

SERVICE-SPECIFIC GUIDANCE NOTE

Virtual chat services

Who should read this?

Any providers that do, or are planning to, offer virtual chat services, which are defined at paragraph 5.3.41 of the [PhonepayPlus Code of Practice](#):

“Virtual chat services’ are not live conversation services but enable two or more users to exchange separate messages, whether by recorded voice, text or pictures, when engaged in the service.”

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus’ expectations around the use of virtual chat services, which are defined above.

In practice, virtual chat services will consist of messages exchanged either between two consumers, or between a consumer and an operator, and might be delivered on a variety of platforms, including the following:

- Voice-based (with messages being left in mailboxes of other registered consumers);
- Text-based (with SMS or MMS messages being exchanged);
- Web/instant messaging (with messages being exchanged via the web or a form of instant messaging service, but charged via premium rate).

What are the key points?

The main issues for providers to consider are:

- Providers should take reasonable steps to ensure that appropriate age verification processes are in place and that adult chat (i.e. that which could be defined as ‘sexual entertainment’) does not occur in non-adult chat platforms.
- Prior to incurring a charge, consumers should be made aware of how the service mechanic works, what to expect in terms of the exchange of messages and the total cost for each message, including any charges for initiating the chat exchange.
- Spend reminders should be sent to consumers once they have incurred a charge of £8.52 plus VAT, and at every charge of £8.52 plus VAT thereafter.
- Promotional material should be clear about whom the consumer will be exchanging messages with (i.e. service operators, or other consumers of the service).

1. Desired outcomes – what we believe good service delivery looks like

- 1.1 Consumers have various legitimate expectations when approaching virtual chat services, and these are dependent on the nature of the service, its user base, the mechanic by which messages are exchanged, and how the service is promoted. We believe these expectations give rise to certain outcomes:
- Chat service mechanics ought to be built around an exchange of messages, and not a format for charged promotional messages flowing from one-sided conversations that are operator-led
 - Consumers ought to have suitable and appropriate levels of control over the exchange of messages and the resulting charges associated with the service
 - Consumers need to be fully aware of all charges associated with the service and therefore providers should aim to keep the complexity of the charges to a minimum.
 - Where optional added-value features such as photo-messaging exchanges are available, and there are additional charges involved, these must be communicated clearly and prominently in relation to their promotion, especially where such features are promoted as part of the virtual chat experience
 - Where services are only consumer-to-operator based, or the opportunity to arrange consumer-to-consumer chat is not the exclusive form of virtual chat available, consumers must be made aware of any limitations such as the inability to arrange meetings in person or dates.

2 Age verification

- 2.1 Providers should take all **reasonable steps**¹ to ensure that no one under the age of 18 uses any virtual chat service which contains adult content, or is adult in nature. Initial age verification should take place prior to the consumer incurring a charge. Promotional material should clearly state that the service is only for individuals aged 18 and over. For virtual chat services delivered on mobile phones, it will usually be expected that the consumer is sent an initial text asking for their date of birth (which must be checked to ensure the consumer is over 18) before each individual service commences.
- 2.2 Alternatively, where a provider seeks to use a system for initial age verification of a mobile MSISDN (mobile number), which can then be applied across all its 18+ services once an initial check is made, providers will need to prove to PhonepayPlus upon request that the system is robust, auditable and tamper-proof. In addition, providers should ensure that they re-check age verification on MSISDNs every three months.
- 2.3 No consumer under the age of 16 is permitted to use any virtual chat services, whether the services contain adult content or not, and providers should take all **reasonable steps** to ensure that this is the case.

¹ This is defined in detail in paragraphs 2.6 to 2.9 of this guidance below.

- 2.4 Operators determining a consumer's age should not use leading questions (e.g. "You are over 18, aren't you?"). Age verification methods should require the user to state their date of birth. Age verification is an ongoing duty and, if during the course of the service, the user gives any indication that they are under 18 (or under 16, in the case of non-adult virtual chat services), then the service should be immediately terminated. We would consider it best practice for providers to also place a bar on that consumer's number, or blacklist it, for six months to a year.
- 2.5 Providers should also take all **reasonable steps** to ensure that sexually explicit chat does not take place on non-adult virtual chat services. A failure to do so could likely result in a breach of paragraph 2.3.7 or 2.3.8 of the [PhonepayPlus' Code of Practice](#) (in the case of the latter this would likely arise where the services are used by those aged 16-17 years of age). Where non-adult virtual chat services are promoted, such promotions should only take place in media where the target readership is those 16 years of age and over.

