what is a high risk area):

- a) Companies checks;
- b) Reputational checks through Google, blogs, AV vendors, Level 1 providers etc.;
- c) How established the affiliate marketer is;
- 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 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 (this will likely result in increased risk);
- g) If the affiliate marketer sub-contracts with other affiliate marketers in doing so (which will amplify any risk) and how it sources and vets individual affiliates;
- h) Whether the affiliate marketer is willing to explain where and in what terms it plans to place your advertising;
- 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.

[m\) The willingness of the affiliate marketer to accept and comply with your insertion orders](#)

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. Expectations should include (but are not limited to):
  - i. Price and other key information should be clearly stated;
  - ii. Any marketing be directly related to the PRS offering i.e. not unrelated and misleading;

## ANNEX EXAMPLES OF BAD PRACTICE

The following are detailed examples of non-compliant practices that should be avoided:

### 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 “Wikipedia” instead of “Wikipedia”. This is done with the intention of redirecting consumers who mistype or click on mistyped links away from their intended destination. Consumers are then led to a website that is designed in a [confusingly](#)

**Commented [RJM7]:** This should say: Examples of practices that may cause a breach of the Code.

It is at this point that you refer to the code requirements e.g. misleading and then would not have the need to repeat them throughout this annex



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 looks like his or her intended destination but contains a PRS promotion. The consumer may pursue the promotion based on its ~~perceived~~ 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 ~~advertising that exploits the or-imitation of~~ another brand with which it does not have an association, ~~it is likely to be misleading in a way that is likely to mislead~~ consumers about the ~~brand behind nature of~~ the service being offered.

## 2 Clickjacking

2.1 'Clickjacking' is a malicious technique of tricking 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 disguised link (the link may be hidden using transparent IFrames), 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 icon to start the free video, has button on it that says "click here for a free iPod"~~ however, an invisible IFrame ~~that~~ has been placed on top of the page and lined up exactly the ~~"delete all messages" "play" button, directly on top of the "free iPod" button.~~ The consumer tries to click on the ~~"play "free iPod"~~ button but instead actually clicked on the invisible ~~IFrame and is directed to another site "delete all messages" button.~~ In essence, the consumers click has been "hijacked".

2.2 In a PRS context, the consumer will be misled ~~into~~ by ~~being~~ redirecting to a website offering a PRS promotion, which may lead to a purchase under false pretences. Another example would be of a website obscuring compliant pricing information, attracting the consumer to click on a consent ~~to~~ charge icon or button without fully understanding the potential costs. ~~This is known as iFrame masking~~ These are highly likely to be in breach of either Rule 2.3.2 or 2.2.1 of the Code.

2.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. This includes linking to a website offering PRS without the consumer's ~~prior knowledge~~ informed agreement to ~~go to that website.~~

~~2.4 Consistent with Rule 2.2.1, all PRS promotions should be as open and transparent as possible, allowing consumers to make an informed choice.~~

2.5 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 – we believe that consumers should not be misled into visiting websites that they did not intend to. 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 a form of clickjacking that targets a consumers social media pages. 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-promoting it to their contact list~~ under false pretences. The deception works in the same way as clickjacking using a transparent IFrame to disguise a link.

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 highly likely to be breach the Code's requirements around

**Commented [RJM8]:** This is a poorly worded example.  
Suggested rewording inside text

**Commented [RJM9]:** This is unnecessary

**Commented [RJM10]:** There is no necessity to repeat this.

**Commented [RJM11]:** Duplicated below

**Commented [RJM12]:** Please see our comments related to this recommendation and reword accordingly.



fairness and consumer privacy.

3.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. Links to PRS promotions must be open and transparent, allowing consumers to make an informed choice. Promotions must clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format. Ultimately consumers should be in no doubt as to what they are engaging in before any charging commences.

