



# **Guidance to support the proposed new Code of Practice**

**Draft for Consultation**

**Issued by PhonepayPlus on 27 October 2010  
The deadline for comment is 19 January 2011**

# Contents

<b>Section</b>		<b>Page</b>
Section 1	Executive Summary	3
Section 2	Update on the new Code of Practice	6
Section 3	Guidance in support of the new Code	8
Section 4	Responding to the Consultation	17

# Section 1 – Executive Summary

## Background

1.1. PhonepayPlus has regulated premium rate telephony services since 1986. Whilst Ofcom has had formal responsibility for regulating premium rate services (PRS) since the introduction of the Communications Act 2003, Ofcom recognises PhonepayPlus as the organisation that delivers day-to-day regulation by approving our Code of Practice.

1.2. Our goal as the regulator of PRS is that consumers should be able to use PRS with absolute confidence. In pursuit of this goal, we have a Code of Practice that sets appropriate standards for promotion, operation and content. We continually monitor the effectiveness of our Code and review and consult on revising it in light of developments. Any new PhonepayPlus Code is approved by Ofcom following consultation if it meets the legal tests set out in the Communications Act.

1.3. Following extensive consultation throughout 2009 and 2010 with the PRS industry, Ofcom and other stakeholders, a new Code of Practice is currently with the European Commission for approval before its launch in 2011. This new Code marks a significant departure from previous Codes of Practice. Where before the emphasis was on a prescriptive set of rules that had to be adhered to, the new Code provides a number of stripped-down and simplified outcomes that must be achieved by providers. In our discussions and consultation with industry stakeholders, it is clear that this outcomes-based approach must be supported by appropriate guidance.

## Main principles of Guidance

1.4. PhonepayPlus' public consultation on the draft Code between April and July 2010 proposed a consolidation and rationalisation of our current suite of guidance in line with the new Code. Service-specific rules in the current Code would become Service-Specific Guidance. Statements of Expectation and a significant number of Help Notes would be reviewed and amalgamated into General Guidance. Guidance would be amended or added to, as appropriate, in the future, following full public consultation.

1.5. The expectation is that this Guidance will be the starting point for providers when considering the most effective ways of achieving the required outcomes under the new Code.

## General feedback on Guidance from new Code consultation and PhonepayPlus responses

1.6. Respondents to the Code consultation expressed concern that Guidance should reflect likely interpretation by, and reasonable expectations of, consumers. PhonepayPlus recognises the need to balance proportionate Guidance with clarity for consumers.

1.7. Some respondents suggested that rules relating to spending caps and thresholds (2.3.7 and 2.3.12) should be removed as rules and become General Guidance to allow for flexibility in the setting of caps. However, for the caps to have legal weight they need to form part of the Code of Practice and cannot be in the non-mandatory Guidance. If spending caps

and thresholds need updating before the end of the life of the Code, we are able to make amendments of this type within a shorter timescale than a full review of the Code.

1.8. Some respondents, including at least one trade association, stated that if a provider followed Guidance, then it cannot be found to be in breach of the Code by a Tribunal. As the PhonepayPlus Executive is separate from the independent Code Compliance Panel (the body from which the Tribunal members are drawn), we cannot require that the Tribunal is bound by our Guidance. However, our review of enforcement procedures will acknowledge that, if a provider followed Guidance, this will be a significant mitigating factor that the Tribunal should use as a guide in its decision.

1.9. PhonepayPlus shares respondents' opinion that Guidance should be cross-referenced with other relevant Guidance and other compliance updates. As the new Code of Practice and associated Guidance will be largely web-based, we hope to achieve this cross-referencing in an easy and accessible format.

### **The Guidance for Consultation**

1.10. As a result of the general comments summarised above, and a number of more specific comments covered in detail within this consultation itself, PhonepayPlus is consulting on 22 individual pieces of Guidance, in two categories of 'General Guidance' (i.e. Guidance which may be applicable across the industry) and 'Service-Specific Guidance' (i.e. Guidance which is likely to be applicable only to one particular service type)

1.11. Questions 1-4 of this consultation relate to the general principles, language, format and expectations set out in the attached Guidance.

