

Consultation on
A Statement of Application
In relation to charitable donations, the
STOP command and SKIP functions

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Executive Summary

- 1.1 PhoneyPayPlus regulates the premium rate services (“**PRS**”) industry through the implementation and enforcement of its Code of Practice, currently in its 12th edition, which came into force in September 2011 (the “**Code**”). The Code is outcomes-based and is designed with innovation in mind.
- 1.2 In light of the dynamic nature of the PRS industry, to have too rigid a Code, without scope for flexibility in how the Code is complied when the need demands it, would prove ineffectual and damaging to industry as well as consumers. For that reason, the Code contains within it the right for PhoneyPayPlus to dis-apply specific rules or requirements within the Code in respect of particular services, where we consider the objectives behind those rules and requirements can be achieved by alternative means. This allows PhoneyPayPlus to respond to innovation in the market in a proactive and positive way, whilst ensuring consumer risk is mitigated and consumer harm prevented. In 2010/11 charitable donations made via premium rate services, especially via mobile shortcodes, began to grow significantly, with various fundraising platforms and independent analysts reporting the potential for even more significant growth up to 2015 and beyond. This was largely in light of the UK mobile network operators offering charities a significantly enhanced proportion of the revenue generated where PRS-based donations were made using shortcodes within the VAT-exempt 7-series (i.e. 7xxxx). As a result, a number of charities and fundraising organisations approached us during 2010/11 to discuss how they might innovate, in terms of allowing consumers to donate on a monthly subscription basis, whilst remaining compliant with the Code.
- 1.3 PhoneyPayPlus granted a pilot to some fundraising organisations, who in turn worked with numbers of individual charities, which allowed the following:
 - The use of a SKIP facility, allowing subscribers to text SKIP to miss a month’s subscription payment, but without opting out of the ongoing donation entirely;
 - Dis-application of the requirement at rule 2.3.12(d)(v) of the Code to remind consumers of the STOP command each month, replacing it with a requirement to remind consumers every three months, and
 - Dis-application of the requirement for PRS-based charitable donations operating on a subscription basis to seek permission to operate where the donation exceeded £4.50 in any given 7-day period.
- 1.4 The pilot was originally granted for 6 months but subsequently extended in order to test against identified potential risks to consumers, and to allow a broader, longer set of data to accumulate. At the same time, PhoneyPayPlus commissioned further research into PRS-based charitable donations, which was carried out by Think Tank in early 2012 and also informed our ongoing assessment of risk. This pilot scheme has now operated for around 18 months and has provided PhoneyPayPlus with ample data to consider the risks associated with the SKIP function, the associated dis-applications of rule 2.3.12(d)(v) of the Code and a requirement to seek prior permission for services over £4.50 per week. At the same time, those who have participated in the pilot have sought greater clarity as to whether they will be permitted to continue with the current exemptions on a permanent basis.

- 1.5 Having analysed the data from the pilot, especially against the previously identified potential risks, PhonepayPlus considers that the potential for risk is low, and where it does occur can be adequately mitigated via conditions attached to any permanent exemption. As a result, we propose to make the dis-applications which have been granted as part of the pilot permanent for those providers who fall within the definition of “relevant providers” as set out in the draft Statement of Application at Annex A of this document.
- 1.6 Having also compared the data from the pilot against other forms of subscription-based PRS, PhonepayPlus has decided to continue to limit the use of the SKIP function and three-monthly STOP reminders to charitable donation service only. This is due to three main factors:
- i. The extremely low level of complaints to PhonepayPlus and number checks about PRS-based charitable donation (only 3 complaints From September 2012 to present with regards to services which were part of the pilot), as opposed to the consistently far higher rates for non-charitable subscriptions.
 - ii. The far higher rate of opt-out after 6 months for non-charitable subscription services – between 15 and 30 times higher each month than charitable donation services, with around 91% of subscribers having exited a non-charitable service after 6 months as opposed to around 25% of subscribers to a charitable donation service.
 - iii. The fact that PRS-based charitable donation services have completed an extensive pilot which has, in our view, demonstrated that the SKIP function and three-monthly STOP reminders can be accommodated without increasing consumer risk or harm. Non-charitable subscription-based services have not been piloted in such a way, and we do not consider that there is a case for conducting a wider pilot, given the higher levels of consumer risk and harm which these services carry.
- 1.7 Based on the factors above, PhonepayPlus considers that the decision will not create an uneven regulatory landscape. This is due to the fact that PRS-based charitable donation does not offer the same service as non-charitable PRS and so does not directly compete with non-charitable PRS for consumers. We consider this reduces any concerns the rest of the industry would ordinarily have with regards to variance in regulation.
- 1.8 In deciding to propose a permanent dis-application for all PRS-based charitable donation service providers, PhonepayPlus is required by paragraph 3.10.4(b) of the Code to publicly consult on a Statement of Application, which sets out how the objectives of the Code will be achieved by other means, and the conditions which will prevent consumer harm. In accordance with paragraph 3.10.4(b) of the Code, this consultation sets out PhonepayPlus’ consideration and proposals. In proposing that the dis-applications within the current pilot be made permanent, PhonepayPlus proposes conditions around the following areas:
- Requirements for all services to be run by registered charities, and to operate on specified 7-series shortcodes

