

# **Statement of Expectation in relation to Promotional SMS messages and Transparency**

## **Background**

This Statement of Expectation is being issued in order to address various causes of consumer harm attributable to mobile phone-paid services. It follows PhonepayPlus' review of mobile phone-paid services, during which four categories of consumer harm were identified and analysed. These were:

- **Promotional SMS Messages**
- **Use of Marketing lists**
- **Transparency, especially regarding pricing, and**
- **Subscription Services, joining fees, and failure of the STOP command.**

PhonepayPlus proposed a Statement of Expectation covering two of these four categories – Promotional SMS Messages and Transparency.

Recommendations for the Use of Marketing Lists will be set out in a Helpline which PhonepayPlus is currently drafting in collaboration with the Information Commissioner's Office, and will be published shortly.

A Notice of the requirement for providers of Subscription Services which cost more than £4.50 in any given week to obtain prior permission from PhonepayPlus to operate has been published on 22 January 2009, and can be found on the PhonepayPlus website.

A Notice of the requirement for providers of services which charge per page or image of a mobile website which the consumer views to seek prior permission to operate has been published on 22 January 2009, and can be found on the PhonepayPlus website.

A Notice informing the phone-paid industry that PhonepayPlus will initiate an immediate Emergency Procedure against any service which does not immediately respond to the STOP command was published on 17 July 2008, and can be found on the PhonepayPlus website.

## **Expectations**

For ease of reference, our expectations have been divided into two headings below:

### Promotional SMS Messages

In order to satisfy the requirements of paragraph 5.7.1 of the 11<sup>th</sup> Edition of the PhonepayPlus Code (Code) we would expect that:

- Where users are sent promotional SMS messages which carry a charge the user should be informed, clearly and straightforwardly, of the cost of receiving that SMS message, and consent to the relevant charge, prior to incurring it.
- Where promotional SMS messages contain a link to a mobile website, if the user is charged for access to the landing page beyond normal network data rates, the user should be informed of the cost of such access, and consent to the relevant charge, prior to incurring it.
- Where users are sent SMS messages which promote a phone-paid service and do not carry any charge, then the user should be informed, clearly and straightforwardly, that they are free either within the title of the SMS message itself, or in the first words of the message

In order to satisfy the requirements of paragraph 5.2 of the Code we would expect that:

- All promotional SMS messages must ensure that recipients are provided with a shortcode, either in the title of the message or in the remaining characters available in the message itself, as a mechanism by which the recipient may opt out of future promotions by texting STOP to the shortcode, in line with the requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended.
- Where SMS messages are used to promote a text-based Betting Service, recipients should be provided with a shortcode as a mechanism by which they may opt out of future promotions by texting STOP to the shortcode, in line with the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended. This shortcode should be provided, either in the title of the message or in the remaining characters available in the

message itself or in a separate message containing clear and unambiguous opt-out instructions which immediately follows a promotional SMS, every third promotional message or 72 hours, whichever occurs sooner.

In order to satisfy the requirements of paragraph 5.4.1a of the Code we would expect that:

- Where chargeable or reminder messages, either for subscription or 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, but does not require, that the words ADVERT or PROMO are inserted immediately before the promotion related information.

### Transparency

In order to satisfy the requirements of paragraph 5.4.1a of the Code we would expect that:

- Where promotional material acts as a direct link to a website, it should not contain any information that will, or be likely to, mislead users.
- Promotional messages should make it clear to the consumer if a reply to the message will result in them opting into a service carrying a premium rate charge so as to avoid consumers being misled.
- Services should not imply that consumers are exchanging unique messages with other users, or that users will be able to meet others by using the service, unless that is in fact the case.

As regards Code provisions which raise specific obligations regarding promotional material we would expect that:

- Websites which allow users to browse and purchase different phone-paid services should contain all of the information required by paragraph 5.7 to 5.14 inclusive, of the Code, regardless of whether general information has been provided in promotional material. This information should be provided alongside the description of any phone-paid service/download, and positioned

prominently so the consumer is likely to see it in advance of any purchase. We would generally not accept such information to be included elsewhere on the website, nor simply referenced in the website's terms and conditions.

### **Enforcement**

PhonepayPlus considers misuse of Promotional SMS Messages, and a lack of transparency, to carry a serious risk of consumer detriment, and will continue to actively monitor services to ensure that the above conditions are complied with.