1.12. In addition, questions 5-10 relate to issues covered within individual pieces of Guidance as follows:

- Questions 5 and 6 – Guidance on 'Due diligence and risk assessment and control'
- Question 7 – Guidance on 'Promotions and promotional material', with reference to the 'freemium' model of PRS
- Question 8 – Guidance on 'Method of exit from a service', with reference to software that can identify a mistakenly entered 'STOP' command
- Questions 9 and 10 – Service-Specific Guidance on 'Subscription services', with reference to subscription initiation messages and Mobile Network Operator contractual requirements

1.13. The background to these questions is set out in more detail within the main consultation document that follows.

### **Responding to the consultation**

1.14. Full details of how to respond to this consultation are included in Section 4.

1.15. As the new Code applies direct regulation to Level 2 providers for the first time (currently commonly referred to as Information Providers), we ask that Level 1 providers (currently Service Providers) and Network operators help us to attain feedback on this consultation from your clients. This Guidance is largely aimed at assisting Level 2 providers

comply with the Code and it is important that we are able to engage with the parts of the delivery chain that we have not traditionally had direct regulatory contact with.

1.16. Responses to this consultation will be published. If you wish all or part of your submission to remain confidential, please specifically request this with your reasons for the response remaining confidential.

## Section 2 - Update on the new Code of Practice

### About PhonepayPlus and the Code of Practice

2.1. Ofcom has formal responsibility for regulating premium rate services (PRS) through the Communications Act 2003. Under the terms set out in section 121 of the Act, Ofcom has recognised PhonepayPlus as the organisation which delivers the day-to-day regulation of the premium rate services market by approving the PhonepayPlus Code of Practice.

2.2. PhonepayPlus has regulated premium rate services since 1986. PhonepayPlus' goal is that consumers should be able to use premium rate services with absolute confidence. In pursuit of this goal, PhonepayPlus creates a Code of Practice which sets appropriate standards for promotion, content and operation of all premium rate services. In applying these standards, PhonepayPlus has particular regard to vulnerable people, especially children.

2.3 PhonepayPlus continually monitors the effectiveness of the Code of Practice and, as the need arises, reviews the Code and makes proposals to Ofcom for producing a revised version. A draft Code is then developed by PhonepayPlus and consulted on, with Ofcom giving approval if they decide it meets the legal tests set out in the Communications Act.

### Background to the new Code

2.4. In reviewing the 11<sup>th</sup>, and current, edition of the Code of Practice, and drafting a proposed new Code, PhonepayPlus took into account a range of considerations which can be summarised under the following broad headings:

- *Developments in the PRS market* (e.g. developments in technology such as VoIP and secure billing systems, and the increased market share for PRS delivered to mobile handsets – all leading to increased complexity within the PRS delivery chain).
- *Developments in regulation* (e.g. the recognition by the independent Code Compliance Panel that many breaches of the 11<sup>th</sup> Code were repeat occurrences by the same providers – pointing to a need for a Code that required a greater level of proactive risk assessment and control from the industry).
- *Developments in accessibility* (e.g. the need for a Code which is as accessible as possible, both for consumers seeking assurance that they can use PRS with confidence and for an industry looking to innovate and grow the market).
- *Recommendations from Ofcom's 'PRS Scope Review* – this review made a number of specific recommendations to PhonepayPlus. These were:
  - A strengthening of guidance around mobile pricing in advertising;
  - An expansion of PhonepayPlus' 'Number Checker' to better assist consumers in identifying the provider responsible for a particular service;
  - The introduction of complaint-handling obligations;
  - The introduction of a mandatory industry Registration Scheme;

2.5. Following extensive engagement with stakeholders, both from industry and other areas, PhonepayPlus issued a new Code Discussion Paper for public comment in July 2009. This paper was not intended to set out the full detail of the new Code, but was rather an indication of the direction we wished to take when we began the actual drafting process and an invitation for all with an interest in the PRS industry to engage in our policy development.

