

GENERAL GUIDANCE NOTE

Vulnerability Guidance

1. The Code of Practice offers specific protection for vulnerable consumers. The vulnerable consumers guidance is designed to assist providers across the value chain and service types in ensuring that they meet the requirements of the Code. The key points for providers to take note of are:
 - The new Code Rule, which came into effect with the launch of the 13th Code of Practice;
 - PhonepayPlus' definition of vulnerable consumers;
 - The risk factors providers should consider;
 - What is meant by "unfair advantage" and "reasonable foresight";
 - Questions to consider when designing an effective strategy to meet the requirements of the Code.
2. Consumers can be vulnerable for a variety of reasons, either based on their characteristics or circumstance. This can result in vulnerable consumers being less likely to make fully informed, rational decisions. Vulnerable consumers may lack confidence with technology or be less able to understand the deal presented to them or its value, or less able to assess the true nature of the service or be overly reliant on services. Vulnerable consumers, therefore, may be more likely to suffer detriment.

Rule 2.3.10

3. The 13th Code brought in a revised vulnerability provision that is intended to offer vulnerable consumers effective protection from harm. Rule 2.3.10 reads:

PRS must not be used or provided in such a way that it results in an unfair advantage being taken of any vulnerable group or any vulnerability caused to consumers by their personal circumstances where the risk of such a result could have been identified with reasonable foresight.
4. The revised Code provision is consistent with PhonepayPlus' regulatory approach, placing emphasis on outcome as opposed to the manner in which something was done (e.g. intentionally or recklessly). As well as emphasising outcome, the provision introduces two new concepts that providers should be aware of: "unfair advantage" and "reasonable foresight".

Who is a vulnerable consumer?

5. PhonepayPlus defines a vulnerable consumer as:

A consumer who is less likely to make fully informed, rational decisions due to a specific characteristic or personal circumstance, and can suffer detriment as a result.



6. Vulnerability due to characteristics - Traditionally consumers were considered vulnerable because of a defined characteristic. Characteristics that may lead to a consumer being considered vulnerable include (but are not limited to):
 - Lack of English language or literacy skills
 - Disability
 - Age – children (defined as under 16 years of age) and the elderly (usually defined as over 65 years of age)
 - Learning difficulties
 - Long term financial hardship
 - Those with a mental illness
7. Vulnerability due to circumstance - A temporary or unexpected change in circumstance that might cause distress and result in a situation of vulnerability. These are generally considered significant life events that can effect anyone and are often unexpected. Unlike characteristic-based causes of vulnerability, circumstantial vulnerability tends to be more short or medium term and are temporary in nature. These include for example (again not limited to):
 - Bereavement
 - Job loss or other loss of income or livelihood
 - Victim of a natural disaster (e.g. flood)
 - Sudden and unexpected situation causing strife (e.g. collapse of a financial institution, illness or relationship breakdown)

Unfair Advantage

8. In contrast to previous iterations of the Code, unfair advantage focuses on outcome rather than any perceived intention to take advantage. To illustrate, what might be considered unfair advantage, we have developed some hypothetical examples to illustrate a) whether a consumer may be considered vulnerable, b) whether the provider may have taken unfair advantage of that consumer, intentionally or not and c) what providers might do to avoid such a situation occurring¹.

¹ For the avoidance of doubt the examples may raise other Code breaches which we do not seek to identify here.

Hypothetical example	Is the consumer vulnerable and could this hinder effective decision making, potentially leading to detriment?	Has the promotion or service resulted in the consumer being taken unfair advantage of?	How could a provider avoid taking unfair advantage of consumers?
A psychic services user who has recently experienced a significant life event (e.g bereavement). The provider of the service proactively encourages the user to call back on multiple occasions to reach a satisfactory conclusion, whereas one or two calls may have sufficed.	Yes, the consumer may be suffering as a result of their sudden change in circumstances. This could play a role in the consumer assessing the value of the service or becoming over-reliant on it through a feeling of dependency.	Yes unless further safeguards have been implemented to prevent the consumer being taken advantage of. The operator of the service may have acted insensitively to the consumer's vulnerability to create a dependency on their service.	Operators of the service will need to be alert to a consumer's potential vulnerability and, if identified, act in a sensitive manner that does not seek to profit from their situation.
An elderly consumer enters a competition service paid for on a weekly subscription basis. The consumer discovered the content online and entered the service in a clear and transparent manner but was unaware that it was a subscription.	Yes, in a traditional sense that may manifest in a lack of confidence in using technology. The instant, frictionless payment experience combined with the consumer's potential lack of confidence may result in a sub-optimal decision being made.	In this example, it is unlikely that the consumer has been taken unfair advantage of.	Providers should consider whether their service journeys are clear and unambiguous, mitigating the risk of such a situation arising on numerous occasions and ensure they are monitoring their complaints to identify any patterns.
A payday loan brokerage service over states the chances of a consumer making a successful application for a loan and subsequently lengthens the call to their service beyond what the consumer deems necessary.	The likelihood is that consumers contacting such a brokerage are in a situation of some financial difficulty and so are likely to be considered vulnerable.	Yes, the provider's promotion would likely be considered to have unfairly targeted and thereby taken advantage of the consumer's circumstance by over stating the chances of securing a loan and unduly lengthening the call. A broker is likely to be investigated in circumstances where	The service and likelihood of securing a loan would need to be transparent and fair as per the Code of Practice.



