

## HELP NOTE

### Help Note on Virtual Chat services (Including text chat) Version 2: February 2010

#### Background

This PhonepayPlus Help Note has been written in response to the high number of investigations that have been brought for final adjudication since January 2009. Of these, the Executive has used the Emergency Procedure, pursuant to paragraph 8.6.1 of the Code of Practice (11th Edition Amended April 2008) ('the Code'), on seven separate occasions.

Further to the publications of the '*Mobile Review: Regulation of Mobile Phone-paid Services and their Marketing: A Policy Statement by PhonepayPlus following its consultation*' (<http://www.phonepayplus.org.uk/upload/2009StatementonMobileWhitePaperMR.pdf>) and the '*Notice to Industry: Virtual Chat and Date Services Advertising That Consumers Can Meet Others Through The Service*' (<http://www.phonepayplus.org.uk/output/news/VIRTUAL-CHAT-DATE.aspx>), dated 22 and 30 January 2009 respectively, the Executive draws the attention of the industry to the specific recommendations that were made around the operation and promotion of Virtual Text Chat services, which included the following:

- That the content for all promotional messages being sent must make clear to the consumer if a reply to the message will result in them opting into a service that carries a premium rate charge;
- Services should NOT imply that users are exchanging messages with other users or that users will be able to meet others by engaging with the service unless that is, in fact, the case; and
- That PhonepayPlus may reinstate a Prior Permission requirement based on the compliance record shown for such services.

This Help Note sets out PhonepayPlus' concerns and regulatory expectations in this area in the hope that clarifying guidance will encourage a greater degree of consistency by the industry through the correct application of paragraph 7.3 of the Code.

However, this Help Note is non-binding on a Tribunal and does not form part of the Code of Practice. Service/Information Providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact PhonepayPlus **before** starting to operate the service.

#### When will PhonepayPlus consider that consumers are being misled?

Service/Information Providers should ensure that language used in promotional material such as '*meet*' or '*date*' does not mislead users into thinking that they are using a '*Contact and Dating*' service when the service is solely for the purpose of providing fantasy chat.

Service/Information Providers should ensure that their chat operators are NOT indicating to users that there is a chance of meeting when this is not the case. PhonepayPlus would strongly suggest that, where consumers request meetings, the operators manage expectations correctly and respond by confirming that the service is a Virtual Chat service and meetings will not be possible.

## How should Service Providers manage consumer expectation?

### Virtual Text Chat

PhonepayPlus is aware that Virtual Text Chat services are currently operating in two different ways:

1. One message in, one message out services: the service receives a message originating (MO) text message from the consumer and sends one message terminating (MT) text message in response. If no further consumer MO text message is received, then the operator chat messages end; and
2. One message in, multiple messages out services: the service receives a MO text message from the consumer; the service sends a MT text message in response. Even if no further consumer MO is received, the service continues sending MT messages up to, and on occasion beyond, the £10 spend reminder limit.

At present, PhonepayPlus does not require services to use the one-in, one-out service model; however, it regards this as the model that carries the least amount of risk to the consumer. Where a one-in, one-out model is not being used, PhonepayPlus expects consumers to be clearly and prominently informed in promotional material what their experience will be after sending a MO text message into the shortcode. This should include information about how many MT messages a consumer will receive for each MO they send.

Example: If the consumer sends a text message to the shortcode and the service operates by sending five billed matches, then the pricing should clearly state that, by entering the service, the initial costs incurred will be  $5 \times £1.50 = £7.50$ .

If a number of matches cannot be prescribed, then promotional material for a service should state what the maximum number of messages, and the potential cost, could be without interaction after initiating the service.

Example: If the consumer sends a text message to the shortcode and the maximum number of billed messages will be seven at a cost of £1.50 each, then promotional material should clearly reflect this.

For further information on this, please refer to Code Paragraph 5.7.1 which states *“the cost of using a service”* must be provided clearly and straightforwardly: <http://www.phonepayplus.org.uk/output/Code-of-Practice-1.aspx>.

### How should cost reminder information be presented?

PhonepayPlus has noticed that there is a need for some clarity to be provided in relation to Code paragraph 7.3.3a, which states:

*“All virtual chat services must, as soon as is reasonably possible after the user has spent £10, and after each £10 of spend thereafter, inform the user of the price per minute of the call.”*

The misconception around this paragraph appears to involve the use of the word ‘call’. Please note that, for the purposes of the Code, the word ‘call’ includes any communication that passes through an electronic communications network, such as a text message (please see Code paragraph 11.3.11).

This paragraph requires Service/Information Providers to, as soon as reasonably possible after the user has spent £10 using the service, send an MT text message to the consumer reminding them of the cost of using the service. However, PhonepayPlus recommends that the spend information – *“£x spent”* – continues to be included in the MT reminder text message in addition to the cost of using the service.