2.6. Responses to this Discussion Paper were generally supportive of the key proposals, and highlighted a number of issues that PhonepayPlus addressed as the proposed new Code itself was subsequently drafted.

#### Public consultation on the proposed new Code

2.7. Having drafted a new Code of Practice, PhonepayPlus issued a public consultation in April 2010, running until July 2010. We received a record number of written responses to this consultation (55 in total), and a further 91 noted responses, which we received verbally either at PhonepayPlus Forums or one-to-one meetings during the consultation period.

2.8. These responses were analysed by PhonepayPlus, and 80 separate issues were identified. These issues ranged from straightforward comment on the draft Code itself, to concerns about how the Code would be interpreted or enforced in practice, to comments about the proposed requirement for providers to register and how the proposed Registration Database would work.

2.9. As a result of the range of issues raised, PhonepayPlus has considered each of them carefully, and in context (that is, issues around enforcement and registration have been passed to the relevant teams to consider as part of their strategy for Code implementation). Issues which related directly to the drafting of the Code itself led to a number of alterations being made to the draft Code, where considered relevant and necessary. However, many of the points raised in the consultation responses related to the working implementation and enforcement of the Code. These points have been reflected in the redrafting of Guidance to accompany the new Code that we are now consulting on. Stakeholders may wish to consider whether their concerns have been reflected in the changes made to the Code or the draft Guidance when responding to the consultation.

2.10. The Code has now been submitted to the European Commission for consideration by other EU member states. Subject to any comments made by member states, the Code is expected to be approved by the Commission in January 2011. A full and final policy statement will subsequently be released by Ofcom and PhonepayPlus giving final approval to the Code.

2.11. In the interim a copy of the Code as submitted to the European Parliament is attached to this document at Annex A for information. A summary of changes to the Code since public consultation closed is attached at Annex B, again for information. The summary sets out the changes and briefly sets out the reasoning behind them. A full analysis of the consultation responses received and PhonepayPlus' consideration of them will form part of the final statement issued on approval of the Code.

## Section 3 - Guidance in support of the new Code

### Background to proposed Guidance in support of the new Code

3.1. Feedback that PhonepayPlus received to the new Code Discussion Paper in 2009 indicated clearly that our proposed approach of a more concise, outcomes-based Code would need to be adequately supported by appropriate guidance.

3.2. Many respondents to the Discussion Paper welcomed the greater flexibility and opportunities to innovate that an outcomes-based approach would provide. However, an equal number of respondents warned that flexibility would have to be linked to ongoing clarity as to how the Code will be applied to specific types of service or industry practices. In this way, all participants in the PRS market, whether large or small, new entrants or innovators can proceed with confidence when devising and developing services.

3.3. At the same time as we made these proposals, PhonepayPlus also recognised that good guidance and advice to industry (of the kind that becomes an agreed and recognised standard) could only be achieved through proper engagement with industry and other stakeholders. In practice, this will entail appropriate pre-consultation on any new Guidance in the future (whether Service-Specific or General), and a full public consultation to test Guidance in support of the new Code before it is published.

3.4. As a result, PhonepayPlus' public consultation on the draft Code proposed the following approach to Guidance:

- That the prescriptive, service-specific rules currently contained within Section 7 of the 11<sup>th</sup> edition of the Code would be removed, and instead produced as Service-Specific Guidance, as appropriate. New or revised Service-Specific Guidance would then be created in the future, as appropriate.
- That guidance currently classified as Statements of Expectation (and a significant number of Help Notes) would be reviewed, and consolidated, as appropriate, into General Guidance. New or revised General Guidance would then be created in the future, as appropriate.
- As they are subject to full public and industry consultation, both these types of Guidance would carry greater weight than the guidance which currently supports the 11<sup>th</sup> edition of the Code. A PhonepayPlus Tribunal would consider whether a provider has followed the Guidance, or met the requirements of the Code by other means. We would therefore expect Guidance to be the starting point when providers consider the most effective means of achieving compliance.

