

**Affiliate Marketing Discussion Paper
Update**

Issued by PhonepayPlus on 30 July 2014

Affiliate Marketing: Discussion Document Update

PhonepayPlus published an affiliate marketing discussion document in March 2014 to find a mutually supportive way forward that helps address both PhonepayPlus and industry concerns about the use of affiliate marketing in premium rate services (PRS). The use of affiliate marketing by PRS providers has seen significant levels of consumer harm which has resulted in a marked lack of confidence in the market.

Our regulatory response to these issues has produced some tension between the various parts of the industry and PhonepayPlus. In addressing the concerns and tension, the discussion document aimed to clarify PhonepayPlus' approach to the regulation of PRS, open a discussion with conscientious providers about how to use affiliate marketing compliantly, draw on others' experience and set out actions we intended to undertake to further this agenda. We received five formal responses to the paper, all of which were supportive of the discussion document's aims and many of the principles contained within it. Two PRS providers and two trade association's publicly responded to the document. A further respondent requested that their response be kept confidential.

In summarising these responses, we have analysed respondents' feedback in terms of their experiences of using affiliate marketing, comments on our understanding of 'good' affiliate marketing set out in the paper, key asks and response to our workplan and recommendations.

- Respondents' experiences of affiliate marketing: Zamano noted that their experience of working with affiliates was generally positive but advertisers (i.e. Level 2s) must place tight controls on those they contract with and monitor traffic closely as affiliates are motivated to produce as many leads as possible. Trade association Action4 noted that its membership was concerned that certain affiliate marketers do not act in the interest of advertisers. These views align closely with our view of affiliate marketing; while valuable, there are very real risks associated with affiliate marketing and providers should take all appropriate steps to mitigate these. Zamano noted that monitoring, while important, can be resource intensive and rely on the sharing of information. We believe that our guidance and the initiatives detailed in this paper should assist providers in this endeavour. Buongiorno highlighted that they have a well-developed policy for dealing with affiliate marketers and that their procedures focused on preventative action, ongoing risk monitoring and ex-post action.
- PhonepayPlus understanding of 'good' affiliate marketing: Three of the four public responses to the discussion document reflected on our consideration of a set of principles that an effective affiliate due diligence risk assessment and control process should include. To this end, the three responses acknowledged that any such process should be auditable, ethical, systematic and transparent. We remain of the opinion that these principles are suitable and should assist conscientious providers in developing effective affiliate marketing programmes.
- Key asks: Respondents called on PhonepayPlus to assist industry in ensuring affiliate marketing can be used compliantly. In order to build compliance, Zamano called on the regulator to share information in a timely fashion. The Mobile Broadband Group asked that PhonepayPlus recognise providers that take all reasonable steps to mitigate the risks associated with affiliate marketing. We believe that the actions set out in this update address these stresses in an appropriate fashion.
- All respondents welcomed PhonepayPlus' commitment to working with industry to mitigate the risk of consumer harm posed by affiliate marketing. As is outlined, we look forward to working with stakeholders to further this agenda.

We also received positive informal feedback from a number of providers. It is clear the document has contributed to moving the debate around affiliate marketing beyond the difficulties of the last 12 months.

Since publishing the paper, we have continued to play an active role in a joint working group comprised of PhonepayPlus, the mobile network operators and the Association for Interactive Media & Entertainment (AIME) that was formed to deliver a mutually supportive way forward that would address our joint concerns. The working group has met five times to, among other things, discuss two industry-led initiatives that are designed to assist industry in using affiliate marketing: an Early Warning System (EWS) and AIME's digital marketing guidance. PhonepayPlus has contributed to, and is supportive of, the development of both industry-led initiatives.

PhonepayPlus recognises and welcomes the industry's efforts to meet the outcomes detailed in the Code of Practice ('the Code'). In particular, the two initiatives should make a positive contribution to protecting consumers from harm and building confidence in the market. AIME's guidance suggests that more than a third of web traffic is estimated to be fake and we continue to receive complaints from consumers that are directly related to the marketing of PRS by affiliates and other digital marketing partners. For example, since the start of the calendar year, we have received more than 600 complaints from consumers relating to PRS marketed using co-registration.

In our view, AIME's guidance is a good body of work that details a number of practical and reasonable steps that providers throughout the value chain can take to manage the risks around using affiliate marketing. However, we would note that it has the status of industry guidance, rather than PhonepayPlus guidance. We would also emphasise that following the guidance alone is not necessarily a guarantee of operating compliantly with the Code, which is outcomes-based. As AIME's guidance itself underlines: "Following the advice in the document does not ensure that affiliate fraud will not happen, nor that PhonepayPlus will not take an interest, investigate and ultimately issue a breach notification letter." It is therefore important that providers do not take a mechanistic or box-ticking approach to using the guidance, but rather use it (and other information or intelligence available) in a purposive way that focuses on achieving the underlying goal; that of ensuring that consumers are not misled into using PRS. Having said this, we recognise that in a fast moving environment, adhering to the guidance is likely to have a positive effect on a provider's ability to meet its regulatory obligations as part of its wider affiliate due diligence, risk assessment and control processes.

The second of the two industry-led initiatives that PhonepayPlus have engaged in since publication of the discussion document in March is the EWS. PhonepayPlus has agreed to support the EWS as a means to help mitigate and prevent potential forms of malpractice that could have a negative impact on consumers. The system, hosted by AIME, will both allow providers to share any risks they identify and represents another source of information that providers will likely want to consult about on a regular basis. We believe that the speedy sharing of disclosable information between the regulator and industry and among businesses themselves will help identify emerging areas of risk relating to digital marketing that can be dealt with in an appropriate fashion. In supporting this initiative, PhonepayPlus will:

- Promptly communicate cross-industry warnings where it is appropriate to do so and won't jeopardise an existing investigation.
- Not generally use information placed on the EWS as evidence to launch an investigation.
- Promptly communicate general concerns with affiliate marketing.

We will also ensure that any contribution made by PhonepayPlus to the EWS is made available to all providers regardless of whether they are AIME members or not. To this end, any information communicated by PhonepayPlus will be available to non-AIME members through the EWS¹ and will be published on our website.

¹ AIME has advised that it will make PhonepayPlus contributions visible to non-members on their system.

We remain committed to working with stakeholders to mitigate the risks of consumer harm.

PhonepayPlus will continue to meet with AIME and the MNOs to monitor the effect of the initiatives outlined as well as discuss other options as they arise.