

GENERAL GUIDANCE NOTE

Promotions and promotional material (including pricing information)

EXECUTIVE SUMMARY

Quick summary on premium rate promotions and promotional material:

The rules set out in the PhonepayPlus Code of Practice cover a range of different elements around promotion. This Guidance sets out PhonepayPlus' likely expectations in the following areas:

- Pricing information;
- Misleading promotions;
- Inappropriate promotions;
- Expectations around specific promotional mechanics (promotional text messages, cross-promotion within a service and web-based promotion).

1. Introduction

1.1. The purpose of this General Guidance Note ('the Guidance') is to assist those involved in the provision of premium rate services ('PRS') by clarifying PhonepayPlus' expectations in relation to various outcomes and rules within our Code of Practice ('the Code') that concern promotions or promotional material.

1.2. Paragraph 2.2.1, which sets out PhonepayPlus' overarching expectation around promotions, states the following:

2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made

2. Background

2.1. General Guidance does **not** form part of the Code of Practice; neither is it binding on PhonepayPlus' Code Compliance Panel ('the Tribunal'). However, we intend it to help providers understand how compliance with the Code might be achieved.

3. Basic checklist of key information

3.1. There is a vast range of potentially different types of PRS. Each of these may need to give slightly different information to a consumer in order to ensure they have all the information they would reasonably need before purchasing.

3.2. In addition, there are a range of different types of promotional material, ranging from promotions that are self-contained (such as a print-based advert, inviting a consumer to call or text an access number), to promotions which have a number of components that lead a consumer towards a purchase. An example of this would be a text message with a link to a mobile website, where the consumer subsequently purchases using a secure payment method. In this latter case, there would be a number of steps between the first promotion and a purchase, and so a number of opportunities to ensure consumers were aware of all information necessary, prior to purchase.

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3.3. Because of this complexity, PhonepayPlus recommends that providers familiarise themselves with the entire contents of this Guidance. However, as a basic starting point, the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- The total cost of the service, including price per minute and/or text, and any initial charges, such as a joining fee;
- The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
- Whether the service bills by subscription – i.e. carries a repeat charge which ends only upon termination by the consumer.

4. Pricing information

4.1. Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase. The principle rule around transparency of pricing in the Code is rule 2.2.5, which states the following:

2.2.5 In the course of any promotion of a premium rate service, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.

How should pricing information be generally presented?

4.2. As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code for the PRS itself), easy to read, once it is located, and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged. Examples of unclear descriptions would include the following:

- 'premium rate charges apply',
- '100ppm',
- '1.50 GBP'

4.3. PhonepayPlus strongly recommends the price should be expressed in conventional terms, such as '50p per minute', '50p/min', '£1.50/msg' or '£1.50 per text'. PhonepayPlus accepts there may be different conventions, based upon the amount of space available (for example, in a small print ad, or a single SMS promotion), however, pricing should remain clear. Variations on this, such as charges being presented in per second formats, or without reference to a '£' sign (where the rate is above 99p), may breach the PhonepayPlus Code.

What about network or data charges to the consumer in addition to the PRS charge?

4.4. The overall charge to a consumer for calling a PRS will often exceed the actual cost of the PRS itself advertised by the service provider or promoter. This can be for one of two reasons:

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- Because many non-BT networks, both mobile and fixed, levy supplementary charges on voice-based calls.
 - The possibility exists that consumers could incur data charges when downloading content to a mobile device, or when browsing a mobile internet site beyond the landing page.
- 4.5. While consumers may have a general awareness that calls from mobile phones and some landline networks may cost more than others, or that they may incur data charges if they do not have a data-inclusive contract with their mobile network, it is necessary to include information in the promotional material, stating these possibilities to consumers.

Cost type	Example wording
Standard per minute PRS	Calls cost [x]p per minute plus network extras
Standard per minute PRS where duration is known	Calls cost [x]p per minute and should last no more than [x] minutes. Network extras apply.
Single drop charges	Calls cost [x]p plus network extras
Premium rate texts	Wording to cover: Cost per text/download; clear statement of how many texts need to be sent to complete the task (if more than one, state how many). An indication that the text cost is in addition to standard network rates (if applicable).
Interactive red button services	Cost per use (prior to pressing red button), including a statement, if appropriate, that network extras may apply
For all PRS on TV where call costs generally exceed £2, pricing information must be spoken as well as visually	See above for written pricing requirements. Spoken pricing should match these examples

