

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

Issued by PhonepayPlus on 26 February 2014

[FOLLOWING CONSULTATION]

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Executive Summary

- 1.1 PhoneyPayPlus regulates premium rate services (“**PRS**”) through the implementation and enforcement of its Code of Practice, currently in its 12th edition, which came into force in September 2011 (the “**Code**”). PRS are the goods and services that consumers can purchase by charging the cost to a phone bill, whether fixed line or mobile. Such goods and services are diverse in nature; and we have a Code that 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 compiled 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 in respect of particular services, where it is considered 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:
 - For the purpose of donating money via a premium rate text shortcode on an on-going subscription basis, 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
 - Exemption for PRS-based charitable donations operating on a subscription basis from the requirement 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 six 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.¹ By November 2012 this pilot scheme had operated for around 18 months and has provided PhoneyPayPlus with

¹ ‘Charitable Donations by Premium Rate’ (December 2012) research report is found on our website, alongside other [consumer research](#)

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 sought greater clarity as to whether they would be permitted to continue with the pilot exemptions on a permanent basis.

- 1.5 Having analysed the data from the pilot, especially against the previously identified potential risks, PhonepayPlus considered that the potential for risk was low, and where it does occur could be adequately mitigated via conditions attached to any permanent exemption. As a result, we consulted in November 2013 on the proposal 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 annexed to the consultation paper. The purpose of this paper is to provide our final response to that consultation.
- 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 proposed that the decision to make the SKIP pilot permanent would 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 proposed this would reduce any concerns the rest of the industry would ordinarily have with regards to variance in regulation.
- 1.8 In accordance with paragraph 3.10.4(b) of the Code, the consultation paper set out PhonepayPlus’ consideration and proposals. In proposing that the dis-applications within the current pilot be made permanent, PhonepayPlus proposed 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 welcomed dialogue from industry and other regulatory bodies in the UK, and received 7 formal responses to the consultation, which have been published on our website. PhonepayPlus has considered feedback and made the following decisions as a result:

- To proceed with the Statement of Application to permanently dis-apply paragraph 2.3.12(d)(v) of the Code in relation to all premium rate services which facilitate charitable donation on a 7-series shortcode. In addition such services will also be exempted from the requirement to obtain prior permission when operating a subscription which can cost more than £4.50 in any given 7-day period.
- To retain all conditions as originally proposed, bar an amendment to condition vii) which will no longer require a “re-opt in” from consumers who text SKIP in 3 consecutive months, but rather require a text to be sent to the consumer reminding them to text STOP if they wish to opt out of the service.

Consultation responses and our decision

2.1 The consultation closed on 12 December 2013; however, PhonepayPlus welcomed some additional responses from stakeholders in the short period following that date. A full list of respondents is found at Annex B. Whilst PhonepayPlus received 7 responses to the consultation, the responses were mostly positive, and with very few comments on individual conditions as proposed. As such we present our consideration and determination under the following two headings:

- Permanent dis-application of rule 2.3.12(d)(v)
- Proposed conditions within the Statement of Application

Permanent dis-application of rule 2.3.12(d)(v)

2.2 PhonepayPlus asked the following question in relation to our approach:

“Do you agree with the risks identified and our assessment of them?”

2.3 Having considered all responses, PhonepayPlus has decided to pursue the permanent dis-application of the Code for all relevant providers who wish to operate charitable donation services, as opposed to making the prior permission regime a fixture of our regulatory framework. This is on the grounds that:

- 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.
- 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.

2.4 In total, we received 7 responses to the consultation. The industry response was unanimous in its support of the decision to issue a ‘Statement of Application’ for the reasons set out.

2.5 The Information Commissioner’s Office raised concerns in its response questioning whether the proposals would reduce the consumer’s control over the donations.

2.6 PhonepayPlus considered its original proposals and confirms that the STOP command function would be operational at all times. The only change that the Statement of Application makes is in relation to the promotion of the STOP command within service messages. The universality of the STOP function is therefore maintained regardless of the changes. Furthermore, the STOP command will be promoted in marketing material, at the point of initiating the subscription service, and at the beginning of months 3, 6, 9 and so on. As such we do not consider that the Statement of Application would reduce the level of opt-out information available to consumers prior to a transaction, or the tools available to the consumer to opt out of a subscription-based donation.

2.7 To re-enforce the above consideration, PhonepayPlus has used the pilot scheme, which has been in place for over 18 months, to test consumer reaction to measures very similar to those consulted on. That pilot scheme has demonstrated that consumers do not lose any control over the payments they make. Indeed, the SKIP function gives greater control to donors who have chosen to give to charity on a regular basis, but may wish to cancel one month’s payment without exiting the charitable donation service itself.

2.8 One other respondent questioned this approach to regulation and sought much more onerous powers to introduce a block on all premium rate service charges. Given that the ‘Statement of Application’ tool is not capable of achieving this aim, and the fact that there is no evidence to suggest that the low risk presented by charitable donation services justifies such a step, PhonepayPlus is not minded to amend its proposal to make this statement.

Conditions that must be met by relevant providers

2.9 PhonepayPlus went on to ask two questions relating to the conditions we proposed, which were as follows:

“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?”

“Are there any additional conditions that you consider necessary to achieve the objective of rule 2.3.12(d)(v) of the Code?”

2.10 While the industry response to the consultation was unanimous in its support of the wider proposals, it was equally unanimous in its response to condition (vii), which said:

“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.”

