

**Guidance on digital marketing practices
and promotions in support of the
PhonepayPlus Code of Practice**

A PhonepayPlus Consultation

A PUBLIC CONSULTATION

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Executive Summary

PhonepayPlus has previously issued Guidance on Promotions and Promotional Material: <http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011Guidance.pdf>.

The draft Guidance we are issuing on digital marketing practices is intended to supplement (not replace) this earlier Guidance on promotions and is aimed at premium rate service (PRS) providers who use digital tools to promote their services. For the purposes of this consultation digital marketing is marketing that uses electronic devices such as computers, tablets, smartphones, standard mobile phones, digital billboards and/or game consoles to promote goods and services or otherwise engage with consumers and other business partners. Internet marketing is a major component of digital marketing.

As consumers increasingly use such electronic devices to access services, digital marketing is becoming an increasingly important tool for PRS providers (as for other businesses) to reach consumers and engage them in their services. The intention of this Guidance is to help PRS providers ensure that any digital marketing they engage in – whether directly or through third parties – is done in a legitimate way that promotes genuine consumer engagement and does not mislead or harm consumers.

It is important to emphasise that in most cases, the digital marketing of PRS is compliant with the PhonepayPlus Code of Practice (Twelfth Edition) ('the Code') and helps to drive genuine consumer engagement. However, over the past year, we have seen a trend of increasing complaints, consumer harm and adjudications centred on a range of misleading digital marketing practices:

- Typosquatting
- Clickjacking
- Likejacking
- Misleading SEM/SEO
- Misleading banner ads, pop-ups and pop-unders
- Content-lockers
- Spam

In February 2012, PhonepayPlus issued a compliance update, *Misleading digital marketing of premium rate services*, which alerted providers to a number of these practices and warned that they would likely be judged as non-compliant with our Code by PhonepayPlus' Tribunal.

Since February last year, the complaints we have received about misleading digital marketing have continued to rise. In light of this, we stepped up our work in combating misleading digital marketing in premium rate, focusing on three main elements:

- Developing industry guidance for PRS providers – set out in this document.
- Taking an active approach to enforcement, where we identify breaches of our Code. This is evidenced, for example, by the ten cases we brought before our Tribunals in 2012 concerning misleading digital marketing.
- Working closely with other bodies and companies who have a common interest in combating misleading digital marketing, for example the Information Commissioner's Office, the Institute of Professional Marketing, the Internet Advertising Bureau,

Facebook and Google. An example is the work we have done with Facebook to assist them in identifying and removing misleading promotions from their website.

In taking forward this work, we recognise that misleading digital marketing is not exclusively, or even mainly, a premium rate services problem. Rather it is something that occurs with all sorts of goods and services promoted and sold over the internet or connected devices. Nonetheless, our goal as the PRS regulator is to ensure that consumers of PRS are protected from misleading digital marketing and to give PRS providers the tools they need to ensure that their marketing is compliant.

In short, this consultation outlines areas of heightened consumer risk that we have identified, highlights digital marketing practices that are likely to be found in breach of the Code and details our proposals for draft Guidance on compliant digital marketing. In particular, the draft Guidance advises PRS providers to:

- Ensure that consumers are presented with all vital information, including the price, relating to a PRS service before they commit to purchasing it.
- Not to intentionally mislead consumers into purchasing a PRS product that they may have had no intention of purchasing. All forms of intentionally misleading digital marketing are highly likely to be found in breach of the Code.
- Make sure consumer consent is provided knowingly and clearly auditable.
- Introduce appropriate controls and due diligence processes on their affiliate marketing partners or other digital lead generation partners. Where the affiliate marketing of PRS is found to be in breach of the Code, it is important for PRS providers to note they that retain responsibility for the marketing of these services.

We set out a number of questions in this document on which views are sought and we look forward to broad stakeholder consultation on the draft Guidance. Details about how to respond can be found on page 24.

Section 1

The Role of Guidance in supporting the PhonepayPlus Code of Practice

- 1.1 Paragraphs 1.5.1 to 1.5.4 of the Code of Practice set out the status of Guidance and advice in relation to the Code.
- 1.2 To assist those involved in providing PRS to comply with their responsibilities, PhonepayPlus has provided Guidance that sets out our likely interpretation of Code rules – both generally and in relation to specific service types.
- 1.3 Guidance does not form part of the Code and is non-binding on the decisions of PhonepayPlus Tribunals in the event of an investigation which requires them to adjudicate. However, it is likely that providers who have not followed any Guidance relevant to the service under investigation will be invited to explain how they have complied with the Code by other means.
- 1.4 22 separate pieces of Guidance were launched along with the Code in March 2011, and paragraph 1.5.3 of the Code allows PhonepayPlus to change or add Guidance from time to time, subject to reasonable notice and appropriate consultation. Since then, we have published a further piece of Guidance. Where PhonepayPlus intends to consult on changes to existing Guidance, or the introduction of additional Guidance, we will look to proactively engage with relevant stakeholders and gather intelligence prior to the actual consultation paper itself.
- 1.5 Over the past 18 months, we have noticed an increasing need to address issues around the digital marketing of PRS and set out our expectations in terms of consumer confidence and compliance with the Code.
- 1.6 Respondents to this consultation are invited to comment on the proposed Guidance.

Section 2

Consideration

Background

- 2.1 Digital marketing is an ever more prominent means for businesses to promote their products and services. In this context, digital marketing and promotions refers to a broad range of marketing practices that make use of online platforms. These range from online advertising (including banner ads for example) and affiliate marketing through to Search Engine Optimisation, paid placements and the use of social media. Two main forms of digital marketing appear to exist:
- 2.2 In pull digital marketing, the consumer actively seeks the marketing content, often via web searches or opening an email, text message or web feed. Websites, blogs and streaming media (audio and video) are examples of pull digital marketing. In each of these, users have to navigate to the website to view the content.
- 2.3 In push digital marketing the marketer sends a message with or without the consent of the recipient, such as display advertising on websites and news blogs. Email, text messaging and web feeds can also be classed as push digital marketing when the recipient has not given permission to receive the marketing message. Push technologies can deliver content as it becomes available and can be better targeted to consumer demographics, although audiences are often smaller, and creation and distribution costs are higher.
- 2.4 As the regulator responsible for premium rate services, we have seen how the digital marketing of PRS has grown exponentially over the past few years. The benefits are well-known: digital marketing allows PRS providers to access thousands of potential consumers in an immediate and dynamic fashion, driving consumers to engage with their products.
- 2.5 Digital marketing is often done through individuals or businesses generally known as affiliate marketers, affiliate networks, or lead generators. Affiliates can offer specific expertise and tools to help businesses reach consumers and are paid on a performance basis – i.e. they are paid for every consumer who purchases a PRS after the affiliate has directed them to the merchant's website.
- 2.6 The advantage for PRS providers in using affiliates can be two-fold. Firstly, they can gain access to marketing tools and techniques that they may not have in house. Secondly, because affiliates are paid on a performance basis, the merchant only pays for results and does not risk being saddled with marketing costs that are unrelated to commercial performance.
- 2.7 However, there are also potential risks to signing up with affiliates that merchants need to be aware of. Given the way in which they are paid, affiliates have strong incentives to drive consumers to purchase the relevant PRS service. This can be a good thing if it is done legitimately, but it can also incentivise less scrupulous affiliates to mislead

consumers in order to increase their revenues. This can be particularly the case where affiliates are small and have no particular interest in maintaining relationships or a brand reputation in the UK.

