

PHONEPAYPLUS CONSULTATION

Guidance to support the new PhonepayPlus Code of Practice

Submission by OpenMarket Limited

OpenMarket welcomes the opportunity to respond to the consultation on the draft Guidance for the new Code of Practice. Responses to each of the draft Guidance Notes are provided below, and responses to the specific questions (5-10) provided under the relevant Guidance Note.

On a general note, some of the guidance is presented in the form of requirements. As guidance notes are not binding, we would suggest that where requirements are stated - such as the £30 spend cap for all live services – that the provenance of the requirement is also stated: in this case the prior permission certificate would state a £30 spend cap.

GENERAL GUIDANCE

The appropriate use of number ranges

§4.3: Given the MNOs have control over short code allocation, we suggest that reference is made to the <http://www.short-codes.com> website for information on short code ranges and allocation in order to avoid conflicting information. For example, the Guidance Note does not include any information about the 5xxxx range codes which can be enabled in certain circumstances.

The avoidance of undue delay

§3.13: Given the intended nature of the Guidance Notes, it is incongruous that such prescriptive clauses are included. We would suggest that it be recommended that introductory messages do not exceed 30 seconds, unless there is just cause, and suggest that the relevant Level 2 seeks advice from PP+ where the message exceeds 30 seconds. Indeed, in cases where consumers are informed from the outset that they need to remain on the call for X minutes at £x.xx per minute in order to purchase their product, there would be no consumer harm for what would be a legitimately advertised service with a long ‘introductory’ period to cover the cost of the product being purchased.

§3.19: It is unclear why this is a consideration for PP+. In such cases, PRS would simply be the charging mechanism, and there are other regulatory protections in place to cover this area, namely the European Distance Selling regulations. Given that no other charging mechanisms, such as credit card, would impose such requirements, we would suggest the clause be amended to read “Services that sell goods or products through the use of premium rates services as their payment mechanism must ensure that those transactions are handled in accordance with all relevant regulatory requirements, such as the European Distance Selling Directive.”

§5: It is unclear why guidance pertaining to eavesdrop services – which are included in the Live Services Guidance Note – has been replicated here. We would suggest that this section be deleted.

Complaint-handling process

No Comment.

The conduct of live services

§5.1: This clause should recognize that the £30 limit is the cap which is likely to be stated on the prior permission certificate, but there is scope for a call to continue beyond the £30 cap where there is a positive auditable consent from the consumer.

§Annex A: The approved supplier list should be updated to incorporate recent company name changes. e.g. MX Telecom is now OpenMarket and Thus is C&W.

Consumer Refunds

§3.1: We agree that consumer refunds should be payable in instances where it can be demonstrated that a service has not been provided in accordance with current regulatory requirements and there is evidence of consumer harm. However, providers should not be obliged to issue a refund where a service has been appropriately advertised, legitimately requested and subsequently fulfilled, simply because a consumer has made a complaint and/or requested a refund. We suggest this be clarified in this Guidance.

§3.2: For the same reasons as for §3.1, above, PP+ should not require that consumer refunds be awarded unless there is evidence of consumer harm.

§4.1: It is unclear why the Executive should have the privilege to provide a different timeframe from the Tribunal for consumer refunds. There should be a consistent approach to the issuing of consumer refunds and we suggest a universal policy whereby refunds should be issued as soon as is practicable, and certainly within 28 days.

Definitions of those involved in providing PRS

§5.3: The latest understanding on registration is that Level 2 service providers will not need to register individual services with PP+, but rather provide PP+ with customer care information for their PRNs and Premium Short Codes. This renders the second bullet point redundant.

Due diligence and risk assessment and control on clients

§3.5: The latest understanding on registration is that Level 2 service providers will not need to register individual services with PP+, but rather provide PP+ with customer care information for their PRNs and Premium Short Codes.

§3.7: Irrelevant to guidance on an ongoing basis.

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.