3.4 As set out in Rule 2.4.1 of the Code, providers “must ensure that premium rate services do not cause the unreasonable invasion of consumers’ privacy.” 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 popunders

4.1 Banner ads, pop-ups and popunders aim to attract consumers to promotions, usually based on other websites. 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 leads to a website where pricing information is not clearly stated, and thus the consumer might be misled, the provider is highly likely to be found in breach of the Code.

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 is unlikely to be accepted as a defence by the Tribunal.

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. 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. This practice is highly likely to breach Code 2.3.2. (be found misleading) by the Tribunal.

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, all or at least the majority of services being promoted should be free. If none or only a minority of services being offered are free, a PhonepayPlus Tribunal is highly likely to find such practice in breach of the Code. Any reference to a brand 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.

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. This is clearly a breach of any expectation PhonepayPlus has around digital marketing.

**Commented [RJM13]:** Please see our comments related to this recommendation and reword accordingly.

**Commented [RJM14]:** Please see our comments related to this recommendation and reword accordingly.

**Commented [RJM15]:** The predetermination of a Tribunal decision should not be implied.

**Commented [RJM16]:** This is unreasonable and disproportionate. Please see our comments above.

**Commented [RJM17]:** The predetermination of a Tribunal decision should not be implied.

**Commented [RJM18]:** This is possible as the site operating the search or the next site has sold its residual click-through traffic to unrelated advertising due to poor sales in related advertising. The emphasis should be on the consumer being fully informed prior to a purchase so that the only aspect of a misled consumer is on a journey, not a sale.

## 6 Content lockers

6.1 In many cases, the practices listed above all lead the consumer to interact with a service through several steps. Content locking is often seen in conjunction with misleading digital marketing. These include clickjacking, likejacking and misleading SEM/SEO.

6.2 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.

6.3 Ransomware 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.

6.4 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. PRS promotions that garner consumer consent to engage in PRS in order to access unrelated content are likely to be considered misleading. Content locking is almost certain to be considered in breach of the Code if the consumer is not made fully aware of the cost of accessing the unrelated content and/or the content is not delivered.

**Commented [RJM19]:** This paragraph is combining two separate practices to create a confusing picture. The first is that the consumer must buy a PRS in order to unlock content but is informed of the PRS detail, the second is that the consumer is misled to enter their number for locked content and unknowingly is signed up to a subscription quiz. These need separating as they have different degrees of harm, the former being negligible as long as the locked content is then accessible and is legal.

**Commented [RJM20]:** We disagree. You can currently get discounted cinema tickets by buying insurance, why should this promotional practice be misleading in a PRS world if the consumer is fully informed and makes a conscious buying decision.

## ANNEXE B3 - ENABLING CONSUMER SPEND CONTROL

### GENERAL COMMENTS

Excessive spend is personal and infrequent. While it causes distress to the user, it is unlikely to cause industry reputational damage.

Overspend / over-usage which causes distress should mainly be mitigated by sympathetic refund (or part refund) policies and there is no mention of this in the guidance.

Bill shock is often accompanied by a refusal to pay the bill, creating financial loss for the telecom operator and / or the provider. Therefore it is in the provider's interest to manage excessive usage and this aspect is not mentioned in the guidance.

We believe that excessive usage is a part of single user vulnerability and would recommend that this guidance note and vulnerability are cross referenced.

The purpose of the guidance is to ensure that providers have thought about the issue and have taken reasonable steps to prevent it. However, there will be times when it cannot be prevented e.g.

- Distributed chat systems, where multiple agents may not know that the user has contacted previous agents
- Voting systems where the high usage occurs over a limited time and predictive prevention will be impossible to manage

Users often do not respond to spend warnings or spend warnings may arrive too late to prevent the usage. Providers will need to demonstrate that they made efforts to contact or warn the excessive user but cannot be held responsible if the user ignored those warnings.

Bill shock can also occur when parts of the actual spend is outside the control of the provider e.g. a 25p PRS call can cost 73p from a mobile magnifying £10 of (reasonable) spend to £30. This needs to be mentioned in the guidance.