3.5. Attached to the public consultation on the new Code were a series of early drafts of Service-Specific Guidance, and draft General Guidance around the theme of 'Due diligence and risk control'. These were intended as illustrative versions of a work in progress, rather than proposed drafts, and we invited comment and feedback which could be fed into a review of Guidance.

3.6. Respondents to the consultation were also invited to comment on areas where they felt either Service-Specific or General Guidance would be necessary. This was with a view to

a full public consultation later in 2010 on all the supporting Guidance to be launched alongside the new Code.

### Feedback from the consultation regarding Guidance

3.7. As previously mentioned in Section 2 of this document, PhonepayPlus received a wide range of feedback from a record number of sources, from which around 80 separate issues were identified.

3.8. While there were a significant number of issues or questions relating to the actual text of the draft Code, a larger number related to Guidance, or the way in which PhonepayPlus might generally interpret Code provisions in practice. Issues relating to Guidance can be broken down into three distinct types, which are listed, and the issues around them summarised, directly below:

- a) General comments about the approach to Guidance;
- b) Suggested areas as to where Guidance should provide clarification;
- c) Comments on the illustrative version of General Guidance around 'Due diligence and risk assessment and control' (which was attached to the new Code consultation).

#### *General Comments about the approach to Guidance*

3.9. A number of respondents commented that Service-Specific Guidance should take account of the likely interpretation, and the reasonable expectation, of consumers. Their suggestion was that Guidance should not go beyond what a consumer would reasonably expect in order to use the service with trust and confidence. PhonepayPlus agrees there is a need to ensure that Guidance is proportionate and in line with consumer expectation, but without compromising consumers or a PhonepayPlus Tribunal's ability to make clear decisions.

3.10. Some respondents suggested that rules 2.3.7 and 2.3.12 of the draft Code published for consultation could be removed, and instead dealt with as General Guidance. The rationale for this move was that it would make the setting of spending caps and thresholds for certain types of service more flexible. However, for the caps to have legal weight they need to form part of the Code of Practice and cannot be in the non-mandatory Guidance. If spending caps and thresholds need updating before the end of the life of the Code, we are able to make amendments of this type within a shorter timescale than a full review of the Code.

3.11. Some respondents, expressed the view that Guidance should be binding on a Tribunal – i.e. if Guidance has been followed, then a provider cannot be found in breach. The Code Compliance Panel (the body from which Tribunal members are drawn) is independent of PhonepayPlus. This means we cannot require that they be bound by the Guidance. However, given its status as a fully-consulted on exposition of industry best practice, any Tribunal would use the Guidance as its starting point when considering a case.

3.12. We would stress that, while it is not impossible that a provider who has followed Guidance in good faith could be found in breach of the Code (especially if they have followed it incorrectly), it is highly unlikely.

3.13. Lastly, a number of respondents suggested that routine compliance updates to the industry (of the type that PhonepayPlus already provides on a week-to-week basis) should cross-reference to the appropriate Guidance. Also, that Guidance should cross-reference other Guidance, where appropriate. It has always been PhonepayPlus' intention to ensure that this edition of the Code, and supporting Guidance, is more web-based than before in order to allow linkages between Guidance and make advice more easily accessible online.