§6.2: This clause places an onus on the Level 1 provider to carry out risk assessments based on a Level 2's promotional material. While Level 1 providers may request promotional material before the launch of a new service, it should be recognized that given the wide range of media options available for promoting a service, it is impossible for the Level 1 to have visibility on all future promotional material relating to a service.

§6.13: Irrelevant to guidance on an ongoing basis.

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.

There should be no requirement to check passports of directors as it would be incongruous in some situations, such as when carrying out due diligence on a FTSE 100 company. However, there may be cases where passport checks are appropriate, such as when a Level 1 provider is conducting due diligence on an unknown individual from abroad.

Lower-cost services

§6.3: It is unclear why prior permission would be required for a lower cost international call routing service, given the low cost of the service would reduce risk of consumer harm. We would suggest this be removed.

Method of exit from a service

§4.1: The STOP command should be recognized regardless of the case of individual letters. We would suggest the second sentence be amended to read "This command should be recognized regardless of whether individual letters are entered in upper or lower case."

§4.2: We agree with the sentiment that a consumer should be able to opt out of a service by sending the STOP command in response to a billing message, but feel there is no harm where a different STOP short code is advertised, provided a STOP command in response to a billing message is also recognized.

Q8: At present, Guidance does not recommend that providers take steps to be able to recognize 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?

Guidance does make reference to this at §4.3. Given the automated nature of the vast majority of premium mobile services, this is not technically feasible. e.g. a computer would not be able to discern a consumer's intention in a message which read "I can't stop smoking". This has the potential of subscribers being unintentionally opted out of a service. The universal STOP command is widely recognized by consumers as the method of opting out of a premium rate service on mobile and as such, is sufficient as an opt-out method. We would suggest this clause be removed.

§4.5: Given that voice and video short codes can technically only charge on a per-minute or per-call basis, i.e. while the user is connected to the service, and as such don't support recurring charges, the reference to voice and video calling in this clause serves no purpose.

§5: The MNOs have rules surrounding the use of the STOP command in the context of a shared short code. This section 5 contradicts those rules, and as such introduces ambiguity. We would recommend



that the MNOs have sufficient rules in place for this eventuality and there is no value in attempting to replicate the rules here.

§6: See comment in §5, above, with regard to the reference to voice services.

Privacy and consent to charge

There is an attempt in this Guidance Note to cover two distinct areas, namely consent to charge and consent for marketing. We would suggest that it be split into two Guidance notes, separately covering Consent to Charge and Consent for Marketing. Further, we would suggest that the PECR requirements are provided via a link to the relevant website and not replicated in the Guidance Note.

§4.6: We agree with the sentiment that the Level 2 provider's right to generate a charge should be auditable. However, we see no reason why a Level 1 service provider or MNO cannot be trusted to verify opt-ins, and as such don't see the need for a third party from outside the PRS value chain to validate consent to charge.

§4.7: The suggestion included in this clause is not achievable given technical constraints and we would recommend it be deleted.

§4.9: For the purposes of auditing consent to charge, MO SMS is the preferred opt-in method in this context. However, there are services where MO opt-in is unsuitable for technical or commercial reasons. Given this, and the challenges relating to auditing web optins, we would suggest that the PIN be sent through a Level 1 service provider, which would create an audit trail for the PIN being sent to the handset. The timestamps for the PIN being sent to the handset and the PIN being entered on the website could then be compared as part of an investigation into the validity of an optin.

§7.3: The six month time limit for marketing should not apply from the time of sale, but, rather from the time of the last successful transaction with the consumer where a successful transaction is defined as either:

- An MO SMS, MO MMS, Voice or Video Call from the subscriber;

OR

- An MT SMS or MT MMS (where a successful delivery report has been provided) or a successfully connected outbound Voice or Video Call to the subscriber.

Where a consumer is receiving, say, a marketing message each week, there is no reason to opt them out of receiving marketing simply because they have not bought anything from the merchant for six months. Given there should be a simple opt-out method in the form of the STOP command, there is no consumer harm associated with sending out mobile marketing to a user, provided there has been a successful transaction (either billed or free-to-user) within the past six months.