Using a modal method is not a statistically safe measure. Many services can have a mode of 1 meaning anyone using it twice is considered excessive. A provider should be encouraged to set the points on its service where a single user's usage would be considered excessive both in quantity and in spend terms. The points at which a service is being used excessively can be achieved via Bell Curve Analysis also known as probability density. This will identify the normal high end usage and the provider should set a target at which point the high usage becomes excessive requiring steps to be taken to protect the consumer from themselves. The bell curve can be analysed for short term peak usage as well as long term usage. The emphasis should be that the provider needs to have thought about this and developed triggers based on the normal usage profiles of its services including high users.

Most excessive spend occurs over a short period, but consideration has to be taken on whether the service is likely to get bursts of usage from a single user (e.g. a Q&A type service used in pub quizzes)

We recommend not using AQA's brand in this guidance or any other documentation that refers to a Q&A service type.

#### 1. Excessive use

1.1. Excessive use of a 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; a financial detriment; and possibly dissatisfaction with the PRS, and subsequent reputational damage to the industry as a whole.

**Commented [RJM21]:** Excessive spend / use is personal and infrequent. While the bill may cause distress to the user, it is unlikely to cause industry reputational damage.

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

2.1. As above, excessive use can lead to bill shock as a result of unexpected charges, or excessively high or unchecked charges applied to a user's account. To mitigate the risks associated with such activity, providers should bear in mind Rule 2.3.6 of the PhonepayPlus Code of Practice.

2.2. 'Excessive use' refers to any potential incident(s) of high usage, sustained repetitive use over a short period of time 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 an average user, may appear excessive.

2.3. Providers should monitor average user engagement across a defined period or billing cycle (daily, monthly, etc., as appropriate) to understand the average user activity, engagement and experience. Providers should also be observant of user patterns and any irregular activity, such as sustained, repetitive use in a short period, or in short bursts – for example if using 'Any Question Answered' (AQA) style services, 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 average is used to gauge average user spend – 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 50% higher than the modal average may be considered potentially excessive, and can serve as a flag or indication that it is an appropriate time to contact the consumer. In such cases, PhonepayPlus recommends that providers contact 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.

2.6. It should be noted that the recommendation at paragraph 2.4 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.

## 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 2.6 of the Code, and specifically in relation to Rule 2.3.6 noted above.

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

**Commented [RJM22]:** Editorially, we do not recommend repeating previous statements as it builds complexity into the document.

**Commented [RJM23]:** This is a branded service and by referencing it, PPP is creating further brand damage (above the existing PPP references). PPP should refer to "Q&A type services".

**Commented [RJM24]:** This will create false triggers. A voting service has a mode of 1, two votes are therefore excessive under this recommendation.

**Commented [RJM25]:** Please refer to para 3.2 for methods of contacting the consumer.

**Commented [RJM26]:** We disagree with this form of analysis as it is statistically incorrect and will create too many false triggers. The probability density and high usage trigger points will be far more reliable. See our earlier comments.

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>3</sup>.

(b) Implement account purchase/deposit history access, as required in relation to the provision of remote gambling services by special conditions<sup>4</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 proposals and 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) Where the level of use is double that of an average user over a set period of time; or is significantly higher than normal single purchases; is 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.

(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 [for a recommended period of 12 months] in the event of an investigation into a specific complaint. PhonepayPlus recommends that such records be recorded and maintained by an independent third party.

#### 4. Managing examples of excessive use

4.1. 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 2.6, but a failure to contact such users may constitute a breach of Rule 2.3.6. It is recommended that a log of the attempt to contact the user is maintained for future use.

