

GENERAL GUIDANCE NOTE

The avoidance of undue delay

EXECUTIVE SUMMARY

Quick summary on the avoidance of undue delay:

- Except in exceptional circumstances (explained on **page 2**), service introductory messages must not be longer than 30 seconds in length for any type of service.
- Generally, queuing is not permitted on any type of service (exceptions are made for the use of the 'eavesdrop' facility and 'Lower cost services', as well as for 'emergency situations' – all of which are set out in the document).
- 'Holding' or delaying consumers from reaching *key* information is not permitted on any service.
- Any products purchased through a premium rate service must be delivered in a *timely fashion*.

1. Introduction

1.1. The purpose of this General Guidance Note ('the Guidance') is to assist Level 1 and Level 2 providers ('providers') by clarifying PhonepayPlus' expectations by way of the following:

- Clearly explaining the factors that might constitute undue delay once a consumer has chosen to engage with a premium rate service (including what undue delay might look like with regard to the different service types), and;
- Offering advice on how undue delay can be best avoided.

1.2. The obligation on providers is set out in Part 2.3 of the Code (Fairness), which states:

Rule 2.3.4 Premium rate services must be provided without delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.

2. The role of General Guidance

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.

2.2. **Please note:** many exceptions are made with regard to services operating on 'low-cost numbers'; this has been explained on **page 5** under the heading 'Services operating on lower-cost numbers'.

3. What constitutes undue delay

3.1. Once a consumer has chosen to engage with any type of premium rate service, we are of the opinion that the service should either offer prompt engagement with the service itself or that the service goods purchased should be promptly delivered (pay-for-product services).

The following (a-e) is a list of the different ways that services might find themselves operating under undue delay:

a) Queuing (applicable to all live services)

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- 3.2. A live service that employs any variation of a queuing system that prevents (either with intention, or otherwise) a consumer from immediately engaging with that service is likely to be considered to be operating under undue delay.
- 3.3. While providers may argue that the employment of a call queuing system is of benefit to consumers – if it spares the consumer the frustration or expense of having to redial a service, for example – compliance with the Code requires that no premium rate service be designed specifically to operate in this way. This includes services that may have been programmed to inform callers of their position in a queue.
- 3.4. If a temporary queuing system must be employed by a service (i.e. it can be proven by a provider that there was **no other option available at that time**), then the queuing should be:
- Kept to an absolute minimum, and, critically;
 - It should not be the ‘norm’ – meaning that the service must not have been designed in such a way as to allow call queuing as normal practice, but rather, there were circumstances at a particular point in time that made it absolutely unavoidable (refer to the ‘Unavoidable, exceptional and emergency circumstances’ section on **page 5** for an explanation and example).
- 3.5. **Please note:** There are some instances of call-queuing systems being permanently acceptable. The ‘eavesdrop’ facility that is sometimes employed by live 1-2-1 chat and live psychic/tarot services is one, typically promoted on TV and/or on a live internet stream. This facility is explained in **page 4** of the document. Please also refer to the ‘Services operating on lower-cost numbers’ section, located on **page 5**, as live services operating on these number ranges also permit call-queuing.

b) Problems with pre-recorded services

- 3.6. We are aware of some pre-recorded services that have been designed with the intention of keeping the consumer engaged with a service for either as long as possible, or for an ‘*unreasonable*’ length of time.
- 3.7. For example, a consumer might call a premium rate number in order to gain a key piece of information as per the service’s promotion, only to be held back (i.e. kept ‘on hold’) from hearing it for several minutes. During this time, the consumer might hear either vaguely relevant, or perhaps completely irrelevant, information before eventually reaching the key piece of information they had been waiting for and expecting to hear much earlier in the call.
- 3.8. Some pre-recorded services are also known to include lengthy promotions for other services before the ‘key’ service information is heard by the caller.
- 3.9. Providers should note that if there is no valid reason to hold back a consumer from gaining the ‘key’ service information on a premium rate service, whether intentionally or by design, then any such service is likely to be considered to be operating under undue delay. Callers should be able to reach the promoted service, or its key service information, simply and without delay once they have chosen to engage with it.

c) Overly long service introductory messages (applicable to all service types)

- 3.10. Introductory messages are those that are heard by callers immediately upon connection to a premium rate service. They give information, such as the cost of the service per minute and the

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name of the provider providing that service. It should be noted that introductory messages do not include service 'menus', which are covered separately in 'd) Problems with live and pre-recorded services using a 'menu' facility', below.