§9.1: We would suggest that, for consistency, the MNO guidance on formatting for WAP push marketing be replicated here:

- Given the practical constraints of providing clear information in either a WAP URL or on a WAP Site, the fact that a WAP Push marketing message is free should be detailed at the very beginning of the title of the WAP Push.
- To enable the recipient to identify the sender of the WAP Push and unsubscribe from receiving further promotions, a Short Code to which the recipient can send the STOP command to

unsubscribe should also be included within the WAP Push. The recipient should not have to open the WAP Push in order to identify a Short Code to which they can send STOP for the purposes of unsubscribing.

- Incorporating these two requirements into the title of the WAP Push would be presented as follows: **“Free Msg: 81234 [Service Title]”**
- Further information on how the recipient can opt out of future promotions must also be available from the WAP Site. This needs to be provided on the WAP Landing Page or further to the recipient clicking on one clearly identified link from the Landing Page, such as a Help Page. The information to be provided must include:
 - An explanation that the subscriber can unsubscribe from receiving further promotional WAP Push messages by sending STOP to a specific Short Code. This Short Code must be the same as that included within the title of the WAP Push; and optionally also
 - A link which the subscriber can select to unsubscribe from receiving further promotional WAP Push messages.

§11.1: As per our comment on §7.3, above, we would suggest that the date of the last successful transaction with the handset be treated as the most recent consent date.

Promotions and promotional material (including pricing information)

§4.1: s.2.2.5 of the Code requires the cost of a PRS to be clearly legible and visible, which are impossible for radio promotions. We would suggest that the Guidance Note recognizes this anomaly in the code.

§4.2: We agree that pricing needs to be transparent. However, we believe that use of the GBP terminology is acceptable, particularly in cases where displaying the ‘£’ symbol isn’t possible. For example, it is feasible that certain character set codes aren’t recognized by certain SMSCs or, indeed, handsets. GBP is a common symbol in wide use e.g. at Bureau de Change, and should be identifiable by most consumers.

§4.5: For Premium Rate Texts, the Guidance Note requires that there needs to be a clear statement of how many texts need to be sent to complete a transaction. We do not agree that this is necessary, provided the consumer has been informed of the total cost of the service. E.g. If a service is to be fulfilled over two MT SMS each costing £1.50, advertising a service price of £3.00 is sufficient, and provides more clarity than stating the service will cost “2xSMS at £1.50 each”, or similar.

It is feasible that a service might be fulfilled over two MT SMS, were one SMS is chargeable and the second is free to the consumer. Stating that a service costs “1xSMS at £1.50 and 1xSMS at £0.00” would lead to more consumer confusion than stating the service costs £1.50.

For certain services, it could be expedient to state the number of messages, e.g. for chat services where a single MO SMS can result in multiple MT responses. We fully agree that in this case, the consumer’s expectations need to be clearly managed with regard to the number of MT response they can expect by engaging with the service.

§4.6: We feel the use of ‘prominent’ and ‘proximate’, whilst relevant in certain cases, may not be appropriate for all advertising types. There are certain types of advertising where prominence is achieved, but proximity is not, and yet pricing clarity is achieved given the overall impact of the advert. For example, a print advert promoting ten PRNs to vote for one of ten options. If the pricing is clear at



the top of the advert (i.e. prominent), then the fact that the pricing isn't proximate to each individual PRN is irrelevant. Similar situations would arise for dating listings where it would be impractical for the pricing to be included next to each small advert. This is a highly subjective area which has the potential to cause much confusion with service promoters, especially new entrants to the PRS industry. In light of this, we strongly believe that for this Guidance Note to be meaningful, sample screenshots should be included as to what PP+ would consider acceptable and unacceptable in relation to these requirements, using a variety of promotion types.

§4.15: We suggest that this clause be deleted given there is no requirement to inform the consumer of pricing more than once, provided the pricing meets the requirements of the Code in terms of clarity.

Q7: Should the section around free trial periods, contained in the 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.