4.2. 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

**Commented [RJM27]:** This again is a statistically invalid measure. Excessive usage (however measured) needs to be investigated first and then an attempt made to contact the user and receive confirmation of their willingness to proceed. Part of the vulnerability causing excessive usage may also be affected by being disconnected from the service.

directly. Where a resolution cannot be achieved, the provider should give the consumer [details of the ADR organisations](#) (see <http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/News-Items/2015Sep/Information-Note-on-ADR.pdf>)  
If the consumer indicates [dissatisfaction with the handling of their complaint](#), then PhonepayPlus' contact details, as per the requirements of Rule 2.6.5 [should be given](#), and any information on Alternative Dispute Resolution schemes to which the provider is associated.

**Commented [RJM28]:** This is incorrect. PhonepayPlus is not an ADR body under the Alternative Dispute Requirements law. This paragraph should link to your ADR Information note Rule 2.6.5. is for where consumers are dissatisfied with the **handling** of the complaint, not the outcome

## ANNEXE B4 – METHOD OF EXIT

### GENERAL COMMENTS

This guidance note should reflect requirements of the complimentary regulation, the CCR.

As “Method of Exit” predominantly applies to Subscription Services there should be a consideration to combining the two separate Guidance Notes rather than cross referencing and certain duplication. Other services that require a Method of Exit can be referenced back to the “Method of Exit” section of the Subscription Services Guidance.

We have provided edits to the Guidance note to improve its contents. We would like to see greater emphasis on the consumer being adequately informed about the method of exit prior to and after the sale and less emphasis on the consumer's need to remember the shortcode that they used to engage with the service (if at all). We believe that some complexity has been introduced in the authoring of the document and we have attempted to simplify this to ensure that providers are clearly informed. For example we do not understand why voice shortcodes have been detailed along with MMS where the two mechanics have significantly different methods of exit.

We believe that it is unreasonable when a provider has fully informed a consumer on how to exit a service that they are expected to accommodate other means that the consumer may imagine particularly in detecting the word “stop” buried inside a text message and where that word can be used in a chat service without the consumer wishing to cease the service. This requirement is the equivalent to operating a helpline on every permutation of the primary number in case the consumer misdials it.

AIMEs proposed changes are detailed below in either note form or in line edits.

#### 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*

[The requirement to inform the consumer about the method of exit from a contract is also detailed in Consumer Contracts \(Information, Cancellation and Additional Charges\)](#)



### Regulation 2013

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 should work in practice, we consider it best practice that consumers should be able to text 'STOP' to the shortcode the service was initially requested from, or from which it is receiving (chargeable) messages, in order to stop the service.

2.3 We accept that this may not always be possible – either for technical reasons, or because of the cost to a provider of doing so. However, 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.

2.4 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.

2.5 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'.

2.6 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.

2.7 Where providers would like to use an alternative to 'STOP' in 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 PhonepayPlus advised that the use of a command other than 'STOP' was acceptable in promotions, the shortcode itself would still have to respond to the 'STOP' command in addition to any other exit words.

2.8 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**

**Commented [RJM29]:** Is there an expectation that the consumer has to be told to terminate the call in order to stop charges or is this knowledge generally assumed?

**Commented [RJM30]:** This is not correct. The consumer has to be told the method of exit from the service prior to incurring a charge and will also be sent an initiation message containing the exit instructions. Consumer should be able to text stop to the shortcode detailed in these two areas and best practice is also to be able to reply STOP to the shortcode being used for billing purposes.

**Commented [RJM31]:** If you do not demand that the consumer must be able to text stop to the same shortcode the service was requested from, then you do not have to provide this statement

**Commented [RJM32]:** The consumer will be aware of the stop command through the initial promotion, through the initiation message and through monthly reminders. It is disproportionate to expect providers to scan through full text to detect the word stop, particularly in a chat service where "stop" will be used in a different context. The word stop at the beginning of the message is sufficient and the recommendation that providers look for these four characters at the beginning of a message is a stronger recommendation.

**Commented [RJM33]:** In other words, providers can use another word for the method of exit, but "STOP" to the service shortcode must still be the default. This paragraph is confusing.