3.11. Long introductory messages can often lead to consumers being unduly delayed from reaching the service they have chosen to engage with.

3.12. Examples of this type of delay include:

- Introductory messages that contain more information than that which is required under the Code – for example, service introductory messages that give out postal addresses and/or customer service telephone numbers, or perhaps services that choose to give over-complicated service instructions that consumers cannot skip through.
- The recorded human voice within the introductory message, taking long pauses in between sentences, resulting in the message becoming overly long and purposely drawn-out (well over a minute long in many instances).
- The use of recorded ringing tones on connection (i.e. excessive recorded ringing that charges the caller).
- The promotion of other services within the introductory message, either relevant or otherwise, which consumers are not given the option to skip through.

3.13. Except in 'Unavoidable, exceptional and emergency circumstances' (**see page 5**), no introductory message should ever need to last longer than 30 seconds in length for any type of service. Any services currently in operation that have introductory messages lasting longer than 30 seconds must be altered so as to fit within this timeframe.

3.14. When a consumer dials a service, they should hear the relevant regulatory messages required for that service category upon connection, directly followed by either immediate connection to the service itself (connection to an operator, for example), or connection to a service menu (where a service employs such a facility).

d) Problems with live and pre-recorded services using a 'menu' facility

3.15. Service menus are often heard by callers after they have heard the service introductory message. They typically offer the caller a variety of options within the one service, which can be selected and engaged with – for example, "press '1' for 'weather updates', press '2' for 'local news updates', press '3' for 'sports updates'", etc.

3.16. Services that use a menu facility should ensure that the information and descriptions contained within each option are kept as brief and relevant as possible, where '*explanatory*' in nature. To give an explanation of what is meant here, we are aware of instances where some services offer very long and drawn-out descriptions at the beginning of each separate menu option selected by a caller, with the apparent intention of holding the caller on the line for much longer than is required – well over a minute spent describing what an option actually contains or how to use it, in some instances.

3.17. An example being, a caller selecting option '1', 'weather updates', would probably expect to hear just that – a weather forecast or weather update. However, the caller might first of all hear a one minute (or longer) description of what a weather update is, an explanation of how it works

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and then be told why it is the best weather service available, before actually hearing the weather update itself as was the reason for their call.

3.18. Providers are advised that this should be avoided, and that any service menus currently operating in this way should be altered/shortened in length. We believe that all menu options should be concise and relevant, where explanatory in nature. Any providers of the opinion that the menu options within their services that are currently in operation cannot be shortened, for whatever reason (they need to be long because there are complex user instructions to go through, for example), or are unsure of exactly what is being asked of them, should contact the PhonepayPlus Compliance Advice Team to discuss.

e) Products not being delivered in a timely fashion (pay-for-product, including SMS)

3.19. Services that sell goods or products through the use of premium rate services as their payment mechanism must ensure that those products are delivered promptly, once a consumer has chosen to engage with the service. Providers should note that, in the event of an investigation, we ask for evidence of delivery dates and times, as well as any other relevant information.

4. Calls made outside of service hours or to services that may have expired

4.1. This scenario applies either to services that are only available at certain hours of the day or to services that have a shelf-life – examples include services that perhaps employ live operators who are unavailable 24-hours a day, competition services that have reached their expiry date or services that are no longer available.

4.2. Although not compulsory to do so, providers may wish to add a short message to their service for callers that call 'out of hours', which contains the hours of operation or the reason for the service's unavailability, where any of the above scenarios are relevant. We are of the opinion that it may be preferable for consumers to be given a reason for their call not being connected, so as to avoid any potential for confusion.

5. Use of an 'eavesdrop' facility

5.1. An 'eavesdrop' facility is that which allows the consumer the opportunity to listen in on the live call taking place between an operator and another consumer, while waiting to speak live with the same operator (i.e. listening in on the call(s) taking place in front of them, while they are effectively waiting in a queue).