- 2.8 This is reflected in the fact that, as set out below, affiliates have been behind many of the misleading digital marketing practices we have seen in the PRS market over the past year. The risk for PRS providers contracting with such affiliates is two-fold. Firstly, their brand can be damaged by being associated with such misleading practices. Secondly, under the Code of Practice, providers remain responsible for the promotion of their services, even where it is carried out by a third party. Therefore if an affiliate promotion has breached the Code, then the relevant provider will be deemed responsible by the PhonepayPlus Tribunal and may be subject to fines or other sanctions.
- 2.9 Further information is provided in section 3 about affiliate marketing, the role of affiliate networks, and about the steps we expect providers to take in controlling and conducting due diligence on affiliates with whom they contract.
- 2.10 In the vast majority of cases, the digital marketing of PRS is legitimate and serves both the interests of businesses and consumers. However, we continue to see examples of digital marketing of PRS that are misleading and potentially sources of risk to consumers as well as to PRS providers themselves. In February 2012 PhonepayPlus issued a compliance update to assist PRS providers to engage in digital marketing that would likely be considered compliant with the Code. Despite its publication, instances of problematic digital marketing have continued to grow.
- 2.11 We estimate that consumer complaints relating to digital marketing now represent around 40% of total complaints received by PhonepayPlus, up from less than 10% in mid-2011 – although down from a peak of 50% in mid-2012. Total consumer complaints relating to the digital marketing of PRS received by PhonepayPlus now average over 350 per month.
- 2.12 In 2012 alone, PhonepayPlus' Tribunals adjudicated on ten cases directly related to the digital marketing of PRS, levying fines of £1.38 million against PRS providers deemed to have been in breach of the Code.
- 2.13 The total number of consumer complaints against these ten cases was 861 and resulted in fines ranging from £10,000 up to £500,000 depending on the severity of the Code breaches. Of the ten cases, subscription-based quiz services were especially prominent. This is of particular concern given that subscription-based services can result in high cumulative spends and therefore have significant potential for consumer harm.
- 2.14 PhonepayPlus believe that misleading digital marketing not only has the potential to harm the consumer but also damages the image of the PRS industry, hindering its ability to operate and innovate. We have therefore decided to review our response to misleading digital marketing. In this consultation document we detail practices which we believe are likely to be in breach of the Code. Our principal concerns relate to three outcomes detailed in the 12th Code of Practice: 'transparency', 'fairness' and 'privacy'.

2.15 To illustrate our concerns, this section outlines three examples of misleading marketing in a digital context that have been adjudicated by PhonepayPlus Tribunals and found to have harmed consumers and damaged the image of the PRS industry.

Case Study 1

- 2.16 The first case study relates to a non-subscription competition service costing £3 per question. The service, operating on a shortcode, was promoted online using a method known as 'typosquatting' (detailed later in the document).
- 2.17 In this instance, consumers were led to the service if they mistyped or misspelt a common domain name – for example, rather than entering 'Facebook' into their navigation bar, a consumer might have accidentally typed 'Dacebook'. The website arrived at resembled the intended destination, but contained an invitation to take part in a short survey with the chance to win a MacBook Air.
- 2.18 Anyone answering the questions correctly was then asked to enter their personal details to claim their prize. They were then sent a unique pin number to their mobile phone, which they were asked to also enter on the website. The consumer would then receive quiz questions by SMS at £1.50 per question and £1.50 per answer.
- 2.19 38 consumers complained (15 on behalf of their children) that the service was misleading and resulted in high cumulative spends – one consumer was billed for a total of £63. A PhonepayPlus Tribunal found that the PRS provider knowingly mimicked a well-known and trusted brand to entice consumers to a competition service. This was compounded by a lack of pricing transparency. The provider was fined £100,000.

Case Study 2

- 2.20 Another case brought before a PhonepayPlus Tribunal, involved misleading online advertising. When surfing the internet, consumers were presented with banner ads or pop-up adverts that stated "Congratulations! You are today's iPad2 winner!" or "Congratulations you won! It is not a joke. You are the 100,000th visitor of the day! Claim your winnings!"
- 2.21 The consumer was then asked to provide their personal details – purportedly for their prize to be shipped – but, in reality, was entered into a monthly prize draw at a cost of £3 every month. The consumer is enticed into the service with a supposed prize but, in reality, is misled into subscribing to an unrelated monthly prize draw.
- 2.22 The provider claimed that the misleading advertising was propagated without their consent by an affiliate marketer with which they contracted. The provider therefore argued that the contractor was responsible. Despite this, the Tribunal found the provider responsible for the misleading marketing and fined it £85,000.

Case Study 3

2.23 The third case study also relates to misleading online advertising publicised by an affiliate marketer on behalf of a Level 2 provider. Consumers were enticed to engage with a PRS by free £175 or £250 supermarket vouchers and an application that purported to allow consumers to see who had viewed their social media profiles.

2.24 On clicking on the offer, consumers were directed to 'share' the promotion on their social media 'wall' and/or with their 'friend's list'. They were then required to complete a survey. Having clicked on one of the surveys, the consumers were taken to a PRS provider's website.

2.25 The consumer was then told to enter their mobile number. After a mobile number was entered, the promotion diverted to a competition operated by the PRS provider and there was no further mention of the initial offer(s).

2.26 A PhonepayPlus Tribunal found consumers had interacted with the PRS competition inadvertently with the expectation that by entering their mobile number, they would gain access to the initial offer; promotions were designed to mislead consumers as there was no evidence that the original offers were real and consumers were misled. The provider was fined a total of £500,000.

2.27 All three cases set out characteristics common to misleading digital marketing and which cause consumer confusion and subsequent harm. These include:

- The mimicking of trusted brands
- The false reasons given to consumers for providing MSISDN details which will result in a charge
- A lack of transparency in terms of price or the exact frequency and terms of charging.

2.28 Misleading digital marketing is far from being unique to premium rate services – it occurs with many types of goods and services sold over the internet. However, PhonepayPlus considers it important to address the problem to ensure that consumers and the reputation of the PRS industry are protected.

2.29 We are therefore stepping up our efforts to address misleading digital marketing, focusing on three main elements:

- Developing industry guidance for PRS providers – set out in this document.
- Taking an active approach to enforcement, where we identify breaches of our Code. This is evidenced, for example, by the ten cases we brought to our Tribunals in 2012 concerning misleading digital marketing.

- Working closely with other regulatory and industry bodies and companies who have a common interest in combating misleading digital marketing, for example the Advertising Standards Authority, the Information Commissioner's Office, the Institute of Professional Marketing and the Internet Advertising Bureau.
- Working closely with companies like Facebook, Google, we have identified and helped remove misleading promotions from their websites.

2.30 In addition to a variety of concerns relating to transparency and fairness or fair treatment, the next section also addresses concerns PhonepayPlus has relating to consumer privacy from unsolicited marketing.

Q.1: Do you agree with our assessment of digital marketing in the PRS context and our overall approach for dealing with it? If not, why not?

Section 3

Risks and Proposals

3.1 As digital marketing becomes more prominent, PhonepayPlus has identified a number of emerging areas of potential risk to consumers of PRS. These have been identified with industry stakeholders as well as through our monitoring and Tribunal process. Our principal concerns relate to transparency, fairness and privacy.