Prominent and proximate

- 4.6. Pricing information where consumers are unlikely to see it, or where it is hard to find, is unlikely to be judged as 'prominent', or 'proximate', by a PhonepayPlus Tribunal.
- 4.7. 'Proximate' is a new term within the new edition of the PhonepayPlus Code of Practice, and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of information not being proximate is providing pricing information which is too far from the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service).
- 4.8. Lack of prominence, or proximity, most often takes place online (both web and mobile web), where the price is provided in small print elsewhere on the page from the call to action. We have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product; rather than as clear and correct 'stand-alone' information, the price is

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sometimes provided separate from the page with the call to action, or lower down on the page in such a way as the consumer would have to scroll down to see the price. Any of these practices are unlikely to be viewed as compliant with the Code by a PhonepayPlus Tribunal.

- 4.9. Lack of prominence or proximity also takes place in print, where, as online, the price is provided in small print elsewhere on the page from the call to action. As with online advertising described in the paragraph directly above, we have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'stand-alone' information. As before, in such cases, a PhonepayPlus Tribunal is likely to uphold a breach of the Code for lack of pricing prominence.

Legible and visible

Font size and presentation

- 4.10. Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, 'close examination' will differ for the medium, whether on a static webpage, a fleeting TV promotion, in a publication, or on a billboard where you may be at a distance or travelling past at speed.
- 4.11. This test also needs to be considered alongside the use of colour (see immediately below), which could affect the need for close examination, regardless of font size.

Use of colour

- 4.12. There are a number of instances when the combination of colours used in promotional material reduces the clarity of information and the ease with which it can be seen. Providers should take care to ensure that the colour combinations (including black on white) used for the presentation of the price do not adversely affect the clarity.

What about promotions that are just a way of attracting the consumer onto a further promotion, such as banners, WAP links or 'WAP-push'?

- 4.13. PhonepayPlus is aware that there are some promotional mechanics, such as the three listed above in this heading, where it may not be possible to list pricing information due to a lack of available character space. In these circumstances, we would refer to rule 2.2.1 of the Code, which states the following:
- 2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*
- 4.14. PhonepayPlus interprets this to be that the consumer must be informed of the price, and indeed any other necessary information, prior to purchasing. In other words, as long as the consumer is clearly informed of the price prior to purchase, then there is no need to inform the consumer in each individual part of a cumulative promotional process.
- 4.15. We consider it best practice to inform the consumer of the price at every stage of promotion where it is technically possible to do so, but not to do this would not necessarily be considered to be in breach of the Code. In the case of banners and WAP links (both of which take a

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consumer to a website when they are clicked on), and WAP-push (which immediately directs the consumer to a website without them first clicking), however, we accept that there is no technically possible way of informing the consumer of the price at that stage, and so, provided the consumer is then redirected (without charge) to a website or other promotional mechanic where they are informed of the price prior to making a purchase, this is unlikely to breach the Code.

5. Misleading promotions

5.1. If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, an important term or condition likely to affect their decision to use the service.

5.2. Rule 2.3.2 of the Code states the following:

2.3.2 Premium rate services must not mislead or be likely to mislead in any way.

5.3. PhonepayPlus expects that all promotions must be prepared with a due sense of responsibility to consumers and promotions should not make any factual claims that cannot be supported with evidence, if later requested by PhonepayPlus to do so.

5.4. Some examples of promotions that would be likely to be considered misleading by a PhonepayPlus Tribunal are as follows:

Omission of subscription information

5.5. Promotions that do not make it clear and prominent that the service they are promoting will be charged using a subscription mechanic are likely to be found in breach of the Code. Where there is a subscription, then the frequency of billing should be made clear (see the Service-Specific Guidance Note on 'Subscription services' for further information).

Implication that a service is free of charge

5.6. Promotions should not state a service is free of charge, or imply as such, when the service in fact carries a charge. An example would be promotional material which promoted a PRS, stating something along the lines of: *"No credit card needed. Just a short call to hear your password."*

5.7. Where a service offers bonus or extra downloads once a consumer has made a purchase, or entered into a subscription, then it should be clear and prominent that this free element is conditional upon a purchase. Providers **should not** use words, such as 'free', 'extra' or 'bonus', in promotional material, in a font that is bigger or more prominent than the cost of the service, when the two are on the same page.

What about the use of 'free' in Search Engine Optimisation (SEO)?