- Requirements around the transparency of promotional material, and a requirement to send consumers an initiation text message upon signing up, which must contain the following:
 - i. Information that the text is free
 - ii. STOP information which must read “to unsubscribe text STOP to [insert shortcode] at any time or call [insert number]”
 - iii. SKIP information which reads “to miss a gift text SKIP to [insert shortcode]”
- Requirement that only the keyword SKIP is used to facilitate the skipping of a month’s payment
- Requirement that the STOP command is available at all times, and that no alternative method of exit to STOP is used
- Requirement that consumers who text SKIP in 3 consecutive months must be immediately given the option to stop or continue, and be unsubscribed if they do not positively respond within 24 hours.

1.9 PhonepayPlus welcomes any information that may assist our final decision on the establishment and implementation of the Statement of Application, found at **Annex A**. We would ask for all comments and written responses to this consultation to be sent to us by the deadline of **12th December 2013**.

1.10

Pilot scheme introducing the SKIP function for charitable donations

Applications for exemption under prior permission and the pilot initiation

- 2.1 In late 2010, a provider, in conjunction with two high profile charities, approached PhonepayPlus with proposals to develop PRS usage within the charities sector. Following an agreement between mobile network operators to begin offering 100% of a donation to charities, and a subsequent agreement to exempt such shortcodes from VAT payments, charities had begun to run some highly successful fundraising campaigns involving one-off donations, as opposed to ongoing subscriptions. One example is Comic Relief, which raises millions via one-off PRS-based donations (amongst other mechanics) over the space of one evening.
- 2.2 As a result of the success from one-off donation-based campaigns, some charities had also begun to test subscription-based donation to a limited degree. Whilst they appreciated the benefits of being able to form longer-term relationships with donors via a fairly frictionless method of sign-up, they also reported a relatively high rate of consumers opting out in the immediate period following their sending of a monthly STOP reminder (in line with the requirements at paragraph 2.3.12(d)(v) of the PhonepayPlus Code of Practice).
- 2.3 Their initial investigations into the cause of these opt-outs, most of which took place in the first or second months following consumer sign-up, suggested that whilst some consumers had wished to opt out, others had instead either mistaken the reminder for

an instruction, or more commonly had wished to skip a month's payment but had been unable to do so without texting STOP to opt out of the service altogether.

- 2.4 As a result, in late 2010, a provider in conjunction with two high profile charities approached PhonepayPlus with proposals to develop PRS usage within the charities' sector. This involved the addition of a SKIP function to their monthly subscription-based charitable donation services, whereby donors could skip a month's payment, but not opt out of the service altogether in doing so. In order to effectively introduce such a SKIP function the proposal also sought dis-application of the provision at paragraph 2.3.12(d)(v) of the current PhonepayPlus Code of Practice, which requires providers of services which carry a repeat charge to send monthly messages reminding consumers of the existence of the STOP command as a method of exit. Instead the proposal was that a STOP reminder be sent every three months to consumers of services involved in the pilot.
- 2.5 Further interest in this scheme arose over time, following publication of the details of the dis-application in January 2011. This led to PhonepayPlus inviting other providers to operate similar services on the basis that they apply for a similar exemption. The Executive published details of this pilot scheme, initially intended to last 6 months, in March 2012.
- 2.6 By now PhonepayPlus was increasingly aware of the growing interest from the charitable sector in the potential offered by PRS-based donation, commissioned research to analyse the potential, and also any potential consumer concerns, in greater detail.

