



## **Guidance Development:**

**‘Method of exit from a service’  
& ‘Subscription services’**

**STATEMENT FOLLOWING PUBLIC CONSULTATION**

**Issued by PhonepayPlus on 17 August 2016**

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## Summary

- 1.1 PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. Our aim is to provide effective and proportionate regulation that builds consumer trust and confidence in a healthy and innovative market. We seek to achieve this through the development and enforcement of the PhonepayPlus Code of Practice (the “Code”), along with assistance to industry through published Guidance and the availability of compliance advice on request.
- 1.2 The process of guidance development is ongoing and just as the market is dynamic the regulator needs to be ready to respond when circumstances change and industry members need additional support. In assessing consultation feedback, PhonepayPlus has observed strong support for the current suite of Guidance following our review, which has considered both:
  - the expectations set by PhonepayPlus within its regulatory framework; and
  - the manner in which Guidance and compliance advice is presented on our website.
- 1.3 PhonepayPlus has now completed a thorough review of Guidance resulting in new guidance being developed and existing Guidance updated. This statement focusses on the development of two pieces of Guidance which are as follows:
  - i. ‘Method of exiting a service’
  - ii. ‘Subscription services’.
- 1.4 These two pieces of Guidance were not published along with other documents in July 2016 as PhonepayPlus felt additional time was needed to reflect on qualitative research undertaken by Craft Realities, the findings of which were shared with PhonepayPlus after the Guidance consultation began in February 2016<sup>1</sup>. We have updated these pieces of Guidance following consideration of consultation responses from a range of stakeholders. The feedback in response to the questions posed in the consultation paper has been helpful in shaping our proposals and future strategy for guidance development.
- 1.5 The background to the development of these pieces of guidance is set out in section two of this statement, whilst section three explains in detail the changes we have made in reaction to the consumer journey research and submissions received from stakeholders during our earlier consultation. We also outline our impact assessment.
- 1.6 PhonepayPlus anticipates the guidance will be updated again in accordance with any new Notices of Special conditions in autumn 2016 if such new provisions are implemented following public consultation.

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<sup>1</sup> To read a summary of Craft Realities ‘A Study of Consumer Journeys Relating to Online Competition and Adult PRS’ go to:

<http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Research/2016/Summary-report-on-A-study-of-consumer-journeys-relating-to-online-competition-and-adult-PRS.pdf>

## Background

- 2.1. The consultation paper published in February 2016 set out the breadth of review that led to current proposals. The two-stage review enabled PhonepayPlus to fully assess and introduce appropriate Guidance in keeping with the objectives set out in paragraphs 1.5.1 and 1.5.2 of the Code.
- 2.2. All current Guidance is kept under review over time to ensure it is clear, fit for purpose, and effective in assisting the development of PRS and the delivery of high compliance standards in the industry.
- 2.3. This statement focuses on two pieces of Guidance, Subscription services and Method of exiting a service, which were developed over the course of the last year alongside guidance on advice services, digital marketing and promotions and enabling consumer spend control. These two pieces of Guidance have been updated following careful consideration of consultation responses received from a range of stakeholders, including AIME, BMCM Group and Ofcom's Communications Consumer Panel (CCP).
- 2.4. The two pieces were not published with other documents in July 2016 to allow additional time to reflect on the Craft Research, the findings of which were shared with PhonepayPlus after the Guidance consultation began in February 2016.
- 2.5. The consumer journey research highlighted a lack of consumer understanding where subscription services were concerned. It also suggested that the majority of consumers participating in the research who subscribed to services experienced difficulty when trying to exit them. For this reason PhonepayPlus wanted to consider further whether the updated guidance addressed these concerns sufficiently and in particular consider how it expresses its preference for the use of the STOP command in light of this report. The findings of the consumer journey research are published alongside this statement.
- 2.6. Separate from Guidance development, in light of the consumer journey research we have explored the risks posed by online competition services and online adult PRS and considered whether Special conditions are necessary. While PhonepayPlus is consulting on new Special conditions for these service types assessed to be higher risk services, the Guidance published alongside this statement remains broadly the same as that which we consulted on in February. Section 3 of this statement explains the changes we have made in reaction to both the research and the submissions from stakeholders during our earlier consultation.
- 2.7. We anticipate the guidance will be updated in line with any new Notices of Special conditions in autumn 2016 if such new provisions are implemented following public consultation.

## Proposal development

- 3.1 In this section of our statement we briefly set out the responses to our proposals and how they have led to further work to develop finalised Guidance.