*Suggested areas as to where Guidance should provide clarification*

3.14. As expected, there were a wide number of different areas raised as follows:

- *How providers will be defined for purposes of investigation (i.e. when will a provider be a Level 1 and/or Level 2)?* – included in General Guidance on Definitions.
- *What PhonepayPlus' expectations will be around refunds to consumers, especially automatic refunds as required by Paragraph 4.8.2(j) of the proposed new Code* – included in General Guidance on 'Consumer refunds'.
- *Under what circumstances will promotions be able to state a service is free, or use other words such as 'bonus' or 'extra'?* – included in General Guidance on 'Promotions'.
- *How PhonepayPlus defines "information likely to influence the decision to purchase", as set out at Paragraph 2.2.1 of the proposed new Code* – included in General Guidance on 'Promotions'.
- *Whether Rule 2.2.6 of the proposed new Code would inadvertently capture 'STOP' commands, or other similar messages charged at standard rate, or multiple messages to collect legitimate payment for a service* – the answer is no, and this is clarified within General Guidance on 'Method of exit from a service'.
- *What PhonepayPlus' expectations will be around auditable consent to either billing for a PRS, or future marketing from a PRS provider* – included in General Guidance on 'Privacy and consent to charge'.
- *Whether responsibility for handling consumer complaints can be passed on by providers, as is currently the case* – this will continue to be the case, and is set out in General Guidance on the 'Complaint-handling process'.
- *How Network operators, or Level 1 providers, will apportion refunds from retained revenue when there isn't enough money to refund all consumers* – included in the General Guidance on 'Consumer refunds'.
- *Whether Rule 2.2.5 of the proposed new Code will inadvertently capture Google and other similar media of promotion* – the General Guidance on 'Promotions' clarifies our proposed expectations.
- *Whether the processes around prior permission will be updated in light of the new Code's proposed more flexible approach* – the prior permission processes are currently being reviewed. The outcome of this review will form part of the final statement on the new Code;
- *Whether Rules 2.2.1 and 2.2.5 of the proposed new Code will inadvertently require that broadcasters, especially radio broadcasters, must state this information each time a promotion is advertised on air* – the General Guidance on 'Promotions' clarifies our proposed expectations.
- *Whether Guidance around competition services can ensure major prize availability is monitored and subject to routine independent scrutiny* – the Service-Specific

Guidance on 'Competitions' addresses the issue of fair prize distribution. However, we have not gone as far as to require independent scrutiny, as these areas are already covered by other regulators such as the Office of Fair Trading and the Gambling Commission.

- *Whether Guidance around contact and dating services is necessary, given the removal of prescriptive rules around this area from the proposed new Code* – at present, and following review, we have not included any Service-Specific Guidance on 'Contact and dating' in the Annexes to this document. However, Rule 2.5.9 of the proposed new Code clearly sets out expectations where consumers of a PRS can make arrangements to meet.

#### *Comments on illustrative Guidance around 'Due diligence and risk assessment and control'*

3.15. Of the illustrative Guidance that we released with the new Code consultation, this was the most developed. Therefore, it was expected that this Guidance would attract the most comment from those who responded.

3.16. Some respondents asked whether this Guidance should include a section on how to perform due diligence and risk control on a client who is not themselves registered with PhonepayPlus – for example, an affiliate marketer. This issue has been addressed within the version of the 'Due diligence and risk assessment and control' Guidance attached to this document, and has also been referenced in other Guidance around 'Promotions' and 'Definitions' in order to make it as accessible as possible.

3.17. A significant number of Network operators expressed concern as to the responsibility which was outlined in respect of Level 2 clients with whom they directly contracted. Some respondents signalled that following all the recommended actions to the letter would significantly increase their costs. While we do consider that anyone who contracts directly with a Level 2 provider must assess risk and take appropriate controls where necessary, we recognise that, in the case of many Network operators, their clients will be low-risk.

3.18. As such, the version of 'Due diligence and risk assessment and control' Guidance attached to this document makes clear that those who contract with a Level 2 provider need only take further monitoring action if they feel there is a risk, or if a risk is clear to them.

3.19. Additionally, some Network operators expressed the opinion that they should not have to keep written records of how numbers they export are being used. While we accept that it is not proportionate for Network operators to keep records of further exportations (i.e. when numbers are subsequently passed on again by their clients), the Guidance still reflects the need to keep a clear record of all PRS number exportations, ensuring that, in the event of an investigation PhonepayPlus can quickly identify the owner of a number.

3.20. While Ofcom does not allow PRS to be delivered using a 070 number, there have been a number of high profile instances of 070 numbers being used to perpetrate PRS 'missed call' scams and cause widespread consumer detriment. As a result, the Guidance recommends that Network operators keep a record of any 070 exportations.