5.8. As the web is now the fastest growing form of advertising for PRS, websites offering PRS may seek to ensure their site appears at, or near, the top of a list of search engine results. One way

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of doing this is to ensure a website promoting premium rate services contains the metatag 'free' (or variations) in order to attract the 'crawler' software used by search engines.

- 5.9. Where a metatag such as 'free' is used, and none of the content on the actual website it relates to is free, then this is highly likely to be found to be misleading, and in breach of the Code.
- 5.10. Where a metatag such as 'free' is used, and part of the material on the website it relates to is free of charge, then it is likely a Tribunal may still consider the initial promotion to be misleading. For this reason, we recommend the following step is taken:
- When a consumer then clicks on the search engine link, the first webpage they are directed to clearly explains that not all services are free of charge, and which services are free and which are not.

What about 'freemium' services?

5.11. For avoidance of doubt, 'freemium' refers to services which offer PRS free for a specified period, or part of a PRS – such as one level of a video game – with subsequent access being charged. In these cases, PhonepayPlus would consider it acceptable to promote the free element of the service, provided the following was also true of the service:

- The promotion should clearly state what is and isn't free – i.e. any use of the word 'free' (or variations) must be clearly qualified in a way that is immediately visible, understandable, and proximate;
- The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences;
- Charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service is at an end. Charging should not commence some time after this point, where the consumer may be likely to have forgotten their initial opt-in to the free element.

Promotions which mislead as to the service on offer

- 5.12. No promotion, with particular emphasis on SMS- or MMS-based promotion, should imply that the consumer will be making a one-off purchase, when they will, in fact, be entered into a subscription, or mislead the consumer as to the service they are being invited to purchase.
- 5.13. An example of this would be a service that advertised itself as an IQ test or 'love match', where the consumer was then invited to text or click to obtain more in-depth results, only to find that these results carry a further charge or enter the consumer into an unwanted subscription.

Where a service uses separate devices for billing and delivery of content

- 5.14. In cases where a consumer participates in a service, or receives content, via one device, but is billed for the service via another device, it should be clear to the consumer they will be charged in this way.

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- 5.15. Confirmation of a purchase should be sent to both the device that delivers the service and the device that the charge is attributed to.

What about premium rate services that involve the purchase of 'virtual currency', which is then used on other services?

- 5.16. Premium rate services that invite consumers to purchase a form of virtual currency should be absolutely clear as to the service(s) in which this currency can be used, and as to whether unused currency carries an expiry date. Where services automatically 'top up' a consumer's virtual currency account once all the currency has been spent (with another PRS charge to the consumer), this should be clear to the consumer, prior to purchase.
- 5.17. Any provider who does not see the service they intend to offer covered in the examples above, and may have doubts as to whether what they are intending to promote could be misleading, should contact PhonepayPlus for further case-by-case advice at compliance@phonepayplus.org.uk.

6. Inappropriate promotions

- 6.1. Rules 2.5.6 and 2.5.7 of the Code state the following:

2.5.6 Level 2 providers must ensure that their services are not promoted in an inappropriate way.

2.5.7 Level 2 providers must use all reasonable endeavours to ensure that promotional material is not targeted at or provided directly to those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful.

- 6.2. In determining whether promotional material or content are likely to be inappropriate, PhonepayPlus looks to take a pragmatic approach. We are aware of the need to balance innovation in promotion to as large an audience as possible, with the need to prevent consumers, especially children, from seeing or receiving inappropriate material. Examples of where promotions might be considered inappropriate include, but are not limited to, the following:

- Inappropriate services being advertised in children's publications (such as live chat, chat and dating, virtual text chat services, or other services where usage is restricted to over-18s).
- Inappropriate imagery or language/text in children's publications (e.g. sexual, violent, or adult images or language).
- Targeted promotions (e.g. text messages) which are inappropriate to the consumer's previous opt-in. For example, a consumer who had previously taken part in a competition, or subscribed to a football score update, should not be sent adult promotional material, or promotions for adult services.
- Promotional material that takes advantage of vulnerability (e.g. an illness, bereavement or financial difficulty) or vulnerable groups (e.g. children, the elderly, people with learning difficulties, those who have English as a second or third language, and are targeted for these reasons).