		marketing was directed to people known to have been refused a loan elsewhere.	
A nine year old child enters into a competition service by clicking on a banner ad in a popular children's app. This led directly to a PayforIt flow, which the child enters	Yes, in that a nine year old child is less likely than an adult to understand the deal presented to them (and the paid nature of it) and the value of the purchase they are making.	Yes, in that a service was advertised in a known popular children's app.	Because the service was advertised in an app designed for a younger audience, the provider will need to demonstrate that they have taken additional steps to mitigate the risk of this situation arising. This may include specifying that marketing must not be directed at children, monitoring complaints for any involving minors and acting appropriately if any have been identified. (We appreciate that it is impossible to completely eliminate the risk of this happening all the time). Without such evidence, the provider will likely breach the Code.
A male in his twenties engages in an adult service late on a Friday night after drinking alcohol. The consumer later regrets their purchase.	Certainly, the consumption of alcohol could affect the consumer's ability to make an effective decision. However, this circumstance is very short term, self-induced and the service is designed to fulfil a want rather than a perceived need.	Unlikely, while the consumer may have made a sub-optimal decision that they later regret, they are unlikely to be considered vulnerable. However if the provider had deliberately targeted drunk consumers or had altered their service in response to the consumer's circumstances, then	Providers should consider where it is appropriate to advertise and the risks associated with this.

		they would likely be considered to have taken unfair advantage of the consumer.	
--	--	---	--

Reasonable Foresight

10. The requirement to exercise “reasonable foresight” is designed to mitigate the risk of a provider taking unfair advantage of vulnerable consumers. In short, providers are expected to take steps to actively identify and monitor risk and take appropriate action if there is a risk that the service may take advantage of vulnerable consumers.
11. PhonepayPlus appreciates that it is not always easy or possible to identify at the point of use whether a consumer is vulnerable or not. Therefore to help providers act with reasonable foresight, PhonepayPlus has developed a series of questions designed to contribute to the approach providers take to identifying risk.² Clearly, not all eventualities can be predicted but we believe such steps will help reduce the likelihood of consumer detriment. This list, which was developed in consultation with industry, is not exhaustive. Rather, this is both a guide and starting point for providers that can be adapted to a specific business model or augmented where appropriate. We strongly recommend that actions taken to ensure you are acting with reasonable foresight are evidenced and auditable.
12. The key aspects of this approach are to ensure that:
 - a. The risks of potential harm to vulnerable consumers have been thoroughly assessed
 - b. Ongoing risks are monitored when a service is in operation
 - c. Once an issue has been identified, adequate steps are taken to address it.

² This approach is similar to the approach expected of providers that contract with affiliate marketers to promote their service. In this case, providers are expected to have thoroughly assessed the risks to consumers of contracting with an affiliate marketer or network, taken steps to mitigate and monitor that risk and respond to any issues accordingly. For more information about this approach please see: <http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Consultation-PDFs/Affiliate-Marketing-discussion-paper-published.pdf>

Risk assessment	Monitoring risk	Response to issues (this will depend on the nature of the risks and issues identified)
<ul style="list-style-type: none"> • What is my target audience? Is it likely to include vulnerable consumers or a particular type of vulnerable consumer? • Have I considered how a vulnerable consumer may come into contact with my service? • Who do I intend to market to and how? Is this likely to attract vulnerable consumers? • Am I advertising in ways which will attract vulnerable consumers? • Is my proposed service and consumer journey clear and unambiguous? • Will I have oversight of my marketing campaigns? 	<ul style="list-style-type: none"> • Who is using my services? • What visibility do I have of consumer complaints relating to my service? • Am I able to identify complaints from vulnerable consumers? • Is my complaint handling sufficiently sensitive to the needs of vulnerable consumers? • Are there patterns in my complaints? Do a number involve, for example, children (or some other vulnerable group)? • Are consumers knowingly and willingly engaging in my services? • Do I have appropriate oversight of my advertising? • Am I advertising in places that will attract vulnerable consumers? 	<ul style="list-style-type: none"> • If a higher than normal level of complaints are from those who may be vulnerable, have we thoroughly assessed the causes of this? • If an advertising channel is suspected of driving vulnerable consumers to my service, how can I address this with my marketing partners? • If I am likely to be attracting children to my services, should I have parental controls? • Do I need to change my service flows to ensure they are clear and unambiguous? • Are there additional steps that I can take to prevent the service provision taking unfair advantage of consumers? • Is redress appropriate and, if so, what sort?

Other Considerations: Complaint Handling

12. There are various ways a PRS provider can respond to its assessment of consumer vulnerability. Such assessment can help businesses plan consumer engagement and marketing campaigns, improve customer care facilities and establish an effective complaint handling protocol.
13. The Code requires providers to handle consumer complaints quickly, easily and fairly. Complaints from vulnerable consumers are no different. Complaint handling that is sensitive and aware of the potential for consumer vulnerability should form part of a provider's approach to meeting this requirement. Providers

are encouraged to listen to complainants and be aware of both the explicit and implicit signs of potential consumer vulnerability³.

³ The Direct Marketing Association produced a guide for call centres on how to deal with vulnerable consumers. While this is a little out of date and not entirely focused on the issues that PRS providers will face, it may be of use when developing a sensitive call handling process. See: http://dma.org.uk/uploads/call-centres-vulnerable-consumers_final_53d7c237289c1.pdf