2.11 Industry respondents challenged that the impact of this condition is such that, where a consumer has sent SKIP three times in consecutive months, silence means STOP. It was argued that this is contradictory to the consumer’s expressed intention as regards their ongoing interaction with the service. While SKIP means they do not want to make payment on a particular month, industry respondents and charities argued that it cannot be assumed repeated use of the SKIP function is in lieu of full cancellation of the service. Indeed, statistics referred to by PhonepayPlus in the consultation paper highlight a significant minority of donors who do send SKIP three times, have chosen not to send STOP when invited to do so.

2.12 PhonepayPlus has considered this response and decided to amend condition (vii). Where a consumer has sent three consecutive SKIP commands to the service, we consider it appropriate to verify whether the consumer still wishes to be subscribed to the service. However, we agree that this can be done by sending the consumer an automatic reminder on the third consecutive SKIP that they if they wish to unsubscribe from the service then they should send STOP.

2.13 Condition (vii) will now read:

“Where the SKIP command is activated for three consecutive months, this must automatically trigger the sending of a message to the relevant consumer, informing them that they can reply with STOP if they wish to opt out of the service.”

Recommendation about signing up to a fundraising Code of Practice

2.14 While PhonepayPlus did not ask any specific question relating to the recommendation made within the Statement of Application, we welcomed consideration of this in light of the variety of key stakeholders within this industry sector. One respondent indicated that charities associated themselves with a variety of fundraising “trade” associations and sought some expansion to the Statement of Application’s recommendation that charities deriving benefit from premium rate donation should sign up to the Fundraising

Standards Board's Code of Practice. PhonepayPlus is happy to acknowledge other relevant bodies with relevant codes, which are equally valid. The recommendation will now read:

"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', and/or the Institute of Fundraising's Code of Fundraising Practice, and/or other relevant guidelines issued by relevant trading bodies."

2.15 All other conditions remain as previously stated. The Statement of Application is found in Annex A.

Subscription services over £4.50 – exemption from prior permission

2.16 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.

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

- 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.
- 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.
- The significant difference between complaint levels about charitable donation services and other subscription-based PRS.

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

- (iii) 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*'.

2.19 Respondents either supported this position or did not comment on the proposal. As such PhonepayPlus has not altered its original view and will proceed with the exemption as intended.

Implementing the Statement of Application under paragraph 3.10.4(b) of the Code

3.1 Paragraph 3.10.4(b) of the Code states:

“Where PhonepayPlus considers following reasonable consultation that any objective of the Code can be adequately satisfied by means other than strict adherence to the Code provisions it may issue a Statement of Application which will set out such alternative means and any conditions applicable. A Statement of Application may be withdrawn or varied by PhonepayPlus on the provision of reasonable notice.”

3.2 Focussing on the latter part of the provision, it is clear that the Statement of Application must set out such alternative means or any conditions applicable. If these conditions are adhered to then PhonepayPlus will consider the objective of the Code met, without strict adherence to an identified rule or rules. In this case the conditions deal with how the SKIP function will operate and indicates that where these conditions are met, strict adherence to rule 2.3.12(d)(v), by the relevant providers, is no longer necessary.

3.3 What this means in practice is charities, and intermediaries operating the charitable donation services on their behalf, do not need any form of prior permission certificate before operating such services. Instead they simply need to comply with:

- a. The conditions within the Statement of Application, and not rule 2.3.12(d)(v) (all other Code provisions remain as applicable); or,
- b. Rule 2.3.12(d)(v) (and all other Code provisions as applicable), and not these conditions.

3.4 Where a PRS provider does not fall within the definition of a ‘Relevant Provider’ within the Statement of Application, they must adhere to rule 2.3.12(d)(v) when operating subscription-based services, whether related to charitable fundraising or not.

3.5 Where there is evidence of non-compliance with any condition within the statement, then the relevant provider may be investigated for a breach of the Code if they also fail to strictly adhere to rule 2.3.12(d)(v).

3.6 For the sake of clarity, the prior permission regime that has been in place throughout the charitable donation services pilot scheme will come to an end when the Statement of Application takes effect. The Statement of Application, found at Annex A, will take effect as at **00:01 on Monday, 3 March 2014.**

ANNEX A – 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 5.3.8(a) and 5.3.8(b) 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.

Conditions applicable to Level 1 provider

- (ii) 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.
- (iii) This Statement of Application enables the service to operate at price points up to £10 in any given seven day period without triggering the requirement to use the *double opt-in mechanism* normally applicable to the category of service “*Subscriptions over £4.50 in any seven-day period*”.
- (iv) The use of SKIP is the instruction command which consumers must activate to suspend payment of their monthly donation.
- (v) The monthly reminder containing the SKIP instruction must be sent 24 hours prior to when the consumer is due to be charged.
- (vi) 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.
- (vii) Where the SKIP command is activated for three consecutive months, this must automatically trigger the sending of a message to the relevant consumer, informing them that they can reply with STOP if they wish to opt out of the service.

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

- (x) 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.
- (xi) All free service messages as sent should start with the wording “FreeMsg” or equivalent at the outset of the message.
- (xii) 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.
- (xiii) 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]”
- (xiv) 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’, and/or the Institute of Fundraising’s Code of Fundraising Practice, and/or other relevant guidelines issued by relevant trading bodies.

ANNEX B – List of Respondents

Consultation responses are published on the PhonepayPlus website and a full list of the respondents are as follows:

- *Cymba Integrated Solutions Ltd*
- *Information Commissioner's Office*
- *Institute of Fundraising*
- *Dr Michael Ward*
- *Open Fundraising*
- *Save the Children*
- *SCOPE*