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7. Other promotional expectations

Promotional messages to a consumer's mobile phone

7.1. PhonepayPlus' previous research has indicated that consumers regard marketing sent directly to their mobile handsets with greater caution than they do promotion in general. Their biggest concerns can be summarised as follows:

- They will be charged as soon as they open a message, and so sometimes consumers do not open a message, even to opt out of future marketing.
- Where a message contains a WAP link (i.e. an SMS, MMS or, most often, a binary message containing only a link to a mobile website) or a 'WAP-push' (i.e. an SMS, MMS or binary message which contains coding that immediately directs the web browser on the consumer's phone to a mobile website), then consumers are worried that they will be charged as soon as they click on the WAP link, or have already been charged as a result of the 'WAP-push'.
- They have no easy way of opting out of future marketing – this is especially true of 'WAP-push' messages. (For further detail around marketing opt-in, please see the General Guidance Note on 'Privacy and consent to charge').

7.2. In order to alleviate these concerns and build consumer trust, and with regard to Rule 2.3.2 of the Code (a requirement not to mislead), we set out the following expectations as a guideline to compliance in this area:

- Where promotional text messages (SMS, MMS or WAP-push) contain a link to a mobile website, and there is a charge beyond normal network data rates for accessing that website, then the consumer should be informed of this charge before they click on the link.
- Similarly, promotional messages containing a link to a mobile website should not contain any information which would be likely to mislead a consumer.
- Promotional text messages should make it clear if a reply to them will result in a consumer incurring a PRS charge.
- Where consumers are sent text messages which promote a PRS and do not carry any charge, then the consumer should be clearly informed, either within the title of the message or in the first words of the message itself, that the promotional message is free. A PhonepayPlus Tribunal is likely to regard the words 'FreeMsg' as acceptable to do this.

Cross-promotion within service messages

7.3. From time to time, providers may insert promotions for other services within service messages to a consumer who is already subscribed to a PRS. These promotions may appear within messages that carry a PRS charge, or within free reminder or access messages. Where this happens, consumers will sometimes become confused as to which part of a message relates to the promotion, and which to the service to which they are already subscribed. This can cause them to miss spend reminders or other information that would inform them about the service they are subscribed to.

7.4. In order to build consumer trust, and with reference to Rule 2.3.2 of the Code (see above), we set out the following expectations as a guide to compliance in this area:

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- Promotions within reminder or service messages should ensure that the promotional material is placed **after** the information concerning the service the consumer has already subscribed to.
- In addition, the promotional part of the message should be clearly flagged as being separate from the other information with the message. To do this effectively, we would strongly suggest that the words 'ADVERT' or 'PROMO' are inserted directly before the promotional part of the message.

Web-based promotion of PRS

- 7.5. Web-based promotion is the fastest growing area of PRS promotion, both in terms of market share and innovation. Increasingly PRS is promoted on websites and social networking brands such as Facebook and Twitter, and consumers are often invited, or required, to enter their mobile phone number in order to access content.
- 7.6. Below we clarify expectations around web-based promotion, in terms of likely compliance with the Code:

Prominence of key information on-screen

- 7.7. Once on a webpage that promotes a PRS, consumers **should not** have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see **Section 4** of this Guidance), or click on a link to another webpage. The PhonepayPlus Tribunal is likely to take the view that scrolling up or down to read key terms and conditions, or requiring the consumer to click on a link to view them, is in breach of Rule 2.2.5 of the Code.
- 7.8. Level 2 providers should ensure that consumers do not have to scroll, regardless of screen resolution, to view the key terms and conditions of a service, or click on a link to view key terms and conditions. Key terms and conditions should be placed on all website pages of the service that a consumer has to click through.

Web-based entry of mobile phone numbers

- 7.9. PhonepayPlus has continued to receive a significant number of complaints regarding unsolicited messages. These arise, in part, from a consumer's phone number having previously been entered on a website, but are more often as a result of unsolicited promotion to consumers, often masked by the existence of a website on which a provider claims the consumer has entered their phone number.
- 7.10. PhonepayPlus recognises that there are risks associated with web opt-in which are separate from promotion – i.e. proving a consumer's opt-in in an independently auditable way. For more information on how an opt-in, to either charging or future marketing, can be proven in a way that is acceptable to PhonepayPlus, please refer to the General Guidance Note on 'Privacy and consent to charge'.
- 7.11. However, it is important to not only be able to prove consumer opt-in to marketing for PRS, but also make the process of opt-in, where a consumer enters their number, as transparent as possible. With this in mind, PhonepayPlus recommends that, where consumers are required to enter their mobile phone number online, transparency can be achieved by structuring the page as outlined below:

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- A brief statement that confirms where any service content (e.g. an IQ test result) will be displayed (e.g. mobile handset, next screen, etc.);
- A brief summary of the key terms and conditions. For example, subscription services should state that it is a subscription service and the cost of participating in the service.