PhonepayPlus research into charitable donations made via premium rate services

- 2.7 Between March and July 2012, *Think Tank* conducted research on behalf of PhonepayPlus looking at '*charitable donations by premium rate*'. A report under that title was published on 27 July 2012¹.
- 2.8 The research was commissioned with a brief to provide insight into the PRS-based donations sector with respect to the following areas:
 - Drivers and barriers – for consumers, charities, and industry
 - Demographic information
 - Understanding of the patterns of PRS-based donation as against other forms of giving
 - Forecasts of the likely future growth of the sector
 - Insights that enable PhonepayPlus to provide support to all stakeholders to assist consumer confidence in the sector

Key findings

- 2.9 A copy of *Think Tank's* report is available on our website. However, key findings and recommendations from the report were as follows:

¹ Report found on the PhonepayPlus website: http://www.phonepayplus.org.uk/For-Business/Research/~/_media/Files/PhonepayPlus/Research/Consumer%20Research/Charitable%20Donations%20by%20Premium%20Rate%20Research.pdf

- a) Charities were generally enthusiastic about PRS-based donation. Inevitably larger charities took the lead as they were better resourced, and possibly aware of the potential at an earlier stage. However in a relatively saturated UK charity market, with the added perception that the public has less money to give, interest in PRS-based donations would continue to grow.
- b) To support the findings at a), the research estimated that PRS-based donation could raise as much as £150.1m annually for charities in the UK by 2015. This was in comparison to a figure of £32.7m in 2011, and £66.1m in 2012.
- c) The research also confirmed that PRS-based donation offers additional revenue to charities, bringing in new donors rather than simply cannibalising them from other existing mechanics. In many cases, consumers who are reluctant to sign up for a monthly Direct Debit-based donation will sign up for a monthly donation via PRS.
- d) The identified reasons as to why consumers had preferred PRS over other forms of donation were as follows:
 - Ease and speed of sign up
 - Greater anonymity (i.e. sign up takes place only with the consumer's mobile phone number rather than address or bank details, and so reduces the opportunity for fraud)
 - Lower donation amounts (as perceived against other donation mechanics)
 - Greater control – in particular the easier method of exit and monthly notification that the consumer is about to be charged for their donation when compared to Direct Debit.
- e) In addition to the reasons cited by consumers, charities cited the following further benefits:
 - Quicker, more frictionless, sign-up allows greater consumer spontaneity
 - PRS-based donation is usable by under 18s, who may not have the facility to donate on an ongoing basis via Direct Debit. As such it provides access to a previously unreachable demographic
 - Lower set-up costs (e.g. in comparison to the costs involved in setting up call centres or street-based fundraising)
 - Better opportunity to directly update the consumer as to the value of their donations (e.g. via the sending of text-based updates or links to video footage which can be viewed on smartphones).

2.10 In conclusion, the research highlighted that PRS-based charitable donation is a novel, fast-growing mechanic, which was generally well-received by consumers and charities alike. However, the research also highlighted that PRS-based donation was still at a relatively early stage in comparison with its development potential, and recommended PhonepayPlus continue to support its development in such a way that consumer confidence is established and maintained.

2.11 As a result of the research conclusions and recommendations, PhonepayPlus established a Charities Risk Assessment Matrix, against which the ongoing SKIP pilot could be tested, and identified the following areas where risk could exist:

- Consumer Confusion – e.g. that without monthly STOP reminders, donors will use SKIP when they actually mean STOP, or will forget they are signed up to a subscription service
- Reputational – i.e. that bogus or unregistered charities attempt to benefit from the pilot and from any permanent dis-application
- Vulnerable groups or circumstances – e.g. that children may need more protection when donating, and that consumers may need different levels of protection at different price points

2.12 These risks were considered when establishing conditions for the pilot scheme, with a requirement that participants in the pilot gather and supply data to PhonepayPlus that would enable assessment of the risks. PhonepayPlus sets out its consideration of these risks and our assessment of them in section 3 of this consultation.