Where a consumer has subscribed to a service which includes an initial free period, we do not believe there should be a requirement for the user to re-subscribe ahead of being charged. This would not be in line with the standard experience for consumer products which employ other billing methods – such as journal subscriptions – and any requirement for double opt-in would prove a disincentive for the adoption of mobile billing. As per our comments on the Guidance Note for Subscription services, we believe a mandatory subscription initiation message which includes the pricing would be sufficient to provide consumer protection in this case.

SERVICE-SPECIFIC GUIDANCE

Advice Services

No comment.

Betting Tipster Services

§3.1: Given the nature of a betting tipster service, we don't believe it is necessary to state this on all promotional material. However, we agree with the principle, and would suggest the clause be amended to read "Providers of betting tipster services should be able to provide evidence to substantiate claims included in the promotion of the service."

Children's Services

No comment.

Competitions and other games with prizes

We feel that the regulation of competitions and games with prizes is beyond the remit of PP+, to which end this Guidance Note should simply make reference to the relevant legislation and codes of practice, namely those of the Gambling Commission.



§3.3: This clause is redundant; this point could be made in relation to any of the service-specific guidance, e.g. a subscription betting tipster service. It is unclear why it has been included in this Guidance note and not in other service-specific guidance.

§7: In line with the sentiment stated above, we feel that this clause is dealing with what is a Gambling Commission requirement. Providing a simplified guide such as this could lead the Level 2 service provider to a conclusion without making reference to the relevant legislation and Gambling Commission requirements. It would be more helpful to industry to simply make reference to the relevant legislation and codes of practice which need to be adhered to.

Directory enquiry services

No comment.

Employment, employment information and business opportunity services

No comment.

Fundraising and other charitable promotions

§3.1: Given the MNOs can now correctly handle VAT in relation to donation services (i.e. VAT is only levied on the service charges applied down the value chain, not on the value of the donation itself) it is unclear why providers need to state the value of the donation which is paid to the beneficiary. Promotions for donations collected by other payment methods, such as cheque, credit card or direct debit, do not need to state the transactional charges associated with collecting and processing the donation such as pre-paid postage, bank charges, credit card processing charges, cost of administrative staff. Such disclosure for donations collected by mobile provides a negative image of the mobile payment channel.

With regard to the recommendation of charity short codes, the benefits for using these short codes should be stated. Alternatively, the Guidance Note could make reference to the MDA's rules on charity short codes and their implementation by the MNOs.

§3.2: This clause suggests that a charity short code could be used for a charitable competition. This is not the case. The VAT-exempt charity short codes can only be used for pure donations where there is no benefit to the donor in line with HMRC provisions.

Public Information Services

We do not feel that this guidance note provides any useful guidance in addition to the basic provisions of The Code and other Guidance Notes with regard to managing consumer expectations and general consumer protection. Some clauses, such as §3.6 which stipulates the kind of non-premium, non-mobile services which can sit on a .org site – are beyond the scope of PP+'s remit. As such we would suggest that this Guidance Note be removed.

Quiz TV

No comment.

Subscription Services

§3.1: The reference to 'clear opt-out information' should make reference to the STOP command for completeness.

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 11th Code? If not, why not?

The introduction of the initiation message was a successful response to lack of pricing clarity in subscription services resulting in consumer harm. We believe this initiation message is essential to consumer protection and should be retained under the 12th Code.

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?

Given the nature of Guidance Notes in an outcome based regulatory framework, such prescription would be unsuitable.

Virtual Chat Services

§4.2: We suggest the example be split into two possibilities:

The promotional material should clearly state either:

- The total cost of all messages (e.g. Total cost per one message sent = £4.50)

or

- The total number of messages sent and associated message cost (e.g. You will receive 3 messages at £1.50 each for every 1 message sent)

Both these options clearly state the pricing to the consumer. Including both would, in our opinion, burden the consumer with duplicate pricing information in two formats, and be more likely to cause confusion.

§4.5: The clause doesn't scan well. We would suggest "Spend reminders should be auditable and evidence of a spend reminder being successfully sent should be available on request."

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