3.21. A few providers, who would likely be classed as Level 1 in terms of the new Code, highlighted that the illustrative version of the Guidance set out that Level 1 providers should ensure that their clients have sufficient financial strength to meet any obligations under the

Code. Their concern was that this might, in effect, bar a Level 1 provider from contracting with any prospective client who did not have reserves of £250,000 (the current maximum fine which PhonepayPlus can impose for a single breach of the Code). As a result, this has been removed from the latest version of the Guidance attached to this consultation.

3.22. Lastly, a number of respondents suggested a series of steps that Network operators should have to take in order to complete effective due diligence and risk control. This was a very helpful suggestion, and is reflected in the Guidance attached to this consultation.

#### PhonepayPlus' proposals

3.23. The feedback around Guidance from the Code consultation was fed into a review of guidance which PhonepayPlus undertook over the last few months. The main goal of this review was to produce a suite of Guidance to support the new Code, with the following aims:

- a) To produce Guidance that clearly sets out PhonepayPlus' expectations in relation to specific service types and general practices that stretch across the PRS market;
- b) To retain useful information from existing guidance, but to add, subtract or change information, wherever necessary or desirable;
- c) To significantly reduce the number of individual pieces of Guidance, in order that multiple sources of information can be consolidated into one accessible source wherever possible, and to design Guidance for a web-based environment so that links can be made to other relevant information;
- d) To express Guidance clearly and plainly;
- e) To ensure consumers can use PRS with trust and confidence, but that the market is able to grow and innovate wherever possible, and;
- f) To achieve stakeholder buy-in through pre-consultation and full consultation of draft Guidance.

3.24. Our review has now concluded, and we have drafted 22 pieces of Guidance – both Service-Specific and General. This is down from a current figure of around 50 pieces of different guidance, and so is in line with our aim of consolidating information. Two sets of instructions – around 'Registration' and 'Prior permission' – will be produced separately as they reflect actions which must be performed in order to register or apply for prior permission, as opposed to Guidance which serves as a starting point for Code compliance.

3.25. The 22 pieces of Guidance have been pre-consulted with a number of key industry stakeholders, including trade associations, and take account of the comments made there, and in responses to the new Code consultation earlier in the year.

3.26. The Guidance is attached to this document at Annex C (Service-Specific Guidance), and Annex D (General Guidance), and covers the following service types and areas:

<b>Service-Specific Guidance</b>	<b>General Guidance</b>
Advice Services	Appropriate use of number ranges
Betting tipster services	Avoidance of undue delay
Children's services	Complaint-handling process
Competitions	Conduct of live services
Directory enquiry services	Consumer refunds
Employment and business information	Definitions of PRS providers
Fundraising services	Due diligence and risk assessment
Public information services	Lower-cost services
Quiz TV services	Method of exit from a service
Subscription services	Privacy and consent to charge
Virtual chat services	Promotions and promotional material

3.27. Respondents to this consultation are invited to consider the following general questions in relation to all the Guidance at Annexes C and D.

**Q1 – Will the language used in the Guidance be clear to the majority of those involved in PRS provision? If not, why not? Please include any specific suggestions you have for clearer drafting.**

**Q2 – Is the level of information provided in the Guidance sufficient? If not, why not? Please include any specific suggestions you have.**

**Q3 – In your opinion, will any of the expectations set out in the Guidance be likely to cause difficulty to the majority of providers, or cause confusion? If so, please give any reasons or evidence you have. In particular are there technical barriers to following Guidance we have not already acknowledged?**

**Q4 – Do you have any other specific comments on the content of the Guidance notes? Please clearly stat the title of the Guidance and page references where appropriate.**

3.28. In addition to these four questions, which are general to all the Guidance attached at Annexes C and D, respondents are invited to consider the following questions in relation to individual pieces of Guidance:

Guidance on 'Due diligence and risk assessment and control'

3.29. It has been raised in pre-consultation that some Network operators, especially fixed-line, may find a requirement to risk-assess and monitor direct clients onerous. This is on the grounds that some Network operators, especially in the fixed-line part of the market, connect directly with a large number of providers who would be likely to be considered Level 2 under the proposed new Code.

