

## SECTOR SPECIFIC GUIDANCE NOTE

### Subscription services

#### 1. Defining subscription services.

- 1.1 Subscription services are services which incur a recurring premium rate charge usually on a per week or per month basis until the user requests to end the subscription or exit the service.
- 1.2 As charges are recurring it is essential that consumers are made aware of all information that is likely to affect their decision to subscribe before they are charged.

#### 2. Making consumers aware of all relevant information

- 2.1 All promotional material should clearly and prominently state any information that is likely to affect an individual's decision to accept a future recurring charge. Providers must take reasonable steps to ensure this information is prominently available, before the consumer begins use of the service. Relevant information will likely include, but not necessarily be limited to:
- Confirmation that the service carries a recurring charge;
  - Clearly highlight the obligation to pay a recurring charge by labelling activation buttons (or similar function) with an unambiguous phrase such as 'PAY £[X] A WEEK' or similar<sup>1</sup>;
  - The total cost of the service (including any joining fees), any incremental charges and when, or how often, those charges will occur;
  - An adequate description of what the service is offering in exchange for the recurring charge;
  - Clear opt-out information (this is normally the 'STOP' command however other methods may be acceptable providing they are clearly communicated, simple and appropriate to the delivery of the service). For further guidance providers should read the General Guidance Note on 'Method of exit'<sup>2</sup>.
- 2.2 Consumers must be supplied with confirmation of the contract in a durable medium before charging occurs such as an initiation or confirmation message or confirmation via email to an email address previously provided by the consumer<sup>3</sup>.

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<sup>1</sup> Providers are obliged to comply with the Consumer Contracts Regulations 2013; for further information please refer to the PhonepayPlus compliance update regarding the Regulations published in June 2015: <http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/ComplianceUpdates/03-June-2015-Compliance-Update.pdf>

<sup>2</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Method-of-exiting-a-service.pdf>

<sup>3</sup> Providers are obliged to comply with the Consumer Contracts Regulations 2013; for further information please refer to the PhonepayPlus compliance update regarding the Regulations published in June 2015: <http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/ComplianceUpdates/03-June-2015-Compliance-Update.pdf>

- 2.3 Providers operating subscription competition services should also read the General Guidance Note on 'Competitions and other games with prizes'<sup>4</sup>.
- 2.4 Where a subscription service is promoted by a text message or other communication to a consumer's handset, the promotion should confirm the consumer has not been charged.
- 2.5 For more information on the promotion of subscription services, and advice on particular issues such as the use of the word 'free', please see the General Guidance Note on 'Promotions and promotional material'<sup>5</sup>.

### **3. Double opt-in**

- 3.1 Where a subscription service has a recurring charge of more than £4.50 in any given seven day period, providers are required to obtain a 'double opt-in' from the consumer following the initial sign up in the form of a positive, recorded and auditable response where the cost and name of the service has been clearly presented. This is a requirement of the subscription services notice of special conditions<sup>6</sup>.
- 3.2 We recommend that 'double opt-in' is also obtained from consumers entering subscription services that has a recurring charge of £4.50 and under after the consumer consents to the service but before they are charged for it.
- 3.3 An example of 'double opt-in' within a premium rate SMS flow would be a free to receive initiation message containing the same details as set out in paragraph 4.1 below which the consumer should positively respond to. Alternative means of achieving robust 'double opt-in' are possible and may vary depending on the service delivery platform, with changes in technology alternative means may also continue to develop. Where such alternative means are used, and robust evidence of consent to charge is available, it is likely that such services will comply with the Code.
- 3.4 Level 1 providers who operate within the mobile sector of the PRS market may wish to consider contractual requirements with a direct Level 2 client relating to sending an initiation message. This may be a useful way of ensuring that consumers have received the correct information about a subscription service, before incurring a charge. However, for the avoidance of doubt, sending a subscription initiation message does not replace a requirement for the consumer to be clear about the cost of a service, either in promotional material, or upon confirming payment in a payment mechanism, such as Payforit.

### **4. Spend reminders**

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<sup>4</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Competitions-and-other-games-with-prizes.pdf>

<sup>5</sup> [http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Promoting-PRS\\_Oct\\_15v2.pdf](http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Promoting-PRS_Oct_15v2.pdf)

<sup>6</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Clean-version-of-special-conditions-notices-by-service/Notice-of-SC-for-Subscription-services.pdf>

- 4.1 PhonepayPlus has issued a Notice of caps, thresholds and actions in accordance with section 3.12 of the 13<sup>th</sup> Code<sup>7</sup>. Providers of subscription services must send any consumer participating in the service a spend reminder, at no extra cost, once the consumer has incurred charges of £20.45, or each month, whichever occurs first. Spend reminders must be sent at each charge of £20.45 thereafter, or each month thereafter, whichever occurs first. For the avoidance of doubt, spend reminders must contain the following specific information:
- The name of the service;
  - Confirmation that the service is subscription-based;
  - What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
  - The charges for the service and how they will or can arise;
  - How to leave the service; and
  - Level 2 provider contact details.
- 4.2 In certain circumstances it would be acceptable for a service message to also serve as the spend reminder message. For example if the billing cycle matches the frequency of the required spend reminder then the billing message could also contain all of the required spend reminder information (as set out above) rather than sending a separate free reminder message. In these circumstances the consumer is more likely to understand and not believe they have been charged twice, and as an ancillary benefit this would likely reduce bulk messaging costs for the provider.
- 4.3 If the spend reminder message is a free message then 'freemsg' or similar should be stated somewhere within the text. Feedback suggests that stating 'freemsg' at the beginning of the message may lead the consumer to believe the message is spam and instead of reading the contents the consumer may simply delete it. Consistency in presentation of information is likely to improve familiarity with the service and confidence in the market.
- 4.4 In certain, limited, cases, the PhonepayPlus Executive will not pursue enforcement action in relation to the requirement on a provider of a subscription service to provide spend reminders as set out above in paragraph 4.1. However, these are currently limited to services that send alerts as to football or cricket matches (and/or results). This is on the grounds that the events leading to the information being sent, such as goal or wicket updates, are likely to be unpredictable, and the information contained therein easily verified later, and so unlikely to be falsified by a provider in order to create extra charging. Providers who wish to seek an exemption for any other service type should contact PhonepayPlus before they begin to operate a service.

## 5. Termination of the service

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<sup>7</sup> The first such Notice was published on 26 March 2015 ahead of the launch of the 13<sup>th</sup> Code – it can be found on our website here: <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Annex-B--Notice-of-actions-and-thresholds-under-paragraph-312.pdf>

- 5.1 Consumers must be free to leave the subscription service at any time and no service should imply anything to the contrary.
- 5.2 Where a consumer is subscribed to more than one service from the same provider and texts the 'STOP' command, providers should give the consumer adequate opportunity to clarify their intentions. The provider should determine whether the consumer wishes to terminate one, more than one or all of the services they are subscribed to. Providers found to be causing confusion to consumers wishing to leave subscription services may be found to have misled those consumers under paragraph 2.3.2 of the PhonepayPlus Code of Practice.
- 5.3 For more information on opting out of services, please see the General Guidance Note on 'Method of exit from a service'<sup>8</sup>.

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<sup>8</sup> <http://www.phonepayplus.org.uk/~media/Files/13th-Code-of-Practice/Guidance-and-Compliance/Method-of-exiting-a-service.pdf>