#### 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. MMS & Voice Shortcodes

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 shortcodes.](#)

~~4.2. Two recognisable examples at the moment are voice shortcodes, which do not respond to a 'STOP' command as they are configured for voice-based (or IVR) services, and MMS shortcodes. MMS shortcodes do respond to 'STOP' commands; however, MMS messages are very data-rich, and 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 standard rated text shortcode and ensure that the consumer is advised of this shortcode prior to the commencement of the service, in the initiation message and in spend reminders. If this is not possible for technical or cost reasons, alternative and economical means of exiting the service must be in place (e.g. long number text message, voice call) and must be clearly communicated to the consumer.~~

~~4.3. For these reasons, PhonepayPlus is unlikely to raise an investigation into a service using a voice or MMS shortcode on the grounds that the 'STOP' command does not work, provided consumers are given another clear, phone-based method of opting out of the service, which takes effect with no further charge once the consumer has exited. An example would be to provide a fixed-line phone number that a consumer could call to exit the service.~~

4.4. Promotional material should be abundantly clear when explaining the simple, [economical](#) and effective method of exit from these [such](#) services, 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

**Commented [RJM34]:** Voice shortcodes are the same functionally as a PRS number only shorter. The consumer exits the service by ending the call. We cannot see why this needs any specific reference.

billing, PSMS or another payment mechanism.

~~5.2. As noted above, the STOP command is not always the most appropriate means of exit for certain service mechanics – for an app-based service, the same may be true.~~

5.3. Any app using [recurring](#) PRS billing must have a clear and unambiguous method of ~~stopping any recurring payment exiting the service and ceasing all charges, and a along with~~ 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.

5.4. 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 of to be able to tracking](#) and reviewing [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 [to temporarily suspend a regular donation](#).

6.2. For further information on using the SKIP command, please see the [relevant Special Conditions](#).

~~6.3. 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.~~

~~6.4. Where the SKIP command is available to users, the STOP command must also be available and effective when used.~~

**Commented [RJM35]:** Web address would be useful

**Commented [RJM36]:** Having referred readers to another document, there is little point in extracting parts of that document.

## ANNEXE B5 - SUBSCRIPTION SERVICES

### GENERAL COMMENTS

This guidance note should reflect developments in complimentary regulation, the CCR, and ensure that it mirrors the recommendations made by the Primary Authority on CCR for subscription services.

As “Method of Exit” predominantly applies to subscription services there should be a consideration to combining the two parts of guidance rather than cross referencing and certain duplication. Other services that require a Method of Exit can be referenced back to Subscription Services section on “Method of Exit”

The Guidance note needs considerable editing to ensure it is valid for the market. AIMEs proposed changes are detailed below in either note form or in line edits.

#### 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. Subscription Services can also be ad-hoc such as football scores and charge on a per-alert basis

1.2 As charges are recurring it is essential-a legal requirement that consumers are made aware of all information that is likely to affect their decision to subscribe before they are charged.

As well as falling under premium rate regulation, distance sold products and services are also bound under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulation 2013

**Commented [RJM37]:** Do not bury this fact under a footnote.

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

2.1 All consumers promotional material should be clearly and prominently informed of state any information that is likely to affect an individual's decision to accept a future recurring charge prior to the consumer agreeing to the charges.

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;~~
- The frequency of that charge
- ~~An adequate description of what the service is offering in exchange for the recurring charge;~~

- The total cost of the service (including any joining fees), any incremental

charges and when, or how often, those additional charges will occur

If there is an initial free trial period, the period or conditions under which the free trial ceases and charges commence, the consumer has to positively agree to the charges even though they may not be applied.

• Clear information about the method of exit from the ~~service~~ (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'.

▲

2.2 Providers should ~~Clearly~~ highlight the obligation to pay a recurring charge by labelling

activation buttons (or similar function) with an unambiguous payment verb such as phrase such as Pay / Buy /Subscribe.