Pilot extended to gather further information

2.13 In the first six months that the pilot was originally intended to run, the data collected by PhonepayPlus was encouraging in terms of the identified risks above. However, data was based on only three donation services, using two different fundraising platform providers, as follows:

- a. Unicef and Save the Children
- b. Toybox – a much smaller charity which exists to raise and distribute funds to a variety of good causes

2.14 As a result, PhonepayPlus agreed to extend the pilot further in order to amass a greater base of data across a longer time period, and with a greater number of charities running campaigns, to ensure that the interim data remained consistent before any conclusion was made.

PhonepayPlus' decision to make a Statement of Application

- 3.1 With the pilot scheme coming to an end, PhonepayPlus has two options available if it concludes there is an appropriately low level of risk to consumers, which would justify making the arrangements under the pilot permanently available to providers of PRS-based charitable donation services. The first would involve making individual dis-applications of the Code permanent for all providers of charitable donation services who applied, and the second would involve a permanent dis-application of the Code for all relevant providers who wish to operate charitable donation services.
- 3.2 PhonepayPlus proposes the second of these options because we consider the actual service type, as opposed to just individual providers, has been proven to carry less risk than other subscription services for reasons which will become apparent from the further consideration below. Furthermore, we consider that a permanent dis-application for all charitable donation services will reduce the administrative burden on both providers and PhonepayPlus, as providers will not be required to apply for individual dis-applications which will only apply to them in isolation.
- 3.3 In order that this option is implemented effectively, in accordance with paragraph 3.10.4(b) of the Code, and with the support of stakeholders, PhonepayPlus is undertaking this short consultation to introduce the changes and gain feedback relating to the effectiveness of the proposed conditions. When developing these conditions as part of the Statement of Application attached at Annex A, PhonepayPlus has considered whether they adequately satisfy the objective of the provision that is the subject of this dis-application – rule 2.3.12(d)(v). Our consideration and rationale for the proposed conditions set out at Annex A are set out in the remainder of this section.

The objective of rule 2.3.12(d)(v) – the STOP command

- 3.4 'Statements of Application' can be made in accordance with paragraph 3.10.4(b) of the Code. PhonepayPlus must consider the objective of the provision that is intended to be dis-applied, as part of a process by which alternative means are discovered, and set out conditions associated with any 'Statement of Application'.
- 3.5 PhonepayPlus has published Guidance relating to the use and presentation of the STOP command as a method of exit in two separate places. The first² deals with the requirement to provide "*a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge*", under rule 2.3.11. The guidance discusses the widely used method associated with mobile shortcodes, namely the STOP command.
- 3.6 The second piece of Guidance³ deals with subscription services, or services that involve a recurring charge, and the requirement for reminder messages to be issued in accordance with rule 2.3.12(d). The method of exit is one piece of information required in the reminder messages sent out either once a month, or each time £20 is spent by the consumer.
- 3.7 Within this second piece of guidance it states at paragraph **3.3** that "*consumers must be free to leave the subscription service at any time and no service should imply anything*

² General Guidance Note on [Method of exit from a service](#)

³ Service-Specific Guidance Note on [Subscription services](#)

to the contrary.” It is clear that the objective of this rule, and the requirement to include such information in the reminder message sent at regular intervals, is to ensure consumers not only have the technical capacity to leave a subscription service at any time but they must also be fully informed as to how that can be achieved. This means the consumer is in control of what they spend on a service and how long they consent to charging.

- 3.8 Frequent reminders of the key terms associated with the subscription service, along with instructions relating to any simple method of exiting the service, offers protection in that consumers are reminded of the charges and their freedom to end those charges at any time.

‘Relevant Providers’ for the purpose of this Statement of Application

- 3.9 This Statement of Application is targeted at particular providers associated with charities and text donation services, and is not intended to include subscription-based PRS providers which do not fall into the categories below:

“Relevant Providers, for the purposes of this Statement of Application, will fall in to one of the following two categories:

- a) *Charities who are registered both with the Charities Commissions of England and Wales, Northern Ireland or Scotland, and with PhonepayPlus*
- b) *Providers who are registered with PhonepayPlus and facilitate the provision of premium rate donation on behalf of the charities at a).*”

- 3.10 The SKIP pilot scheme was restricted to providers who meet the same definition as above. The pilot did not provide any evidence that the exemption would be effective as alternative means for other service types, in particular, when compared the very low level of complaint and enquiry data about charitable PRS with complaint and enquiry data for subscription services generally. From September 2012 until September 2013, PhonepayPlus received a total of 3 complaints about shortcodes involved in the pilot, all of which were resolved without further investigation by PhonepayPlus beyond initial enquiries. In the same period, there were 402 complaints about non-charitable subscription services. Similarly between September 2012 and 2013 there were 687 consumer checks on the PhonepayPlus Number Checker in relation to shortcodes involved in the pilot (a low amount), as opposed to 33,701 checks about non-charitable subscription services.