Reasonable steps

- 2.6 What we mean by 'reasonable steps' is an expectation that all providers that are engaged in a virtual chat service take a proactive approach to the way their staff are trained and moderated to ensure compliance with the [PhonepayPlus' Code of Practice](#).
- 2.7 As a starting point, we would expect to see evidence of how individual operators are being trained in practice. Some of the mitigating steps that may help providers to achieve appropriate standards of compliance include:
- Signing up to PhonepayPlus' News Alerts to ensure they are being kept updated with adjudications and any new policy developments that might impact upon their business model.
 - Contacting PhonepayPlus to receive further guidance on the compliance of their service model with PhonepayPlus' Code of Practice.
 - Evidence of training taking place for relevant staff prior to them taking up responsibilities for monitoring and / or compliance checks
 - Having a training manual available, which is regularly updated and sets out some of the key 'triggers' and steps that individual operators are expected to take where underage activity is suspected.
 - We would consider it best practice that, where a provider successfully identifies 'underage use', the infringing MSISDN be forwarded to the appropriate Mobile Network Operator for further consideration.
- 2.8 No person employed as an operator for virtual chat services may be aged under 18. All such employees should be adequately trained to operate according to these and any other relevant conditions, and all relevant rules of the Code, before commencing operation.

2.9 Virtual chat services that are sexual entertainment services² and require the user to be over 18 to participate should only operate on:

- *Mobile services* – shortcodes (voice or otherwise) beginning with 69, 79 or 89, which are the prefixes designated by UK mobile network operators for adult services;
- *Fixed-line services* – numbers beginning 0909, 0908 or 098³.

3. Message information and spend reminders

3.1 Consumers should be made fully aware of the total cost of using any virtual chat service prior to entering. This includes making the consumer aware of the number of messages that they are likely to receive in response to the messages they send.

3.2 For example, if for every one message the consumer sends, three are received, promotional material should clearly state either:

- The total cost of all messages (e.g. Total cost per one message sent = £4.50); or
- The cost of each text message and the number of messages the consumer will receive (e.g. You will receive 3 replies at £1.50 per message for every 1 message sent).

3.3 PhonepayPlus recommends it is best practice to do both of the above in order to provide complete clarity to consumers.

3.4 PhonepayPlus has imposed certain actions and thresholds in relation to all virtual chat services under the relevant power found at paragraph 3.12 of the Code. Such services should, as soon as is reasonably possible after a consumer has spent £10.22⁴, and after each £10.22 spend thereafter:

- Inform the consumer separately from the service, or any promotion, that they have spent £10.22; and
- Inform the consumer of the cost per minute, or per message (whether charged for outgoing or incoming messages), of continuing to use the service.

3.5 If the consumer continues to interact with the service, having received these clear spending reminders, then this can be considered a further opt-in to the service. If the consumer does not continue to interact, then the service should be⁵ terminated (i.e. the consumer should not be charged further). Providers who wish to continue to send

² Sexual entertainment service has the meaning set out in the Condition issued by Ofcom under section 120 of the Communications Act 2003 effective from time to time (as replicated in the Code).

³ For more information on the appropriate number ranges, please see Guidance published by Ofcom: http://stakeholders.ofcom.org.uk/binaries/telecoms/numbering/Numbering_Plan_Dec_2013.pdf

⁴ Price figures are inclusive of VAT.

⁵ This requirement is true regardless of whether the service charges via mobile terminating (MT) text messaging or mobile originating (MO) text messaging, and consumers must be made aware of the payment mechanism being used.

messages to a consumer who does not continue to interact should see section 6 of this Guidance below.