5.2. 'Eavesdrop' is typically used in conjunction with live 1-2-1 chat and psychic/tarot services that operate on TV, the internet via a live stream or via a 3G mobile handset (i.e. services that are operator-based and allow for the live visuals to be viewed in conjunction with live vocals between operator and consumer).

5.3. This is something that is permitted, provided that consumers are informed up-front (i.e. a consumer must not be advised that they are being put through to speak with a live operator, only to be put through to the 'eavesdrop' facility). Instead, it should be made abundantly clear to the consumer that the on-screen operator is already on a call. The consumer is then able to make the choice of either staying on the line listening in, until such time as the on-screen operator is free to take their call, choosing another menu option (where there is such a facility on the service), or choosing to hang up and try again later.

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- 5.4. We are also aware of some 'eavesdrop' services that only allow the caller to listen in on the operator's side of the conversation, meaning that the caller's side of the conversation cannot be heard. This is not permitted – providers should note that callers selecting an 'eavesdrop' facility must be able to hear both sides of a conversation talking place between an operator and a caller at all times.
- 5.5. Services using an 'eavesdrop' facility should also ensure that callers are aware that their live conversations may be 'eavesdropped' on by other callers.

6. Unavoidable, exceptional and emergency circumstances

- 6.1. PhonepayPlus may '*give weight*' to circumstances which might be deemed as being either 'unavoidable', or 'exceptional', in nature (i.e. an emergency, which had the effect of causing undue delay to consumers). An example might be the first day of an occurrence of a natural disaster, which has caused an airport and various helplines operating on live premium rate numbers to receive hundreds or thousands more calls than would have normally accounted for. In a circumstance such as this, it is clear that a service is unlikely to have been able to function as normal on that day.
- 6.2. Any separate instance of an 'unavoidable', or 'exceptional', circumstance which a provider claims caused their service to operate with a delay to consumers, would be judged on its own merits, where brought to the attention of PhonepayPlus.

7. Services operating on lower-cost numbers

- 7.1. Many of the requirements are different for lower cost numbers – providers should refer to the 'Lower-cost services' Guidance Note for full advice.
- 7.2. If consumers are held in a queue while they wait for an operator to become available, they must be given a suitable indication of the likely delay. They will then be in a position to make an informed decision as to whether to remain on the call or to try again another time. Where providers believe that a delay is likely to occur, they should consider implementing necessary processes to ensure that consumers will understand right from the outset how long the delay is likely to be. This could be done in a number of ways, for example:
 - Stating an estimation of the length of the delay (in minutes).
 - Telling the caller they are placed in a queue and where they are in relation to others in the queue.
- 7.3. Alternatively, providers could offer to call the consumer back at the company's expense when an operator becomes available. We understand that, in unique circumstances (for example, an extreme weather event, or other emergency), providers may experience delays to a service and will not have had time to prepare a response. In these cases, it may be sufficient to include a general pre-call announcement, explaining the delay, but without an accurate estimate of the wait.
- 7.4. However, we would expect this to be the exception to a service's operation, not the rule. While we do not intend to specify the exact extent to which the estimate is accurate (e.g. to the nearest minute), we will certainly expect providers to ensure that consumers are able to make an informed decision as to whether to stay on the line.

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7.5. We understand that a number of factors affect the delivery of a service, and that consumers' expectations of different services may vary. Where a service is investigated, it is likely that we would seek answers to the following questions:

- Might consumers reasonably expect a high level of demand from other callers and, therefore, be prepared to accept a more lengthy delay? For example, when tickets to a major concert become available for the first time;
- Were there extraordinary events that precipitated a sudden surge in demand? For example, a shock flood that prompted a high volume of calls to an insurance claims line;
- How important is that call to the consumer, and how long would they reasonably be expected to wait? For example, a local health service providing information and support to patients;
- Is there choice in the market? Could consumers choose to look to other providers to provide a better service?
- Was there an extraordinary internal event that affected call wait times? For example, was there a higher than average number of staff away sick at the time of the call in question?