- Transparency – Rule 2.2.1 of the Code states: “Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.” As such, consumers should be presented with all vital information, including the price, relating to a PRS service before they commit to purchasing it.
- Fairness – Rule 2.3.2 of the Code states: “Premium rate services must not mislead or be likely to mislead in any way.” Therefore consumers should not be intentionally misled into purchasing a PRS product that they may not have intended to purchase.
- Privacy – Rule 2.4.1 of the Code states: “Providers must ensure that premium rate services do not cause the unreasonable invasion of consumers’ privacy.” Consumer consent must be knowing and clearly identifiable.

3.2 We have identified several digital marketing practices that potentially pose risks to consumers around these outcomes. These are:

Practices which are always misleading

- Typosquatting
- Clickjacking
- Likejacking

Practices which are mainstream, but with which we have seen some misleading examples in a PRS context

- Banner ads, pop-ups and pop-unders
- Search engine marketing (SEM) and Search Engine Optimisation (SEO)

Practices which are highly likely to mislead consumers in PRS

- Content-lockers

And

- Unsolicited Electronic Communications (Spam)

3.3 It is also important to note that the above list is non-exhaustive. Digital marketing is always changing and new practices are evolving over time. Therefore PRS providers need to be vigilant not only to the above practices, but in any new misleading marketing practices that may emerge in due course.

- 3.4 The following pages detail practices that we have identified that pose potential risks, illustrating how these digital marketing practices might be found to contravene the Code outcomes prior mentioned. They do not comprise an exhaustive list, but include the practices that we are currently aware of through our own monitoring, consumer complaints handling and engagement with industry.
- 3.5 Given that many of our general expectations around transparency, most notably in relation to price, are detailed in previous Guidance on “Promotions and Promotional Material”, we do not revisit them in this consultation. Needless to say, all digital marketing and promotion should comply with all our expectations previously set out in relevant Guidance. These include, but are not limited to: Due Diligence and Risk Assessment and Control on Clients, Method of Exit from Service, Privacy and Consent to Charge and Promotions and Promotional Material.

Typosquatting

- 3.6 Typosquatting, sometimes known as URL hacking or cybersquatting, is a practice which involves registering internet domains that are intentionally misleading to consumers. Misspelt domain names, such as “Dacebook” instead of Facebook, “Twtter” instead of Twitter and “Wikapedia” instead of Wikipedia, are registered to redirect consumers away from their intended destination, leading them to web pages that imitate or resemble that destination.
- 3.7 In PRS terms, such web pages invite consumers to purchase PRS products that the consumer may believe is associated with another, more trustworthy, brand. The misleading association is often compounded by a lack of pricing or charging transparency.
- 3.8 For example, a consumer might mistakenly type ‘twtter’ into his or her browser’s address bar. Rather than arriving at his or her intended destination (i.e. twitter), the consumer arrives at a different website that uses the same colour scheme, type font and often a similar logo as the social media site. The website is home to a PRS promotion – a quiz-based prize drawer for example – that closely resembles the intended destination. The consumer may then interact with the PRS service in the belief that it is associated with their intended destination.
- 3.9 We understand that companies like Facebook and Twitter are very concerned about sites that “squat” on their domain names and take action where they can to take down such sites.
- 3.10 We believe that consumers should not be intentionally misled and be charged for a service that has not been marketed in a transparent fashion. Such a practice is highly likely to contravene outcomes in the PhonepayPlus Code around ‘fairness’ and ‘transparency’. It could also potentially have a detrimental effect on trust in PRS. We therefore strongly encourage PRS providers not to engage in any form of typosquatting as such practice is highly likely to be found in breach of the Code by Tribunal. Indeed, as detailed in the background to this consultation, PRS providers’ use of this practice has already been found in breach of the Code.

- 3.11 Paragraph 2.3 of the draft Guidance sets out PhonepayPlus' expectation around typosquatting:

As set out in Rule 2.3.2 of the Code, providers must not mislead consumers. If a provider were to align itself with or imitate another brand to which it does not have an association, in a way that is likely to mislead consumers about the nature of the service being offered, a PhonepayPlus Tribunal is highly likely to consider it in breach of Rule 2.3.2.

Q.2: Do you agree with our consideration of typosquatting and proposed expectation? If not, why not?

Clickjacking

- 3.12 Often referred to as 'UI readdress attack'¹, Clickjacking is designed to hijack clicks from one webpage, redirecting users to a different webpage, possibly hosted on a different domain. Essentially, the user is unknowingly redirected away from their intended destination. Users will often be unaware of the exploit as the link to the webpage they arrive at may be disguised as something else. This is achieved by layering one or more transparent layer (iframes) on top of the website the consumer thinks he or she is viewing. So rather than being directed to the intended website, a consumer is actually clicking on another link and thus directed elsewhere. In PRS terms, the consumer will be unknowingly redirected to a website offering a PRS.
- 3.13 For example, a consumer may click on a cartoon cat to stroke it. Disguised beneath the cat is a link to a website offering a PRS, which the consumer is then unknowingly directed to. Even where the consumer is then directed to a Code-compliant website, the affiliate marketer may use i-frames to obscure price or other information in order to increase the chances of purchase by the consumer.
- 3.14 By design, Clickjacking is misleading. Consumers are directed to a website they have no intention of visiting and then be further misled once they arrive. As above stated, we believe that consumers should not be deliberately misled into visiting websites that they did not originally intend to. Misleading consumers is likely to have a detrimental impact on trust in the PRS industry and is highly likely to be in breach of Rule 2.3.2 of the Code.
- 3.15 Paragraphs 3.3, 3.4 and 3.5 of the draft Guidance sets out PhonepayPlus' expectations around Clickjacking:

As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. This includes linking to a website offering PRS without consumers' prior knowledge.

Consistent with Rule 2.2.1, all PRS promotions should be as open and transparent as possible, allowing consumers to make an informed choice.

¹ UI readdress attack stands for User Interface readdress attack.

Where a PRS promotion is linked to from another website, the link should be open and transparent, allowing consumers to make an informed choice – we believe that consumers should not be deliberately misled into visiting websites that they did not intend to. Promotions should clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format. Consumers should be fully aware as to what they are engaging in before any charging commences.

3.16 Any provider that fails to meet our expectations is highly likely to be found in breach of the Code by a PhonepayPlus tribunal.

Q.3: Do you agree with our consideration of Clickjacking and our proposed expectations? If not, why not?

Likejacking

3.17 The growth in popularity of social media platforms, such as Facebook, has opened new opportunities for the legitimate digital marketing of all manner of products, including PRS. While marketing on social media is perfectly legitimate when Code compliant, Likejacking is a form of Clickjacking aimed at tricking users into 'liking' something they did not intend to². Likejacking thus utilises consumers' unknowing endorsements to market a product.

3.18 In PRS terms, the consumer might click on an offer a contact has 'liked'. In order to access the content the consumer then goes through a number of steps similar to clickjacking. This is compounded if the consumer unintentionally 'likes' a PRS product or promotion. The PRS provider will thereby benefit from the credibility garnered from the apparent recommendation and leverage an unknowing user's network of contacts to promote its service. The potential reach of a well-designed social media campaign is thus significant.

3.19 A typical user journey might follow the following steps:

- i. The user views a link on their social media homepage that a contact has 'liked' and clicks on it. This may or may not be directly related to the PRS promotion.
- ii. The user is taken to a seemingly blank page with a large message stating 'click here to continue'
- iii. In reality, clicking on the link can do two things:
 - a. direct the user to the PRS promotion that will enable him or her to engage in the promotion that their contact supposedly 'liked', and
 - b. cause the user to unknowingly 'like' the original link, therefore posting the link on their wall/page too, propagating the promotion.

