



Information Commissioner's Office

The Information Commissioner's Office response to PhonepayPlus' Consultation on a Statement of Application in relation to charitable donations, the STOP command and SKIP functions

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this consultation on a statement of application in relation to charitable donations, the STOP command and SKIP functions. We have focused on only one question which has potential privacy implications and poses risks to individuals that could engage data protection compliance concerns.

Q.1 - Do you agree with the risks identified and our assessment of them? If not, please give your reasons and provide any supporting evidence available.

We understand this consultation concerns charitable donations made via premium rate services (PRS) and that PhonepayPlus granted a pilot which allowed the use of a SKIP facility and dis-application of certain requirements of its Code of Practice. We understand PhonepayPlus propose permanent dis-application of these requirements for all PRS based charitable donations.

The consultation details the associated risks which include consumer confusion, reputational risk and risks to vulnerable groups or circumstances. In particular our concerns would lie with the risks that have the potential to detrimentally affect consumers.

In regards to the proposal for the dis-application of the requirement at rule 2.3.12(d)(v) whereby a reminder of the STOP command is sent each month, it appears this will be a move from the previously required more

privacy friendly approach to a less privacy friendly approach. We are disappointed to note that the intention is to move away from a method where consumers are more informed and in control and are frequently reminded of their ability to stop their donation subscriptions.

We encourage transparency and openness and favour approaches where organisations provide individuals with better information. It is our view that this can assist individuals in making more informed choices and to remain in control of their information and affairs. This can also help towards compliance with the DPA's first data protection principle which requires that personal data are processed fairly and lawfully

We understand that PhonepayPlus' investigations indicate that some consumers mistook the STOP command as an instruction, and suggested that more commonly people wanted to skip a payment rather than stop entirely, but only had the option to stop their donations.

We agree that the SKIP facility is a sensible approach to tackle situations where a consumer may not want, or be able, to donate in a particular month and we are pleased that consumers are given more flexibility with this function.

However we are unsure why information about the STOP command cannot be included alongside the SKIP command every month. If there is sufficient character capacity within an SMS, a potentially privacy friendly approach would be to open the monthly message with information about the SKIP message, followed by information about the STOP message.

We are pleased to note there is a requirement to send consumers an initiation text message upon signing up. We consider this will be useful in combination with the information contained in promotional material consumers are provided with before subscribing to a PRS-based donation service. If the three-monthly STOP reminder is adopted as standard, ideally the initial information should flag up that reminders about the STOP command will only be sent at three-monthly intervals.

On a final point, we are not clear whether these proposals will impact on existing subscribers to PRS-based donations. We have some concern that an existing customer may have an expectation they will receive monthly reminders to stop their donations, and may be detrimentally affected should they suddenly stop receiving these reminders.

We do understand that the Code of Practice is outcomes focussed and allows for flexibility when the need demands it. The proposals also aim to encourage innovation in the area of charitable donations. However care needs to be taken so that any changes do not ultimately result in perceived unfairness by some individuals and do not inadvertently

contravene the first data protection principle. Ensuring that individuals are given appropriate information about the choices on offer at the outset and providing effective mechanisms to exercise these choices in practice are central to establishing a privacy friendly approach.