3.30. Some Network operators have suggested that a requirement to carry out a risk assessment, and take suitable steps to monitor and control risk on potentially thousands of clients, could prove excessively costly, and would be disproportionate to the level of risk most of those clients pose.

3.31. PhonepayPlus intends that the section of the Guidance that deals with risk assessment and control recommends reasonable steps in the event of identified risk, rather than setting a blanket requirement to monitor the actions of all clients. While we expect Network operators who share in the revenue from PRS to take reasonable actions to identify any risk posed by direct clients, we do not intend this activity to be disproportionate to the level of consumer risk involved.

3.32. To this end, we would welcome feedback from Network operators, particularly fixed-line Network operators, as to the likely effect the current Guidance would have on their existing systems to assess and control risk. We would also welcome evidence as to current practice in terms of network risk assessment and control on direct Level 2 clients.

**Q5 – In your view, would the current requirement for risk assessment and monitoring of Level 2 clients, contained within draft Guidance on ‘Due diligence and risk assessment and control’, be disproportionate to the level of risk involved? Please provide evidence of current practice in relation to identifying and controlling risk with direct clients.**

3.33. In addition, some trade associations have identified during pre-consultation that the due diligence recommendations set out in the draft Guidance do not include a recommendation to check the passports of company directors of prospective clients. PhonepayPlus had left this out, on the grounds that as the market grows, there will increasingly be Level 2 providers who do not have PRS as their only, or main, business. It would seem disproportionate, for example, to require that the passports of all directors were examined when dealing with major broadcasters, or publicly-listed companies.

3.34. However, PhonepayPlus does accept that this is already an accepted part of due diligence for many Network operators and providers, as a measure to prevent money laundering. We also accept that, in cases where PRS was not their main business, then the passport of the director responsible for the PRS part of the business might suffice. We would welcome thoughts from respondents as to whether some form of check on directors’ passports should be recommended in the Guidance.

**Q6 – At present, the ‘Due diligence’ Guidance does not contain any requirement or recommendation to check passports of directors of prospective clients. Is it appropriate to recommend this in some form? If so, please provide any view you have as to what form.**

Guidance on ‘Promotions and promotional material’ – ‘freemium’

3.35. The draft of Guidance on ‘Promotions and promotional material’ attached to this document currently contains a heading around ‘freemium’ services. For avoidance of doubt, these are services that offer PRS content or services free for a specified period, after which the consumer is charged for the original service or additional content or services.

3.36. Currently the draft document sets out an expectation that, at the end of any free period, consumers should not have to opt out of the service in order to avoid further charging, but rather opt in to charging before it commences.

3.37. Pre-consultation has suggested that this may disadvantage PRS providers in relation to other forms of commerce and media where content or services are offered for a free trial period. PhonepayPlus seeks to provide consumers with absolute clarity in order that they can use PRS with absolute confidence. However, we recognise that, if a consumer is fully informed at the beginning of a free trial that they will be charged if they do not opt out before the trial period is over, then this may be consistent with the outcome that the consumer should be fully and clearly informed of all relevant information, prior to incurring a charge.

3.38. It has been further suggested that, in order to provide complete clarity to consumers, an expectation should be set that charging must commence immediately after the trial period ends, rather than at a later point when the consumer may not remember their original opt-in.

**Q7 – Should the section around free trial periods, contained within Guidance on ‘Promotions and promotional material’ be revised so that, if the consumer is clearly informed at the beginning of a trial period, then it is acceptable to charge without further opt-in as long as charging commences as soon as the free trial is over? Please provide any evidence you have.**

#### Guidance on ‘Method of exit from a service’

3.39. The current draft of Guidance on ‘Method of exit from a service’ contains the requirement that services respond to a ‘STOP’ command immediately upon receipt.