² 'Liking' refers to the process of endorsing a comment or product (post) on Facebook. When a Facebook user 'likes' a comment or product, their endorsement is posted to their wall (personal homepage) and is made visible to their contacts.

3.20 Likejacking can therefore result in two potential sources of consumer harm. Consumers can be redirected to websites that they did not intend to visit and their network of social media contact's can be accessed without their explicit consent. We have also noticed examples of 'likejacking' where consumers have to 'like' a particular PRS offer in order to access unrelated 'locked' content (content locking will be discussed in more detail later in the document). We believe that consumers should not be directed to websites on false recommendation, which is likely to be considered misleading. We also believe that PRS promotions should not be propagated by consumers without their informed consent.

3.21 Such practice is highly likely to be in breach of Rule 2.3.2 of the Code. It is also likely to be in breach of Rule 2.4.1 on consumer privacy. In addition, such a practice is likely to be in breach of Facebook's Page Terms and, in particular, rule III. E. iv, which states: "You must not use Facebook features or functionality as a promotion's registration or entry mechanism. For example, the act of liking a Page or checking in to a Place cannot automatically register or enter a promotion participant."³

3.22 Paragraph 4.3 and 4.4 of the draft Guidance sets out PhonepayPlus' expectations around Likejacking:

As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. Links to PRS promotions must be open and transparent, allowing consumers to make an informed choice. Promotions must clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format. Ultimately consumers should be in no doubt as to what they are engaging in before any charging commences.

As set out in Rule 2.4.1 of the Code, providers "must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy." This includes leveraging a consumer's network of contacts without their explicit and knowing consent. Any links to a consumer's network of social media contacts should only commence after specific, auditable evidence of consent to do so has been received. Records of consent should be made available to PhonepayPlus upon request.

Q.4: Do you agree with our consideration of Likejacking and our proposed expectations? If not, why not?

Misleading Banner ads, Pop-ups and Pop-unders

3.23 Banner ads, pop-ups and pop-unders are forms of online advertising to attract traffic to a website. Banner ads are embedded on an existing webpage, whereas pop-ups and pop-unders generally open a new web page either on top of the viewer's active window or, in the case of pop-unders, below it.

³ https://www.facebook.com/page_guidelines.php

- 3.24 In all three scenarios, the consumer is knowingly led to a website, where the consumer will potentially purchase a PRS product using a secure payment method. In such terms, the vast majority of banner ads, pop-ups and pop-unders are compliant with the Code.
- 3.25 We have noticed that consumers are being enticed to click on a banner ad, pop-up or pop-under under false pretences. As outlined in Case Study 2 on page 8, we have noticed that advertisers have stated that consumers have won an iPad or similar on a pop-up in order to encourage them to pursue a link, when in reality they have not yet won anything. We believe this to be intentionally misleading.
- 3.26 To ensure consumer protection and assist industry maintain confidence in the market, PhonepayPlus considers it best practice to inform consumers of the price at every stage of a promotion. However, we appreciate that it may not always be technically possible to inform the consumer of the price on all banners ads, pop-ups and pop-unders. As long as consumers are adequately informed of the price, or any other key information, prior to the point of purchase, this is likely to be compliant with the Code. By contrast, when a banner ad, pop-up or pop-under leads to a website where pricing information is not clearly stated, and thus the consumer might be misled, the provider is highly likely to be found in breach of the Code. As such, providers are urged to cater for the fact that consumers may not have been adequately informed of price and other key information before reaching their website.
- 3.27 Paragraph 5.4 of the draft Guidance sets out PhonepayPlus' expectation on banner ads, pop-ups and pop-unders:

Consistent with Rule 2.2.1 of the Code, all PRS promotions should be as open and transparent as possible, allowing consumers to make an informed choice. Links to PRS promotions must therefore be open and transparent and not entice consumers on false pretences. Promotions must clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format.

Q.5: Do you agree with PhonepayPlus' consideration of banner ads, pop-ups and pop-unders and our expectations around them? If not, why not?

Misleading use of SEM and SEO

- 3.28 Search Engine Marketing (SEM) is a form of digital marketing that involves the promotion of websites by increasing their visibility in search engine results. Such marketing is usually paid for, and includes word optimisation as well as paid placements, contextual advertising and paid inclusions. Search Engine Optimisation (SEO) is a free form of SEM that adjusts or rewrites web content to achieve a higher ranking on search engine results pages.
- 3.29 Both SEM and SEO are increasing prominent marketing tools for PRS providers; web based is the fastest growing form of PRS advertising. Indeed, it is natural that any PRS provider would want their offering to appear as prominently as possible on any search engine results page.

- 3.30 However, PRS providers may use meta tags⁴ that may not accurately reflect the nature of the service they offer in order to feature favourably in search engine results. An example might be the use of the word 'free' when all or the majority of services being offered are not free. If a majority of the content on the provider's website is not accurately described, this practice is highly likely to be considered in breach of Rule 2.3.2 of the Code by a PhonepayPlus Tribunal.
- 3.31 In its recent consultation document on information, connection and signposting services (ICSS) [<http://www.phonepayplus.org.uk/For-Business/Consultations-and-Invitations-to-Tender/Previous-consultations/Further-assessment-of-ICSS.aspx>], PhonepayPlus identified specific concerns about how these services are being promoted through SEM, in a way that confuses consumers about the nature of the service being offered. As a result, PhonepayPlus is consulting on imposing specific requirements on the use of SEM by ICSS providers that aims to improve transparency and reduce harm for consumers.
- 3.32 In order to encourage SEM and SEO of PRS that is compliant with the Code, paragraphs 6.2 of the draft Guidance sets out PhonepayPlus' expectations:

Providers are expected to use adwords or meta tags that are accurate descriptors of the service being offered and should not mislead consumers either about the cost or the nature of the service. For example, where the meta tag 'free' is used, all or at least the majority of services being promoted should be free. If none or only a minority of services being are free, a PhonepayPlus Tribunal is highly likely to find such practice in breach of the Code. Any reference to a brand or company to which the provider is not associated is also likely to be considered misleading if it confuses consumers about the nature of the service being offered.

- 3.33 Any promotional mechanic that fails to meet our expectations in this regard is highly likely to be found in breach of the Code by a PhonepayPlus Tribunal. We have also noticed examples of websites being compromised by PRS promotions. For example, a consumer enters a search term into a search engine that is completely unrelated to any PRS promotion. Having found the link they are looking for, the consumer clicks on the appropriate link only to be taken to a PRS promotion. This is clearly a breach of any expectation PhonepayPlus has around digital marketing.

Q.6: Do you agree with PhonepayPlus' definition of SEM and SEO and our expectations around them? If not, why not?

Content-lockers

- 3.34 In many cases, the practices listed above all lead the consumer to interact with a service through several steps. Often consumers are enticed into purchasing a product

⁴ Meta tags are pieces of hidden electronic code added to the description of a document or website that 'explain' the content to a search engine or browser. Adding meta tags to a document or website therefore allows a search engine to more accurately index the document or website, with the aim of boosting its relevance on search engine results.

– often PRS – in order to access unrelated content. Consumers may be looking to download an app or a new film or access a particular offer (shopping vouchers, for example), which is not made available until they go through a certain number of steps where charges might be incurred. Effectively the content they wish to access is ‘locked’ until they go through the seemingly unrelated steps.