Words on buttons that may be considered ambiguous such as "Join" even though used in context should be accompanied by information for the consumer, in close proximity to the activation button that reflects the obligation to pay such as "Click JOIN to agree to pay [£xx] per [week/month/event] for [service]"

~~'PAY £[X] A WEEK' or similar;~~

- 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'.~~

**Commented [RJM38]:** This uses the same nomenclature as CCR and PPP guidance. Opt-out generally refers to marketing

**Commented [RJM39]:** What other methods? The industry has spent 12 years with the "universal STOP command" and would be wary of other options that consumers will be unaware of.

**Commented [RJM40]:** This does not discuss other methods apart from ending the call in a voice service. We suggest to delete this paragraph.

**Commented [RJM41]:** See comment above.

2.23 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>3</sup>.

2.34 Providers operating subscription competition services should also read the General Guidance Note on 'Competitions and other games with prizes'<sup>4</sup>.

2.54 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.

2.65 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 'Promotions and promotional material'<sup>5</sup>.

Note that it is acceptable to advise the consumer that they can exit the service at anytime as long as the method of exit is clearly communicated immediately after the first charge.

### 3. Double opt-in

3.1 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>6</sup>.

3.2 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.

3.3 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

**Commented [RJM42]:** If the consumer has agreed to the charge, then the charge can occur immediately. It is not until the provider has received confirmation of the charge from the network can they deliver their side of the contract, so the contract cannot be sent before the charge. This is how it works in other ecommerce environments

**Commented [RJM43]:** This needs a definition for the uninitiated (no pun intended)

**Commented [RJM44]:** This is only applicable if the text message came from a shortcode. It is irrelevant otherwise

**Commented [RJM45]:** This recommendation needs to be reworded as it implies that the requirement does not apply for the first opt-in.

**Commented [RJM46]:** This is excessive and unnecessary if the provider has already complied with CCR and PPP rules. Delete this line.

achieving robust 'double opt-in' 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.

3.4 Level 1 providers who operate within the **mobile sector** of the PRS market may wish to consider contractual requirements with a direct Level 2 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 Payforit.

#### 4. Spend reminders

4.1 PhoneyPayPlus has issued a Notice of caps, thresholds and actions in accordance with section 3.12 of the 13<sup>th</sup> Code<sup>7</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

**Commented [RJM47]:** Are there any subscription services that are not mobile?

**Commented [RJM48]:** This is a very complex paragraph and does not really make it clear what the guidance is. An initiation message is normally one that is sent to a consumer AFTER they have agreed to be charged for a subscription service and confirmed their agreement. As the initiation message can only be sent after the MNO has confirmed that the consumer payment has gone through, the initiation message must contain the relevant information.

- 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.

4.3 If the spend reminder message is a free to-user message then 'freemsg' or similar such as "This message is free" 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 such as sports 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 to the shortcode advised in the initiation message or the shortcode used for billing purposes, providers should give the consumer adequate

**Commented [RJM49]:** Don't you mean "charging" message?

**Commented [RJM50]:** This is not how guidance should be worded. If there is no requirement to send spend reminders for sports alerts then say so. If there is a requirement, then state how this should be delivered. The MNO code of practice for alert type subscription services costing no more than 50p per alert states that cost-of-service reminders and exit instructions can be included within the alerts but on a minimum monthly basis.

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's.

**Commented [RJM51]:** Again, this is not how guidance should be worded. It should be something like "Providers should ensure their services are designed to prevent confusion by consumers wishing to exit from multiple services."