7.12. After prompting a consumer to enter a mobile telephone number onto a website, the next page of that website generally then requires a user to text a keyword to a shortcode. PhonepayPlus would expect all key terms and conditions, pricing and any subscription information to be included on this page.

Promotion through social networking sites

7.13. Where social networking sites (e.g. Facebook, Twitter, etc.) are used to promote PRS, then PhonepayPlus has noticed that personal data (which is available elsewhere on the social networking site) is sometimes manipulated in order to make promotional statements that are untrue. This is highly likely to be considered misleading by a PhonepayPlus Tribunal.

7.14. For example, consumers **should not** be invited to participate in a premium rate service on the grounds that their social networking friend (e.g. 'John Smith', whose connection to the consumer would be publicly displayed on the social networking site) has challenged them to an IQ service, when 'John Smith' has never participated in the service.

Viral marketing

7.15. Viral marketing can be defined as marketing where a potential consumer is invited, or offered an inducement, to forward the marketing onto friends or contacts of theirs in order to ensure the marketing reaches the maximum possible number of people.

7.16. The most common form of viral marketing seen with regard to PRS is where consumers are either invited, or incentivised, to forward a promotional SMS, MMS or binary message to others; less common is a form of marketing where consumers are invited, or incentivised, to input the mobile numbers of others on a provider's website. The risk with both these mechanics is that those who have been forwarded marketing by other consumers will see this as unsolicited, and/or an intrusion on their privacy.

7.17. Providers should be clear that, where we receive complaints regarding the forwarding of viral marketing, PhonepayPlus will still regard this as the provider's responsibility. However, we would suggest the risk can be mitigated by taking the following steps:

- To include sufficient warning, especially on a website, that anyone to whom a promotion is being forwarded should be interested in the PRS on offer;
- To identify the full name (i.e. first name and surname) of the consumer who has forwarded a promotional SMS, MMS or binary message (e.g. "John Smith thought you would be interested in this") at the start of it;
- To state words to the effect in any forwarded promotional SMS, MMS or binary message that "if you have received this message in error, then please ignore it".

7.18. Lastly, PRS where services are promoted through 'Twitter', we would strongly recommend that any access codes provided within the 'tweet' are accompanied by

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clear pricing and other key information, where the 'tweeter' is an employee of the provider, has clear links to the service or may otherwise financially benefit from the service.

8. Controlling risk when using affiliate marketers

- 8.1. Rules 2.5.6 and 2.5.7 of the Code (inappropriate promotion) refer to usage of 'reasonable endeavours' by Level 2 providers. While other rules governing promotion do not specifically refer to reasonable endeavours, we accept that a Level 2 provider will often subcontract promotion to affiliates (who are not required to register with PhonepayPlus).
- 8.2. In these circumstances, PhonepayPlus recognises that the Level 2 provider, while retaining responsibility for the promotion under the Code, may not have immediate, day-to-day control of each individual action an affiliate takes. However, the use of affiliates to market PRS products on a provider's behalf does carry a greater risk than marketing which is under the direct, day-to-day control of the provider.
- 8.3. While the Level 2 provider retains strict liability for any breaches of the Code caused by affiliates, a PhonepayPlus Tribunal may regard the following actions by a Level 2 provider as mitigating factors:
 - The Level 2 provider has clearly set out its expectation to any affiliate that the Code will be complied with, and a record retained of this and presented to PhonepayPlus upon request;
 - The affiliate has not further subcontracted marketing without the Level 2 provider's knowledge, and that, where this does take place, the subcontracted affiliates are also made aware of the need for all their activities to comply with the Code. Level 2 providers are warned that when their direct affiliate subcontracts marketing further, to other marketers or to non-UK networks to send text messages, then the risk to consumers greatly increases, and a Tribunal is highly likely to uphold a breach;
 - The Level 2 provider monitors the actions and activities of affiliates as appropriate (i.e. to ensure instructions are being complied with).
 - The Level 2 provider has reviewed its business relationship with any affiliate whose actions lead to the Level 2 breaching the Code, and where that business relationship is retained, it is subject to the introduction of strict checks and controls on the affiliate's actions in respect of a Level 2 provider's promotions.