3.35 In PRS terms, a consumer journey might resemble the following:

- A consumer sees a link to download the latest blockbuster film for free on a search engine results page.
- The consumer clicks on the link and is directed to a website, where the offer is described in more detail. The consumer is then invited to click again to begin the download process.
- Having attempted to download the film, the consumer is then presented with a dialogue box asking them to complete an online survey in order to access the content they originally intended to download - the content has effectively been locked.
- The survey asks the consumer to enter his or her mobile phone number and to agree to enter the survey at a certain cost per entry (although this is not always clear and transparent). More often than not, this survey is linked to a competition to win the latest Apple product.
- A pin code is then sent to the consumer’s mobile phone, which they then re-enter and the PRS service begins.
- The consumer is then charged for the unrelated PRS service, be it a subscription-based quiz service or not, in order to complete the download of the original film. In the case of a subscription-based PRS service the costs incurred can be substantial
- In most cases, the original content (the film in this example) is then unlocked. However, this is not always the case.

3.36 We have noticed that content locking is not just prominent on internet search engines result pages (through SEM/SEO) but is also common in conjunction with clickjacking and likejacking. Previously we have noticed content locking in conjunction with banner ads as well.

3.37 In PRS terms, such offers are likely to mislead, as consumers are enticed into entering a PRS service in order to access content that is unrelated to that service. Not only is this potentially misleading but the practice will damage the image of the PRS industry. Given Rule 2.3.2 of the Code, a PhonepayPlus Tribunal is highly likely to find such practice misleading. An example of content-locking which a PhonepayPlus Tribunal adjudicated on is set out in Case Study 3 on page 9 of this document.

3.38 Paragraph 7.3 of the draft Guidance sets out our expectation around content-locking practices:

As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. PRS promotions that garner consumer consent to engage in PRS in order to access unrelated ‘locked’ content are highly likely to be considered misleading,

especially where the consumer is not made fully aware of the cost of accessing content and/or the content is not delivered.

Q.7: Do you agree with our consideration of content locking practices and our expectations around them? If not, why not?

Unsolicited Electronic Communications (Spam)

- 3.39 According to the Information Commissioner's Office, spam emails are those sent to an individual without their consent. The Privacy and Electronic Communications Regulations (EC Directive) 2003 ('the Regulations') state that marketing emails⁵ can only be sent to individuals if they have consented to receive them, except where there is a clearly defined customer relationship and the customer has not opted out of receiving such emails (often referred to as 'Soft opt-in' under paragraph 22(3) of the Regulations).
- 3.40 As such, unsolicited email marketing could be in breach of the above-mentioned regulations. On the other hand, email marketing to customers that a PRS provider might already have an on-going relationship with is unlikely to be considered dishonest, particularly where the Soft opt-in requirements of the Regulations are satisfied, and is likely to be compliant with the Code.
- 3.41 Spam, by definition, even where it is not misleading in terms of content will likely be considered a breach of consumer privacy. While spam in general refers to emails, it can also relate to SMS and MMS messages with web links. We have already addressed unsolicited marketing in Guidance on privacy and consent to charge. In that Guidance we set out clear expectations regarding the right to privacy with reference to mobile phones. Those expectations are consistent with our expectations in the digital environment.
- 3.42 We have also noticed examples of PRS related spam that is linked to the use of malware, both of which are highly likely to be in breach of the Code.
- 3.43 In addition, paragraph 8.3 of the draft Guidance sets out PhonepayPlus' expectations on spam:

As set out in Rule 2.4.1 of the Code, consumers have the right to privacy. In line with guidance from the Information Commissioner's Office, electronic marketing can only be sent to consumers if there is explicit and auditable consent to receive it, or if there is an existing, clearly defined and direct customer relationship and the customer has not opted out of receiving such communications. For more information on PhonepayPlus' expectations around the consumer's right to privacy, providers should see the General Guidance Note on Privacy and Consent to Charge.

⁵ Paragraph 1 of the Regulations defines 'electronic mail' as "...any text, voice, sound or image message sent over a public electronic communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient and includes messages sent using a short message service".

3.44 Any failure to meet the above-mentioned expectations is highly likely to result in a breach of the Code.

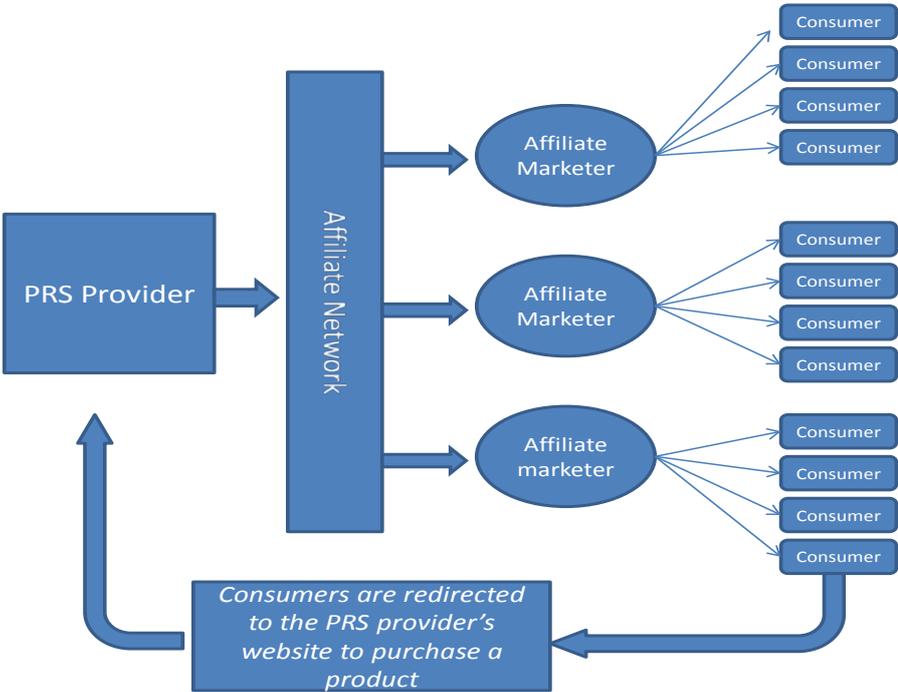
Q.8: Do you agree with PhonepayPlus’ consideration of spam and our related expectations? If not, why not?

Q.9: Are there any other potentially misleading digital marketing practices that we have not identified? If so, then please suggest any, including appropriate evidence.

How to manage relationships with affiliate marketers, lead generators or other digital marketing partners

3.45 As set out earlier in this document, PhonepayPlus is aware that PRS providers may, in many cases, subcontract their digital marketing to other parties. These include affiliate marketers, but also any other partners involved in digital lead generation. Given the nature of the online environment, this is an entirely legitimate and reasonable thing to do. In the case of PRS the majority of these partners are affiliate marketers or affiliate networks and thus we refer to them as such here. However, the expectations set out in the following pages also apply to other digital marketing or lead generation partners.

3.46 Affiliate marketers are digital marketing partners that help engage consumers in services on behalf of their client. PRS providers often contract with affiliate networks who act as conduits to aggregate together numerous, diffuse affiliate marketers or other forms of lead generator. However, providers may choose to contract directly with affiliate marketers (publishers), managing their affiliate marketing programmes in-house.