- 3.11 PhonepayPlus also observed that 75% of subscribers to charitable donation services were still active after over 6 months of operation. This compares very well with non-charitable subscription services that can expect to have only 9% of subscribers active after 6 months, with around 30% of subscribers exiting each month.

- 3.12 Therefore, the Executive proposes to restrict this ‘Statement of Application’ in the same way that the pilot scheme was restricted to set categories of providers associated with the services they operate. Providers who provide both charitable and non-charitable PRS which carry a subscription element should note that PhonepayPlus intends that the Statement of Application should only apply in respect of their charitable PRS.

Assessment of the SKIP pilot

3.13 The pilot was open to any applicant wishing to run a PRS-based charitable donation service from March 2012 onwards. To the end of August 2013, over 50,000 consumers had signed up for services which were part of the pilot, raising in excess of £600,000 across 14 mobile shortcodes.

3.14 Below, we set out our consideration of the risks identified in paragraph 2.10, with reference to the data from the SKIP pilot, and set out any proposed conditions which form part of the Statement of Expectation at Annex A:

Consumer Confusion from changes to STOP reminders

3.15 The identified risk reflects the twin purpose of STOP reminders: (a) to remind people that they are signed up to a subscription service; and (b) to remind them how to exit the service, or how to skip a month's payment, if they wish to.

3.16 Data from the SKIP pilot about how consumers are actually using the STOP and SKIP functions is set out in the table below (all data below is accurate at the end of August 2013):

<i>STOP commands:</i>	
% of all users sending STOP within 24 hours of initial sign up reminder	2.8%
% of all users sending STOP within 24 hours of a stop reminder (excluding initial sign up reminder)	1.8%
% of all users sending STOP at other times	20%
<i>SKIP commands;</i>	
% of SKIP commands sent within 24 hours of a skip reminder	100%
% of SKIP commands sent at other times	0% ⁴

3.17 In addition to the consumers who exited using the STOP command, a further 186 consumers (0.33% of total consumers and 1.2% of all consumers who stopped) made calls to a helpline in order to request that they be stopped.

3.18 In terms of overall percentages, 75% of subscribers were still active (i.e. had not exited the service). By contrast PhonepayPlus understands that an average non-charitable

⁴ A SKIP reminder is issued 24 hours before consumers will be charged for that month's donation, after which SKIP ceases to be effective in respect of that month. As such whilst consumers could SKIP at any time in respect of the next month it appears that none have done so, reacting instead to the reminders in order to exercise their right to SKIP.

subscription service can expect to have only 9% of subscribers active after 6 months, with around 30% of subscribers exiting each month.