#### PHONEPAYPLUS QUESTIONS

**Q.1: Do you agree or disagree with the initial determinations set out in the table at Annex A?**

We are in part disagreement and have indicated why in the table available in this document and by clicking

**Q.2: What further changes to current Guidance or additional Guidance do you consider necessary in future? When responding to consultation questions 3 to 9 in turn, your considerations relating to these matters will be useful to us in finalising Guidance:**

**a. Is the level of information provided in the Guidance sufficient?**

**b. Are the expectations expressed in Guidance confusing or likely to cause difficulty to business when complying with the Code?**

**c. Is there anything extra in terms of the Guidance that could assist industry when offering high quality PRS?**

In our section we have detailed that the guidance needs to be written in a different style to improve readability, reduce the threatening aspects, reduce duplication and where possible to provide helpful advice on achieving compliance. We also would like to see that Guidance is not used to determine conditions that are not expected from the Code and that will put PR based charging at a disadvantage to FCA regulated charging products.

**Q.3: Do you consider the proposed alterations to Guidance on advice services to be helpful and effective for improving compliance standards and developing appropriate procedures to meet Code obligations?**

We have found the Guidance on Advice Services () to be constructed well and have supplied some comments to improve this.





**Q.4: Do you consider the proposed alterations to Guidance on digital marketing and promotions to be helpful and effective for improving compliance standards and managing advertising campaigns in keeping with the Code?**

We are concerned that the tone and style of guidance plus repetition and threat in the Guidance on digital marketing ([Annex B2 - Digital marketing and promotions](#)) may be working against the objective to create Guidance that will be helpful or effective and have supplied significant commentary to explain why.

**Q.5: Do you consider the proposed new Guidance on enabling consumer spend control to be helpful, in particular providing an insight into the requirements set out in Rule 2.3.6 of the Code?**

We have detailed our concerns that the document does not cover alternative options for dealing with excessive spend that are more appropriate to the service being provided. We have supplied significant commentary on this Guidance in the section Annexe B3 - Enabling consumer spend control

**Q.6: Are the options given in the Guidance relating to methodology for identifying 'excessive use' suitable in offering PRS providers assistance with the development of tools that comply with Rule 2.3.6 of the Code? Please explain any concerns and provide alternative options based on your knowledge and experience.**

We are concerned that the methods to detect unusual or excessive usage patterns are flawed and we would request that PPP review our input to this document to help with the rationale behind our concerns and the proposed alternatives.

**Q.7: Are the suggested means of providing information to consumers effective and does the Guidance equip PRS providers to comply with this requirement under Rule 2.3.6 of the Code?**

No, there are many ways of contacting the consumer that are appropriate for the method under which the consumption is made. Additionally, some high spending consumers do not wish to be contacted about either their spend or the products that they are spending on. On the flip side, consumers will complain about not being contacted once they realise that they are responsible for the telecoms bill they have created and this opposing behaviour needs to be factored into the guidance to show that PPP acknowledges this aspect of human behaviour. As stated previously, the goal is for the requirements on PRS providers should be no more onerous than the requirements placed on providers of the same services, but using an alternate payment product.

**Q.8: Do you consider the proposed alterations to Guidance on method of exit from a service to be helpful and effective for improving compliance standards and understanding our approach to regulating these services?**

We have provided input to the document in the way of comments and textual changes to help improve the Guidance. See [. The CCR refers to method of exit also and these should be harmonised.](#)

**Q.9: Do you consider the proposed alterations to Guidance on subscription services to be helpful and effective for improving compliance standards and understanding our approach to regulating these services? Please provide some evidence in support of your response.**



We are concerned that this guidance requires extensive re-authoring as detailed in our comments in the section to ensure that the market will understand the expectations behind running subscription services. We have done our best with in-line changes and comments, but may require a more detailed review with relevant expertise on hand.

**Q.10: Do you agree with our assessment that the current Guidance on Application based payments does not need to be updated?**

We have not seen significant growth in this area and agree with your assessment.

#### CLOSE

We assure you that, as ever, our comments are made constructively and with the intent of achieving an effective, fair, economical and proportional regulatory regime for premium rate charged Interactive Media and Entertainment services in the UK.

If any clarification to our response is required or if we can be of any further assistance please contact the AIME office via [regulatory@aimelink.org](mailto:regulatory@aimelink.org)

Sincerely

AIME