- 3.47 The diagram attempts to illustrate the relationship between a PRS provider, affiliate network (if employed), affiliate marketers and, ultimately, the consumer. The PRS provider contracts with the affiliate network to advertise its product online to consumers via various disparate affiliate marketers. The affiliate network will engage a range of affiliate marketers who are incentivised to reach out to consumers to encourage them to redirect to a PRS provider's website in order to use a PRS. In many cases, the relationship illustrated can be replicated several times; an example would be an affiliate marketer or network advertising on a website where they know consumers are likely to have been drawn by affiliate marketing. In this way the consumer can be drawn through the process outlined in the diagram above more than once before they arrive at their "final" website. Affiliate networks and marketers will often have relationships with one another in order to generate traffic.
- 3.48 Affiliate marketers and networks tend to be remunerated on a performance-related basis, often in the case of PRS using a per client acquisition model (cost per acquisition). As such, the PRS provider only pays an affiliate marketer or network if a new client registers with their service (and thereby consents to a charge). While this generally ensures that the PRS provider only rewards affiliate marketers if it garners fee-paying clients, the model may increase the incentive to mislead.
- 3.49 As with digital marketing generally, in most cases, affiliate marketing is a valuable, revenue-generating practice that is entirely compliant with the Code. However, we have noticed increasing complaints relating to the digital marketing of PRS through affiliate marketers that breach the Code. Indeed, many of the aforementioned practices identified by PhonepayPlus are often associated with affiliate marketing.
- 3.50 In particular, PhonepayPlus has noticed breaches relating to 'transparency' and 'fairness'. Examples include the lack of pricing information at point of purchase and promotions using false incentives (similar to Case Study 3 on page 8, an example being the incentive of receiving supermarket vouchers totalling £150 for a premium rate subscription-based competition service costing £2 per week). Considering Rules 2.2.1 and 2.3.2 of the Code, such examples of affiliate marketing are likely to be in breach of the Code.
- 3.51 The definition of a Level 2 provider under Rule 5.3.8(b) of the Code makes clear that such providers are responsible for the promotion of the service regardless of whether they sub-contract that activity to a third party such as an affiliate marketer. This means that where a promotion by an affiliate marketer has been found to be in breach of the Code in relation to a PRS service, the entity that will be held responsible by a PhonepayPlus Tribunal for the relevant breach will be the Level 2 provider that contracted with that affiliate marketer.
- 3.52 Given these risks, it is important that if contracting with affiliates (be it marketers or networks) PRS providers put in place appropriate and robust controls on their affiliates. Such controls should, as a minimum:
- Enable a PRS provider to understand how their customers reach their website, and which affiliate marketer has brought them there, in order to make their affiliate marketing campaigns effective as well as ensure consumer

protection. Affiliate networks we have engaged with through pre-consultation are confident this is very much possible at negligible cost.

- Ensure that any affiliates acting on a provider's behalf are not engaging in misleading digital marketing practices and that their digital marketing adheres to the outcomes set out in the Code. A stringent approach to monitoring and service testing should identify issues at a very early stage.

3.53 The absence of any such mechanisms may be viewed by a PhonepayPlus Tribunal as a failure of the provider to assess the potential risks posed by a party with which they contract and maintain steps to control these risks. When the affiliate value chain as experienced by a consumer is replicated several times (as alluded to in paragraph 3.48), some are concerned that is potentially more difficult for PRS providers to track their affiliate marketing. However, we do not think that this absolves a provider of responsibility and if put in place, basic safeguards, should minimise this risk.

3.54 We identified a number of processes that can assist PRS providers in effectively monitoring their affiliate marketers in a compliance update issued in February 2012. We further develop this advice here. Paragraphs 9.4, 9.5 and 9.6 of the draft Guidance sets out PhonepayPlus' expectations around affiliate marketing and the control of it. These are that PRS providers throughout the value-chain should:

- *Take account of PhonepayPlus' previous Guidance on due diligence and risk assessment and control on clients. In particular, PRS providers should undertake effective due diligence on any affiliate network and marketer that they are seeking to engage. As stated in paragraph 2.1 of the Guidance on Due Diligence and Risk Assessment and Control on Clients, providers should seek adequate information to assess the suitability of a new affiliate with whom they are contracting.*
- *Place clear expectations on their affiliate networks, marketers and/or other lead generation partners around Code compliance and obtain a clear commitment to this end as part of any contract signed. Expectations should include (but are not limited to):*
 - *Price and other key information should be clearly stated;*
 - *Any marketing be directly related to the PRS offering i.e. not intentionally unrelated and misleading;*
 - *That affiliates will not engage in any of the misleading practices listed above or any other such misleading practices.*
- *Closely monitor their affiliate marketing, particularly in response to consumer complaints, unexplained spikes in traffic to their service and where an affiliate marketer has previously been associated with a breach of the Code. We believe that effective monitoring and tracking tools are in the interest of the PRS industry and require limited capital outlay.*
- *To this end, we recommend that providers utilise effective tracking and monitoring tools and audit their affiliate marketing periodically regardless of activity to ensure that is both effective and compliant. The Internet Advertising Bureau has produced a useful best practice guideline that may be a helpful starting point on how to conduct an affiliate audit. It can be found at:*

<http://www.iabaffiliatemarketing.com/wp-content/uploads/2011/09/Best-Practice-on-Audits-and-Removals-v.5.pdf>.

- *Make it clear to affiliate marketers (and reflect this in any contract) that any failure to comply with the expectations set will result in suspension of payments.*
- *If an affiliate marketer is unable to meet the expectations placed on it, providers are advised to review their relationship with both the affiliate marketer and affiliate network concerned.*
- *Keep clear records of any activity, and make them available to PhonepayPlus upon request.*

While we recognise that Level 2s generally contract with digital marketing partners, Level 1 providers are, too, responsible for the risk assessment and control of their clients (i.e. Level 2s) to ensure that consumer outcomes outlined in the Code are met, including around their promotional material. This is particularly important where a client is known to be using affiliate marketing. In such cases, the Level 1 should check that the Level 2 has appropriate controls in place and raise any issue of concern should it arise.

Q.10: Do you agree with our illustrative representation of affiliate marketing? If not, why not?

Q.11: Do you agree with our consideration of affiliate marketing and our expectations? If not, why not?

Section 4

Responses and Next Steps

We are seeking the views of all stakeholders on the proposals and questions contained in this document by no later than **June 27th** (6 weeks from publication of the consultation).

Where possible, comments should be submitted in writing and sent by email to jlevack@phonepayplus.org.uk by no later than **June 27th**. Copies may also be sent by mail or fax to:

Mr Jonathan Levack
Senior Policy Executive
PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7459
Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or email (insert name) using the above contact details.

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.

List of Consultation Questions

Q.1: Do you agree with our assessment of digital marketing in the PRS context and with our overall approach for dealing with it? If not, why not?

Q.2: Do you agree with our consideration of typosquatting and proposed expectation? If not, why not?

Q.3: Do you agree with our consideration of Clickjacking and our proposed expectations? If not, why not?

Q.4: Do you agree with our consideration of Likejacking and our proposed expectations? If not, why not?

Q.5: Do you agree with PhonepayPlus' consideration of banner ads, pop-ups and pop-unders and our expectations around them? If not, why not?

Q.6: Do you agree with PhonepayPlus' definition of SEM and SEO and our expectations around them? If not, why not?

Q.7: Do you agree with our consideration of content locking practices and our expectations around them? If not, why not?