- 3.19 The percentage of consumers who skipped payments was 12% in month 1. However, this slowly declines to 11% in Month 2 and 9.9% in Month 3 when the first STOP reminder is sent. Whilst this indicates that some consumers who had skipped were then stopping when they received the first STOP reminder, data below does not support the assumption that this is because consumers had forgotten they could stop until they received a reminder. We think that if consumers had forgotten how to exit the service without monthly spend reminders, then two patterns would be likely in the data:
- a. A significant proportion of the total number of stops would take place within 24 hours of a stop reminder – suggesting that consumers may have wished to exit at other times but had forgotten how to; and/or
 - b. You would see a pattern of consumers either skipping three months payments in a row, or (more likely) skipping two months' payments and then stopping on the third month when the stop reminder came through.
- 3.20 In terms of a) above, pilot data reports that in Month 3 (the first STOP reminder), 12.8% of STOP commands occurred within 24 hours of the reminder. Overall the number of STOP commands which occurred within 24 hours of a STOP reminder represents 7.3% of total STOPS. Whilst the data for Month 3, the first time when consumers are sent a STOP reminder, suggest a slightly higher percentage this is at a point when donors are likely to be less committed and knowledgeable.
- 3.21 The data overall suggests that a significant number of STOPS (30.2%) occur in Month 3. However to an extent, and as the charities who originally requested a pilot dis-application had already identified, if you send a STOP reminder then there is a slightly greater chance that people will text STOP. This does not in itself indicate a lack of understanding or a preference for monthly STOP reminders. The data above does not suggest that a significant percentage of those consumers who did stop had reacted instantly to the STOP reminder in order to exit the service.
- 3.22 In terms of b) pilot data reports that of the donors who have subscribed for at least 3 months, 3.38% have skipped three consecutive appeals. Whilst PhonepayPlus had indicated that three consecutive SKIPs should equate to a STOP, this was misunderstood by one provider who instead sent a reply to every one of those consumers asking if they wished to STOP, and that if they did they should text YES or STOP back. Whilst an error on the provider's part, the data did demonstrate that only 67% of relevant consumers who skipped on three consecutive occasions subsequently elected to stop. PhonepayPlus regards this as useful data, and suggests as a result that any dis-application should change the current condition requiring that consumers who text SKIP in three consecutive months are unsubscribed, so that instead consumers who text SKIP in three consecutive months receive a text that says they will be unsubscribed unless they respond in order to continue to be opted in.
- 3.23 This suggests that repeated use of the SKIP command is low – around 2.87% of the total who signed up to PRS-based donation services, and 3.38% of consumers who have subscribed for at least 3 months – and does not necessarily equate to a desire on the consumer's part to exit the service.

3.24 In addition, pilot data suggests that 3.82% of relevant consumers, who were subscribed for at least 3 months, followed the pattern SKIP-SKIP-STOP at some point during the period when they were subscribed.

3.25 Overall both sets of data, even with reference to a longer time-frame and broader client base, would suggest donors are generally comfortable with the use of STOP where they are not reminded of its existence on a monthly basis, but are reminded of SKIP on a monthly basis.

3.26 In light of this consideration, PhonepayPlus proposes the following conditions which are relevant to the operation of the SKIP facility, and to method of exit from the service:

(vi) The use of SKIP is the instruction command which consumers must activate to suspend payment of their monthly donation.

(vii) The monthly reminder containing the SKIP instruction must be sent 24 hours prior to when the consumer is due to be charged.

(viii) The STOP command must be made available and fully functional throughout the duration of the service, with consumers being reminded of the existence of the STOP command every three months.

(ix) Where the SKIP is activated for three consecutive months, this must automatically trigger the sending of a message to the relevant consumer, informing them that they will be stopped within 24 hours unless they reply in such a way as to confirm they wish to continue to participate as a donor.

Reputational

3.27 The pilot has only been open to registered charities up to this point, and PhonepayPlus does not propose that this be changed in any permanent dis-application. However, we do propose that the addition of a condition to require all participants to use a 7xxxx "charity" shortcode, which was not included in the original pilot, would provide a further level of due diligence via the mobile networks who control the use of such shortcodes.

3.28 In light of this consideration, PhonepayPlus proposes the following conditions which are relevant to the status of charities and charitable shortcodes:

(x) *Services may only operate on a 7-series (i.e. 7xxxx) shortcode which has been designated by Mobile Network operators as for the specific purpose of facilitating VAT exempt charitable donations.* PhonepayPlus should be notified of all applicable shortcodes at the time the service commences.

(xi) All participating charities must be registered with the Charities Commissions of England and Wales, Northern Ireland or Scotland and PhonepayPlus.

Vulnerable groups or circumstances

3.29 The risk identified in the heading above reflects two main concerns:

- a. That consumers may need different levels of protection at different price points
- b. That children may need a higher level of protection when donating, especially where a donation campaign is aimed directly at them