## **What does the positive response requirement (post consumer £10 spend) mean for Service Providers?**

Paragraph 7.3.3b of the Code requires that, in addition to the necessary cost reminder (7.3.3a) once a consumer has spent £10 within a Virtual Chat service, the Service/Information Provider must obtain a positive response from the user confirming that they wish to continue using the service; for example, continuing dialogue with the chat operator.

It is essential that Service/Information Providers do not continue to send charged text messages to consumers after the £10 spend limit has been reached, until a positive response has been received from the consumer.

Any charged MT text message sent to a consumer after each £10 has been spent, without having first received a positive response, is likely to amount to a breach of the Code.

## **How should cross promotions be displayed within cost reminder text messages?**

Where cost reminder messages for Virtual Chat services contain promotions for other services, such promotions should be placed after any information given relating to the original service. In addition, the message should clearly distinguish the original service information from any promotion-related information. To do this effectively, PhonepayPlus strongly suggests that the words ADVERT or PROMO are inserted immediately before the promotional information.

## **Chat operator training and internal service moderation**

PhonepayPlus recommends that all chat operators should be provided with a training manual setting out the guidelines that they have to follow to stay compliant with the Code and to minimise potential for consumer harm. PhonepayPlus recommends that appropriate moderation of all Virtual Chat services is in place; inclusive of consumer age verification and, specifically, operator Code compliance with regard to ensuring consumers are not misled in any way.

PhonepayPlus also recommends that at least one member of staff sign up for PhonepayPlus' News Alerts to ensure they are kept up-to-date with news and adjudications, which can be filtered down to members of staff to ensure Code compliance. Please use the following link to subscribe:

<http://www.phonepayplus.org.uk/output/Subscribe.aspx>.

## **Use of mobile long numbers**

PhonepayPlus' *'Review of Mobile Phone-paid Services and their Marketing'*, published in 2008 and concluded in January 2009, previously addressed the issue of Virtual Chat services being advertised using mobile long numbers, as opposed to mobile shortcodes. The Review highlighted that Virtual Chat services are often advertised by text messages originating from a long number, which appears to be another consumer's mobile phone number, thereby inviting the recipient to chat further. This potentially misleading practice is compounded where the text message itself does not contain clear pricing and service information (addressed earlier in this Help Note).

Since the conclusion of the Review, the PhonepayPlus Tribunal has found a number of services to be misleading for promoting from mobile long numbers for the reasons mentioned above. Should Service/Information Providers wish to promote through mobile long numbers, they should be aware of the risks involved and make sure the promotions are transparent and not misleading, and also that they are clearly worded as a promotion, including all the required terms and conditions. PhonepayPlus also recommends that Service/Information Providers seek compliance advice before promoting in this manner.

## **Compliance advice**

Compliance advice is available, free of charge and in writing, from the Executive. Please note that

advice given by the Executive is not binding on the Code Compliance Panel, although a record of such advice is always maintained and will be taken into account by a Tribunal should a service later be found to be in breach of the Code.

Service/Information Providers operating Virtual Chat services are strongly advised to ensure that, in addition to this document, they have taken note of a previous PhonepayPlus Help Note '*Defining sexual entertainment services (SES) in relation to chat & dating and virtual chat services*' ([http://www.phonepayplus.org.uk/upload/defining\\_SES.pdf](http://www.phonepayplus.org.uk/upload/defining_SES.pdf)).

## Summary Check List

1. Promotional material should not use misleading terms such as '*Meet*' and '*Date*' when the service provides fantasy chat.
2. Service/Information Providers should ensure that their chat operators are NOT indicating to users that there is a chance of meeting when this is not the case.
3. If the service sends multiple MT text messages per MO text message, then it should be made clear in promotional material that this will be the consumer experience. Promotions should also include the likely costs consumers can expect to incur by opting into the service.
4. It is essential that Service/Information Providers do not continue to send charged text messages to consumers after the £10 spend limit has been reached, until a positive response has been received from the consumer.
5. Where cross promotions are displayed in cost reminder messages, these should be presented after the necessary cost information and PhonepayPlus strongly suggests that the word ADVERT or PROMO is used to distinguish this from the Virtual Chat service information.
6. All chat operators should be given training on the Code and appropriate levels of moderation should be put in place by the Service/Information Provider.
7. Previous PhonepayPlus Tribunals have upheld breaches of misleading in relation to using mobile long numbers for promotional purposes. Should Service/Information Providers wish to promote in this manner, then care should be taken to ensure these promotions are not misleading and contain all necessary terms and conditions.

## Further information

### Contacting the Executive:

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