- 3.6** Spend reminders should be auditable, and evidence of a spend reminder being successfully sent should be available on request.
- 3.7** In the case of text virtual chat services, consumers must be made aware of the 'STOP' command, prior to incurring a charge within the service. For more information on the 'STOP' command, please see the General Guidance Note on ['Method of exit from a service'](#).

4. Services should not mislead consumers

- 4.1** Promotions for virtual chat services should not lead consumers to believe that they will be exchanging messages with other consumers, or that they may be able to meet other consumers by using the service, unless that is the case.
- 4.2** Use of words such as 'meet' and 'date' may be deemed misleading if the consumer does not, in fact, have the opportunity to meet any other users or operators of the service. Operators should not indicate to consumers that a meeting can take place, where this is not a function of the service. Where a consumer does request a meeting, expectations should be managed correctly and operators should inform the consumer that the purpose of the service is for 'fantasy chat' only.

5. Services that use instant messaging

- 5.1** Services that use an instant messaging mechanic (i.e. where the consumer is participating in chat via an instant messaging service, such as Imo or WhatsApp, but being charged via their mobile device) should make sure consumers are fully aware of how the service works.
- 5.2** Prior to incurring a charge, the consumer, in addition to other guidelines in relation to virtual chat services, should be clearly and prominently informed as to:
- Whether the service uses virtual currency and credits as a form of payment;
 - The incremental charges that they will incur for using the service;
 - The likely total cost of using the service, if this is fixed; and
 - How they will be charged, and whether an automatic top-up charge applies.
- 5.3** Where the charging mechanic is subject to an automatic top-up (i.e. when the consumer has used all their credits, the service automatically issues an incremental charge to provide the consumer with more credits in order to continue with the service), the consumer should be made aware that this is how the service will work, prior to incurring a charge.

5.4 Providers should, where possible, inform the consumer through the instant messaging service that they have spent all their credits and that their account will be topped up via a premium rate charge.

6. Services which promote after a lull in interaction

6.1 Where a consumer does not continue to interact with a service after being informed that he or she has spent £8.52 plus VAT, then the service should be terminated (i.e. the consumer should not be charged further), as set out at paragraph 3.4 of this Guidance above, and stipulated under provisions introduced in accordance with paragraph 3.12 of the [PhonepayPlus Code of Practice](#).

6.2 Providers who wish to promote to consumers who have opted out of a previous interaction with a virtual chat service should regard any interaction after one month from the date of the last previous interaction as having resulted from a new promotion. At that point, any promotional text messages should contain all necessary promotional information once again (see section 3 of this Service-Specific Guidance Note).

7. Promotion of virtual chat services on adult broadcast services

7.1 Adult broadcast services are known to advertise virtual chat services alongside the promotion of adult sexual entertainment service lines inviting viewers to call onscreen 'babes'. As with any cross-promotion, there is scope for confusion related to the multiple terms and conditions presented on the one screen. These terms and conditions may be static or scrolling across the screen in some way. Providers who advertise in this way must take steps to remove any confusion, and ensure all key information is presented clearly and prominently.

7.2 Providers are encouraged to consider the cost and payment arrangements for the virtual chat service carefully, and to reduce any complexity where possible. This is because complex terms and conditions are much harder to present to consumers on screen. Indeed, the more complex the terms and conditions the greater the reliance on scrolling information, which is not as easy for consumers to read and digest.

7.3 Where providers do find it difficult to present all the key information on screen, it is advisable that further details relating to the cost of the service and how it operates are sent to the consumer free of charge prior to the paid-for service becoming operational and initial payment taken.

7.4 Any initial fee for initiating the exchange of messages with virtual chat services operators must be clearly presented in a static way, alongside any other charges levied during the call.

For example: “**Sign-up fee £2.00 and £1.02 per minute for the duration of the call**”.

The role of Service-Specific Guidance

Service Specific Guidance does **not** form part of the Code of Practice; neither is it binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend it to help providers understand how compliance with the Code might be achieved.

Providers are not obliged to follow this Guidance but, in the event of an investigation, a Tribunal will consider whether the alternative actions that providers took delivered compliance with the Code. We recommend that those looking to radically depart from this Guidance contact PhonepayPlus in reasonable time ahead of launching the service.