- 3.30 To date providers have offered consumers the option to donate at either £3 or £5, however the £5 price point was not introduced until after the extension of the pilot in October 2013. Around 22.3% of consumers have signed up to donate £5 per month, with the remainder donating at £3 monthly. In terms of STOP commands sent by consumers, 20.2% of the consumers who have stopped were paying £5 per month.
- 3.31 In terms of number checks by consumers using the PhonepayPlus database from January to July 2013, 50 were recorded against shortcodes for £3 donations and 31 recorded against shortcodes for £5 donations. This represents a higher percentage of number checks on all shortcodes (38.7%) than of consumers donating at the £5 price point (22.3%), however the overall level of number checks is a very low percentage and in addition 31 number checks on shortcodes for £5 donations represents 0.22% of consumers donating at that price point (if each check was made by a separate consumer).
- 3.32 The percentage of consumers donating £5 per month who have stopped is slightly lower than the percentage of consumers who have signed up to donate £5. In addition PhonepayPlus has received no complaints about higher rate charity shortcodes and a low amount of number checks. As such we have not identified any data which would suggest consumers at higher price points require a heightened level of protection, and as a result propose no specific conditions in relation to this risk as part of the Statement of Application.
- 3.33 None of the campaigns run as part of the pilot have been aimed at children, and therefore no data is available. While PhonepayPlus recognises the keen interest shown by children into the work of various charities, and a corresponding desire to encourage children to be generous and considerate to others, be it via charitable donations or otherwise, we continue to consider it appropriate that adult guidance is given to children when transactional decisions are made.
- 3.34 Furthermore, the services that have been involved in the SKIP pilot can charge significantly more than the current £2.56+VAT cap on children's services which is found in rule 2.3.12(b) of the Code. Therefore where relevant providers seek to introduce these provisions, including the SKIP function, PhonepayPlus does not consider it appropriate to permit the targeting of promotions specifically at children.
- 3.35 Lastly PhonepayPlus understands that it is unlikely that charities will target children for fundraising activity, and as a result we propose the following condition within the Statement of Application:

(xvi) Services must not specifically target children in their promotional material under these arrangements.

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.

Exemption from double opt-in requirement for subscriptions which cost more than £4.50 in a 7-day period

3.36 Ordinarily, any subscription service (i.e. that which carries a repeat charge) which can cost more than £4.50 in any given 7-day period is required to seek prior permission from PhonepayPlus to operate. Among the conditions of that permission is a requirement for consumers to have opted in by one of the two following methods:

- Via the Payforit verification mechanic
- By the consumer texting a keyword to a shortcode, and then receiving a free message in response setting out the cost and other key information about the service, to which the consumer must then reply to confirm their opt-in and to allow charging to begin.

3.37 This requirement was exempted for PRS-based charitable donation services that participated in the SKIP pilot on the following grounds:

- a. The nature of the PRS-based product is different, in that the donor is not looking for a product or service from which they tangibly benefit, but rather is providing a series of good will payments to support the work of a charity
- b. Our consideration is that charities have a greater propensity to ensure transparency in their promotions. This is partly due to the need to retain subscribed consumers for as long as possible – as opposed to charging a high initial fee plus a subscription as some PRS providers had done, after which the need to retain consumers lessened – but also due to the far greater visibility of charities when compared to other PRS providers, and the accordant increased risk to their reputation if the services are not entirely transparent.
- c. The significant difference between complaint levels about charitable donation services and other subscription-based PRS

3.38 As a result of the data gathered during the pilot, PhonepayPlus does not see any reason to change the exemption from the need to seek prior permission for PRS-based charitable donation services which conform to the other proposed conditions within the Statement of Application. As such, we propose the following condition:

- (v) This Statement of Application enables the service to operate at price points up to £10 in any given seven day period without triggering the use of the double opt-in mechanism as would normally be required for the category of service ‘Subscriptions over £4.50 in any seven-day period’.

Q.2 – Do you agree with our consideration and proposed conditions and our assessment that they adequately satisfy the objective of the provision without requiring strict adherence to rule 2.3.12(d)(v) of the Code? If not, please give your reasons and provide any supporting evidence available.

Q.3 – Are there any additional conditions that you consider necessary to achieve the objective of rule 2.3.12(d)(v) of the Code? Please provide any reasoning and/or evidence you have for any conditions you suggest.

Next steps

We are seeking the views of all stakeholders on the considerations and questions contained in this document by no later than 12th December (six weeks from publication of the consultation paper). We recognise that four weeks is a relatively short period for responses to a consultation. However, this consultation forms a part of a lengthy period of development for the scheme set out above and follows an extended pilot scheme looking at the use of the SKIP function by charities.

Furthermore, PhonepayPlus is seeking feedback on the isolated issue as to whether the proposals adequately satisfy the objective identified in one specific provision of the Code. In light of this, we consider that four weeks should be a reasonable time period for stakeholders to submit views and any supporting evidence.