3.40. It has come to PhonepayPlus’ attention that a growing number of providers have software that enables them to identify where a ‘STOP’ command has been mistakenly entered (e.g. ‘STO P’, ‘SOP’, etc.), or to flag any other text which may express a consumer’s wish to exit the service. The provider then takes a decision on whether this text is a clear wish to exit the service (e.g. “Go away”, “I don’t want to chat anymore”, etc.), or merely the use of stop in another context (e.g. “Don’t stop flirting with me”).

3.41. At present, the Guidance does not recommend this kind of flagging or consideration. However, this is on the proviso that a provider generally offers a goodwill refund if a series of genuine attempts by a consumer to leave a service are later brought to their attention. PhonepayPlus is keen to understand if software to flag such ‘failed’ attempts to exit PRS is prevalent within the industry, and whether a recommendation to possess such software would be considered standard practice or disproportionate.

**Q8 – At present, Guidance does not recommend that providers take steps to be able to recognise a consumer’s intent to exit, even when they have not sent ‘STOP’ or another correct keyword. Should this be the case and, if yes, how might this be achieved?**

#### Service-Specific Guidance on ‘Subscription services’

3.42. In constructing a new Code, based on outcomes to deliver consumer protection and confidence, rather than prescriptive rules wherever possible, PhonepayPlus did not retain Paragraph 7.12.4 of the 11<sup>th</sup> edition of the Code, which sets out a requirement for

consumers to be delivered a subscription initiation message upon signing up to a subscription service. The reasoning behind this decision was that, if a consumer is clearly informed of the price, and other information needed to make an informed decision before they purchase, then there is no need to require a message is sent once they have purchased which repeats this information.

3.43. Pre-consultation has suggested that this requirement should be recommended within Guidance on 'Subscription services'. At present, it is not contained within the draft document, but we would welcome respondents' views on this.

**Q9 – Should Guidance on 'Subscription services' contain a recommendation to send an initiation message containing stipulated information, as per Paragraph 7.12.4 of the 11<sup>th</sup> Code? If not, why not?**

3.44. Lastly, it has been suggested during pre-consultation that Guidance on 'Subscription services' should align with the requirements for subscription services around text and font size which are set out in the contractual obligations which providers have with Mobile Network Operators. This is not a universally held view, and while there are advantages in terms of consistency, this potentially introduces a level of prescription which PhonepayPlus has not previously considered necessary.

**Q10 – Should Guidance on 'Subscription services' be in line with requirements around text and font size contained in providers' contractual obligations with Mobile Network Operators?**

## Section 4 - Responding to the Consultation

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than **19 January 2011 (12 weeks from the date of issue of this document)**.

Where possible, comments should be submitted in writing and sent by email to [mcollins@phonepayplus.org.uk](mailto:mcollins@phonepayplus.org.uk) . Copies may also be sent by mail or fax to:

Mark Collins, Head of Industry Affairs, PhonepayPlus Ltd., Clove Building, 4 Maguire Street, London SE1 2NQ

Tel: 020 7940 7412

Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or email Mark Collins using the above contact details.

### Engagement with Level 2 providers

This consultation, and the attached Guidance at Annexes C and D, represents a significant departure from previous Codes in terms of where in the delivery chain responsibility will be placed. Previously, 'Information Providers' have had a duty to comply with the Code in terms of the premium rate services they provide, but no ultimate responsibility for doing so.

The recommendations set out in the attached Guidance are largely aimed at assisting Level 2 providers (i.e. Information Providers who are the final link in the delivery chain) to effectively comply with the new Code, with the potential consequence that some Level 2 providers will have to adapt their current business processes in terms of compliance.

For this reason, we are eager to receive feedback to these proposals from those Information Providers who will likely be regarded as Level 2 providers in the new Code. We have conducted an extensive exercise, especially in the mobile sector, to identify known Information Providers, and have also worked with various trade associations to ensure we are able to bring this document to the attention of as many Information Providers as possible.

We would ask that Network operators and Service Providers bring this document to the attention of any of their clients who may be regarded as Level 2 providers under the proposals set out here, in order that we can receive feedback from a part of the delivery chain which has not traditionally responded to consultations in large numbers.

### Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all, or part, of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.