### *Guidance on method of exit from a service*

- 3.2 PhonepayPlus received a range of comments relating to our proposals indicating the balance of the Guidance needed further consideration. The Association of Interactive Media & Entertainment (AIME) suggested the guidance should go further to indicate how PRS providers could explore alternative methods of exiting a service in accordance with rule 2.3.11, which takes a flexible approach to service termination. AIME suggested the invitation to adopt alternatives twinned with a need to still accommodate the use of 'STOP' command undermines the flexibility of the rule by adding cost.
- 3.3 The Communications Consumer Panel (CCP) stated its strong support for the use of the 'STOP' command suggesting it was a proven and effective means of exiting a service. The CCP stated exit methods must be clear, easy to complete, effective and unambiguous. PhonepayPlus recognises the importance of consumer understanding and ease of usage, which is reflected within the wording of rule 2.3.11 of the Code. As such any Guidance on the topic has to properly introduce and represent industry standards as well as consumer expectations.
- 3.4 Since receiving the consumer journey research report, PhonepayPlus has had additional information upon which to form a view of those consumer expectations. While innovation in the market is encouraged, and new payment mechanics developed within the PRS sector may be such that sending a text with the 'STOP' command in it may not be effective or possible, the Guidance reflects the interest of consumers in having an easy to use method of engagement. Where a consumer receives service messages associated with the PRS, it appears clear that it is intuitive for consumers to attempt to reply to those messages with the known 'STOP' or 'STOP ALL' commands.
- 3.5 It is for this reason that we state a clear preference for this mechanism to be used by the majority of PRS providers. Changes to Guidance paragraphs 2.2 and 2.3 try to offer further clarity around these expectations. While Guidance paragraph 2.8 now sets out a process for exploring alternatives where innovation or service design requires it.
- 3.6 BMCM Group, a consortium of Level 2 providers, suggested section 4 of the Guidance was framed in an unhelpful way as it focussed too heavily on specific examples of technology which may pose difficulties for operation of the 'STOP' command. This gave us a clear steer towards exploring the potential limitations to using 'STOP' command, and this became the new title for this section of Guidance. Changes to paragraphs 4.1, 4.2 and 4.3 all frame the new approach to considering such limitations and building an effective mechanism for terminating a service.
- 3.7 Other sections of the Guidance were welcomed and we have taken on board some suggested amendments to increase clarity.

### *Guidance on subscription services*

- 3.8 The feedback received in relation to this Guidance did not point to specific sections requiring changes, and that is reflected in the small number of amendments that have been made following consultation. However, feedback did ask us to consider the guidance in light of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs). AIME was one respondent calling for extensive amendments based on its own guidance relating to CCRs.
- 3.9 PhonepayPlus recognises that industry members will be looking to develop PRS to comply fully with the CCRs and our Code. We provide Guidance that focusses on the expectations set out in the Code and how to comply with its provisions. It is for this reason that we have not made more extensive changes to the Guidance on subscription services.
- 3.10 However, we did reflect further on the bullet points at Guidance paragraph 2.1 and decided to clarify what is meant by the need to highlight the obligation to pay. While the amendment does not directly replicate suggestions from AIME or other responses, it has been re-worded with full consideration of those alternative proposals.
- 3.11 BMCM Group commented on double opt-in requirements and indicated that guidelines set away from the Code made little distinction between requirements under Special conditions for subscription services charging consumers over £4.50 in any seven day period. They noted the recommendation made at Guidance paragraph 3.2 (now 3.3 following the insertion of new text) and questioned whether compliance with the Code was sufficient.
- 3.12 The Code stipulates the need for consumers to be treated fairly and equitably (rule 2.3.1 linked to the outcome of 'Fairness') and that consumers are not charged without consent (rule 2.3.3). The guidance recognises alternative opt-in processes can be developed to achieve these requirements, but our assessment of services currently available in the PRS market leads us to recommend double opt-in to give consumers clarity as to the transaction they are making.
- 3.13 The text at new Guidance paragraph 3.1 is included to explain the concept of 'double opt-in' and thereby frame the recommendation that follows. With a clear understanding of the objective in the Code, especially in relation to rule 2.3.3, it is anticipated PRS providers will be equipped to deliver a range of opt-in processes that comply with those expectations.
- 3.14 PhonepayPlus considers that the Guidance, with the small number of changes made following consultation, achieves the outcome expressed in the response given by the CCP: *"that it is vital that consumers clearly understand the implications of signing up to a subscription service and are content to incur a future recurring charge before they are charged initially."*

### *Our impact assessment*

3.15 PhonepayPlus committed to reviewing its earlier impact assessment that was set out in the Guidance consultation paper in light of any changes. While the prospective Special conditions may have a wider impact on industry, the amended finalised Guidance on 'Method of exiting from a service' and 'Subscription services' published alongside this statement closely resemble the original text and the expectations have not changed from a technical stand point. As such the original impact assessment remains effective and PhonepayPlus publishes the Guidance based on this consideration.

### Original impact assessment

<b>Title</b>	<b>Potential impact on compliance</b>	<b>Possible cost and resource implications</b>
Method of exiting a service	Increased levels of compliance as the basic principle is reaffirmed and expectations are clearly laid out, together with room for innovation and future-proofing of the Guidance.	No further or additional impact on costs or resource.
Subscription services	Increased levels of compliance and confidence with robust opt-in and consistency with new legislation. Increased clarity for consumers in spend reminders and receipts.	Potential increased costs in updating marketing material and potential cost savings with bulk messaging.

### *List of annexes to this statement*

Guidance is published alongside this statement on the following topics:

- Method of exit from a service
- Subscription services