Where possible, comments should be submitted in writing and sent by email to dlevitt@phonepayplus.org.uk by no later than 12th December. Copies may also be sent by mail to:

Mr David Levitt

Regulatory Development Executive
PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7445

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

ANNEX 1 – Statement of Application

Permanent dis-application of rule 2.3.12(d)(v) on the following conditions

Relevant Providers, for the purposes of this Statement of Application, will fall in to one of the following two categories:

- a) Charities who are registered both with the Charities Commissions of England and Wales, Northern Ireland or Scotland, and/or;
- b) Providers who are registered with PhonepayPlus and facilitate the provision of premium rate donation on behalf of the charities at a).

In addition, we would remind Relevant Providers as outlined above that where they meet the definition of either a Level 1 provider or a Level 2 provider (as set out at paragraphs 5.3.8a and 5.3.8b of the PhonepayPlus Code of Practice respectively), they will be required to register with PhonepayPlus prior to commencement of premium rate donation or indeed any other premium rate services.

This Notification should be read by all registered charities which provide, or wish to provide, methods by which consumers can donate using premium rate, and by PhonepayPlus registered providers who work with charities to facilitate premium rate donation.

Conditions applicable to all Relevant Providers:

- (i) All provisions of the Code (as far as they are applicable) apply to the service, except for rule 2.3.12(d)(v) where the service operates in full compliance with this Statement of Application.
- (ii) PhonepayPlus may impose further conditions and/or revoke an individual permission as it may deem necessary after giving reasonable notice.
- (iii) Permission granted under this Statement of Application may be immediately withdrawn or varied by PhonepayPlus at any time on provision of reasonable notice.

Conditions applicable to Level 1 provider

- (iv) All platforms and connections to a Network operator, or another Level 1 provider, that provide access to the service, and any other relevant services provided, are of adequate technical quality.
- (v) This Statement of Application enables the service to operate at price points up to £10 in any given seven day period without triggering the use of the *double opt-in mechanism* as would normally be required for the category of service “*Subscriptions over £4.50 in any seven-day period*”.
- (vi) The use of SKIP is the instruction command which consumers must activate to suspend payment of their monthly donation.
- (vii) The monthly reminder containing the SKIP instruction must be sent 24 hours prior to when the consumer is due to be charged.
- (viii) The STOP command must be made available and fully functional throughout the duration of the service with consumers being reminded of the existence of the STOP command every three months.

- (ix) Where the SKIP is activated for three consecutive months, this must automatically trigger the sending of a message to the relevant consumer, informing them that they will be stopped within 24 hours unless they reply in such a way as to confirm they wish to continue to participate as a donor.
- (x) Services may only operate on a 7-series (i.e. 7xxxx) shortcode which has been designated by Mobile Network operators as for the specific purpose of facilitating VAT exempt charitable donations. PhonepayPlus should be notified of all applicable shortcodes at the time the service commences.
- (xi) All participating charities must be registered with the Charities Commissions of England and Wales, Northern Ireland or Scotland and PhonepayPlus.

Conditions applicable to Level 2 provider

- (xii) Promotional material must not use the words “FREE” or “NO CHARGE” or contain wording that implies the same, except to state that the promotional message itself is free.
- (xiii) All free service messages as sent should start with the wording “FreeMsg” or equivalent at the outset of the message.
- (xiv) Where members of the public are interacting with a free service operated by the relevant charity or charities, material associated with the free service ought not to directly link to another product or service which carries a premium rate charge, unless the consumer is made aware of the separation of services and the charge associated with the new service. Any charge must not be made unless the consumer has consented to it.
- (xv) Immediately upon signing up to a service, consumers must receive a free initiation text message, which must contain the following information:
 - i. Information that the text is free
 - ii. STOP information which must read “to unsubscribe text STOP to [insert shortcode] at any time or call [insert number]”
 - iii. SKIP information which reads “to miss a gift text SKIP to [insert shortcode]”
- (xvi) Services must not specifically target children in their promotional material under these arrangements.

Before operating services under these arrangements, PhonepayPlus recommends that the relevant charity or charities must be signed up to the Fundraising Standards Board’s “*Fundraising Code of Practice*”.