Q.8: Do you agree with PhonepayPlus' consideration of spam and our related expectations? If not, why not?

Q.9: Are there any other potentially misleading digital marketing practices that we have not identified? If so, then please suggest any, including appropriate evidence.

Q.10: Do you agree with our illustrative representation of affiliate marketing? If not, why not?

Q.11: Do you agree with our consideration of affiliate marketing and our expectations? If not, why not?

Annex A

Draft General Guidance Note on Digital Marketing and Promotions

GENERAL GUIDANCE NOTE

Digital Marketing and Promotions

Who should read this?

Any provider that promotes their premium rate service (PRS) using forms of digital marketing.

What is the purpose of this Guidance?

To ensure consumers are protected from potential harm and to assist all companies marketing PRS in the digital space to better understand and comply with the Code of Practice (the Code). It sets out PhonepayPlus' expectations related to compliant digital marketing and details what might be considered misleading. This Guidance supports previous work, the *General Guidance on Promotions and Promotional Material*, and builds on the '*Misleading digital marketing of premium rate services*' compliance update issued in February 2012. Before reading this draft Guidance, providers should familiarise themselves with the expectations set out in both of those publications.

What are the key points?

The digital marketing of PRS is increasingly prevalent. Whilst this is a very natural progression and, in most instances, entirely compliant with the Code, PhonepayPlus has noticed, both through Tribunal adjudications and complaint numbers, that certain practices might be found to contravene the Code. Practices of concern are likely to be found to contravene one (or more) of three outcomes in the Code: 'transparency', 'fairness' and 'privacy'.

This Guidance is designed to assist PRS providers in ensuring that their digital marketing meets PhonepayPlus' expectations in relation to compliance with the Code. The main issues for providers to be aware of are:

- Pricing information
- Misleading promotions
- Attracting consumers on false pretences
- The right to privacy

Providers also need to ensure that they have adequate control over marketing that is done on their behalf by third parties, such as affiliate marketers.

What is digital marketing and why might it be a problem?

1.1 In this context, digital marketing and promotions refers to a broad range of marketing practices that make use of online platforms. Many of these practices are entirely legitimate, compliant with the Code, generate revenue for the industry, drive innovation, allow consumers to engage with PRS and do not cause undue consumer harm.

1.2 At the time of writing, we have identified seven broad practices that are potentially problematic that can be split into practices which are always misleading and practices which are problematic if they are done in a misleading way, as follows:

Practices which are always misleading

- Typosquatting
- Clickjacking
- Likejacking

Practices which are mainstream, but where we have seen some misleading examples in a PRS context

- Banner ads, pop-ups and pop-unders
- Search engine marketing (SEM) and Search Engine Optimisation (SEO)

Practices which are highly likely to mislead consumers in PRS

- Content-lockers

And

- Unsolicited Electronic Communications (Spam)

1.3 This Guidance also clarifies the responsibility of providers to control affiliate marketing carried out on their behalf and sets out some recommendations as to how to do so.

1.4 Our principal concerns relate to three outcomes in the Code: transparency, fairness and privacy.

- Transparency – Rule 2.2.1 of the Code states: “Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.” As such, consumers must be presented with all vital information, including the price, relating to a PRS service before they commit to purchasing it.
- Fairness – Rule 2.3.2 of the Code states: “Premium rate services must not mislead or be likely to mislead in any way.” If consumers are to have confidence in the PRS industry, it is important that they are not intentionally misled.
- Privacy – Rule 2.4.1 of the Code states: “Providers must ensure that premium rate services do not cause the unreasonable invasion of consumers’ privacy.” Consumer consent must be knowing and clearly identifiable.

- 1.5 The following practices may be found to be in breach of the abovementioned paragraphs of the Code by a Tribunal.

Typosquatting

- 2.1 Typosquatting involves registering internet domain names that are misspellings of widely known and trusted internet brands. Examples might include “Dacebook” instead of “Facebook”, “Twtter” instead of “Twitter” and “Wikapedia” instead of “Wikipedia”. This is with the intention of redirecting consumers who mistype or click on mistyped links away from their intended destination. Consumers are thus led to a website that is designed in a confusingly similar manner to the website that they were originally searching for.
- 2.2 In PRS terms, a consumer might be intending to visit a well know website. However, having mistyped their intended destination into their browser’s address bar, the consumer arrives at a website that looks like their intended destination but contains a PRS promotion. The consumer may pursue the promotion based on its association with a trusted brand.
- 2.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. If a provider were to align itself with or imitate another brand to which it does not have an association, in a way that is likely to mislead consumers about the nature of the service being offered, a PhonepayPlus Tribunal is highly likely to consider it in breach of Rule 2.3.2.

Clickjacking

- 3.1 Often referred to as ‘UI readdress attack’, Clickjacking is designed to hijack clicks from one webpage to another. By clicking on a disguised link (the link may be hidden using transparent i-frames), consumers are redirected to a webpage that they had no intention of visiting. Users will often be unaware of the exploit as the link to the webpage they arrive at may be disguised as something else.
- 3.2 In PRS terms, the consumer will be misled into redirecting to a website offering a PRS promotion, which may lead to a purchase on false pretences. Another example would be of a website obscuring compliant pricing information, attracting the consumer to click on a consent to charge icon without fully understanding the potential costs. These are highly likely to be in breach of either Rule 2.3.2 or 2.2.1 of the Code.
- 3.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. This includes linking to a website offering a PRS without consumers’ prior knowledge.
- 3.4 Consistent with Rule 2.2.1, all PRS promotions should be as open and transparent as possible, allowing consumers to make an informed choice.

- 3.5 Where a PRS promotion is linked to from another website, the link should be open and transparent, allowing consumers to make an informed choice - i.e. we believe that consumers should not be deliberately misled into visiting websites that they did not originally intend to. Promotions should clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format. Consumers should be fully aware as to what they are engaging in before any charging commences.

Likejacking

- 4.1 Likejacking is a form of Clickjacking targeting consumers' social media pages. Consumers are encouraged to pursue a link based on their contact's - potentially unknowing - endorsement. In certain cases, clicking on their contact's endorsement may result in them unintentionally 'liking' the same promotion, thus propagating it on false pretences. The deception works in the same way as clickjacking using a transparent iframe to disguise a link.
- 4.2 The link will also take the consumer to a website containing a PRS promotion, often with inadequate transparency. Consumers are therefore engaging in a promotion based on a contact's supposed endorsement as well as marketing the promotion themselves, without their prior consent. Likejacking is thus highly likely to be breach the Code's requirements around fairness and consumer privacy.
- 4.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. Links to PRS promotions must be open and transparent, allowing consumers to make an informed choice. Promotions must clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format. Ultimately consumers should be in no doubt as to what they are engaging in before any charging commences.
- 4.4 As set out in Rule 2.4.1 of the Code, providers "must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy." This includes leveraging a consumer's network of contacts without their explicit and knowing consent. Any links to a consumer's network of social media contacts should only commence after specific, auditable evidence of consent to do so has been received by the provider. Records of consent should be made available to PhonepayPlus upon request.

Misleading Banner Ads, Pop-ups and Pop-unders

- 5.1 Banner ads, pop-ups and pop-unders aim to attract consumers to promotions, usually based on other websites. In most cases, where pricing and other key information is clearly stated, they are likely to be compliant.
- 5.2 However, when a banner ad, pop-up or pop-under leads to a website where pricing information is not clearly stated, and thus the consumer might be misled, the provider is highly likely to be found in breach of the Code.

- 5.3 In some cases, banner ads, pop-ups and pop-unders advertisements promise high street vouchers in order to get consumers to follow their link. Whilst the subsequent website may be transparent in terms of price and other conditions, the consumer may consent to a charge in the mistaken belief they will receive high street vouchers as a result.
- 5.4 Consistent with Rule 2.2.1 of the Code, all PRS promotions should be as open and transparent as possible, allowing consumers to make an informed choice. Links to PRS promotions must therefore be open and transparent and not entice consumers on false pretences. Promotions must clearly state what the service offered is, how it operates and its cost, displaying relevant key information in a visible, legible and proximate format.

Misleading Search Engine Marketing and Search Engine Optimisation

- 6.1 Search Engine Marketing (SEM) and Search Engine Optimisation (SEO) both aim to improve a service provider's visibility in search engine results pages. Both are prominent means for PRS providers to market their products. However, providers might use misleading terms in order to artificially boost their search engine ranking. This practice is highly likely to be found misleading by the Tribunal.
- 6.2 Providers are expected to use adwords or meta tags that are accurate descriptors of the service being offered and should not mislead consumers either about the cost or the nature of the service. For example, where the meta tag 'free' is used, all or at least the majority of services being promoted should be free. If none or only a minority of services being are free, a PhonepayPlus Tribunal is highly likely to find such practice in breach of the Code. Any reference to a brand or company to which the provider is not associated is also likely to be considered misleading if it confuses consumers about the nature of the service being offered.
- 6.3 PhonepayPlus has also noticed examples of websites being compromised by PRS promotions. For example, a consumer enters a search term into a search engine that is completely unrelated to any PRS promotion. Having found the link they are looking for, the consumer clicks on the appropriate link only to be taken to a PRS promotion. This is clearly a breach of any expectation PhonepayPlus has around digital marketing.

Content-lockers

- 7.1 In many cases, the practices listed above all lead the consumer to interact with a service through several steps. Content locking is often seen in conjunction with other misleading digital marketing. These include clickjacking, likejacking and SEM/SEO.
- 7.2 When a practice known as content-locking or content-unlocking is used, consumers are enticed into purchasing a product – often PRS – in order to access unrelated content. Consumers may be looking to download an app or a new film or access a particular

offer (shopping vouchers for example), which is not made available until they go through a certain number of steps where charges might be incurred. In PRS terms, a consumer might for example be prompted to enter their mobile phone number in order to download a film or access shopping vouchers but in reality they are entering into a subscription-based quiz. Effectively, consumers enter the quiz to access the 'locked' content.

- 7.3 As set out in Rule 2.3.2 of the Code, providers should not mislead consumers. PRS promotions that garner consumer consent to engage in PRS in order to access unrelated 'locked' content are highly likely to be considered misleading, especially where the consumer is not made fully aware of the cost of accessing content and/or the content is not delivered.

Unsolicited Electronic Communications (Spam)

- 8.1 PhonepayPlus receives numerous complaints from consumers about PRS marketing that, they feel, encroaches on their privacy. This includes potentially unsolicited email marketing that may, in certain cases, contain malware.
- 8.2 By definition, spam, even where it is not misleading in terms of content, is likely to be considered in breach of the Code as outlined above. For more information on PhonepayPlus' expectations around the consumer's right to privacy, providers should see the General Guidance Note on Privacy and Consent to Charge.
- 8.3 As set out in Rule 2.4.1 of the Code, consumers have the right to privacy. In line with the Information Commissioner's Office guidelines, spam can only be sent to consumers if there is explicit and auditable consent to receive it, or if there is an existing, clearly defined and direct customer relationship and the customer has not opted out of receiving such communications. For more information on PhonepayPlus' expectations around the consumer's right to privacy, providers should see the General Guidance Note on Privacy and Consent to Charge.

How to manage relationships with affiliate marketers, lead generators and other digital marketing partners

- 9.1 We are aware that PRS providers often subcontract their digital marketing to partners, the majority of which are known as 'affiliate marketers'. This is an entirely reasonable and legitimate thing to do, and can provide value to providers by leveraging external marketing tools and techniques paid for on a results basis.
- 9.2 However, providers who use affiliate marketers need to be aware of two key points:
- Responsibility for ensuring that promotions are compliant with our Code remains with the PRS provider regardless of whether this activity is subcontracted to a third party such as an affiliate marketer. So if an affiliate marketer breaches the Code in relation to a PRS service, then it is highly likely

that a PhonepayPlus' Tribunal will hold the PRS provider accountable for the breach.

- We have seen a number of cases where affiliate marketers have been responsible for misleading digital marketing practices of the kind outlined above in an attempt to inflate their revenues by engaging consumers in services without their clear understanding and consent.

9.3 Providers therefore must put in place appropriate controls to ensure their affiliate marketing adheres to the Code as part of their ongoing compliance processes. The absence of any such mechanisms may be viewed by a PhonepayPlus Tribunal as a failure of the provider to assess the potential risks posed by a party with which they contract and maintain steps to control these risks.

9.4 PhonepayPlus expects PRS providers to take account of PhonepayPlus' previous Guidance on Due Diligence and Risk Assessment and Control on Clients. In particular, PRS providers should undertake effective due diligence on any affiliate marketer that they are seeking to engage. As stated in article 2.1 of the Guidance on Due Diligence and Risk Assessment and Control on Clients, providers should seek sufficient seek adequate information to assess the suitability of a new affiliate with whom they are contracting.

9.5 In addition, PhonepayPlus expects PRS providers throughout the value chain to:

- Place clear expectations on their affiliate networks and marketers around Code compliance and obtain a clear commitment to this end as part of any contract signed. Expectations should include (but are not limited to):
 - Price and other key information should be clearly stated;
 - Any marketing be directly related to the PRS offering i.e. not intentionally unrelated and misleading;
 - That affiliates will not engage in any of the misleading practices listed above or any other such misleading practices.
- Closely monitor their affiliate marketing, particularly in response to consumer complaints, unexplained spikes in traffic to their service and where an affiliate marketer has previously been associated with a breach of the Code. We believe that effective monitoring and tracking tools are in the interest of the PRS industry and require limited capital outlay.
- To this end, we recommend that providers utilise effective tracking and monitoring tools and audit their affiliate marketing periodically regardless of activity to ensure that is both effective and compliant. The Internet Advertising Bureau has produced a useful best practice guideline that may be a helpful starting point on how to conduct an affiliate audit. It can be found at: <http://www.iabaffiliatemarketing.com/wp-content/uploads/2011/09/Best-Practice-on-Audits-and-Removals-v.5.pdf> .
- Make it clear to affiliate marketers (and reflect this in the contract) that any failure to comply with the expectations set will result in suspension of payments.

- If an affiliate marketer is unable to meet the expectations placed on it, providers are advised to review their relationship with both the affiliate marketer and affiliate network concerned.
- Keep clear records of any activity, and make them available to PhonepayPlus upon request.

9.6 While we recognise that Level 2s generally contract with digital marketing partners, Level 1 providers are, too, responsible for the risk assessment and control of their clients (i.e. Level 2s) to ensure that consumer outcomes outlined in the Code are met, including around their promotional material. This is particularly important where a client is known to be using affiliate marketing. In such cases, the Level 1 should check that the Level 2 has appropriate controls in place and raise any issue of concern should one arise.

The role of General Guidance

10.1 General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

10.2 Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.