

**Special conditions for online competition and
online adult premium rate services**

A Public Consultation

Issued by PhonepayPlus on 17 August 2016

Deadline for responses 12 October 2016

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1. Executive summary

- 1.1 PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. Our vision is that anyone can use PRS with absolute confidence in a healthy and innovative market. In achieving this, we are committed to working with providers to build the reputation of the premium rate industry and ensure it remains respected and trusted.
- 1.2 We maintain an outcomes-based Code of Practice ('the Code') that sets the standards for PRS. Where services are deemed to pose higher risk to consumers, PhonepayPlus may impose Special conditions in addition to the Code with the purpose of ensuring the Code's outcomes are met.
- 1.3 We are now consulting on the imposition of Special conditions on online competition and online adult services. This consultation sets out:
- the context
 - the risks posed to consumers by these services and the evidence of these risks currently in the market
 - the policy options available to us to address identified risks
 - draft Special conditions notices
- 1.4 In doing so, we have applied the regulatory risk framework model also consulted upon today. This is with a view to ensuring we are proposing a proportionate response to the risks posed to consumers by these services.
- 1.5 We seek stakeholders views' on our risk assessment and proposed draft Special conditions notices published as annexes to this document. Details on how to respond to this consultation are included on page 16 of the document. The deadline for responses is **12 October 2016**. We aim to publish a final statement on the outcome of this consultation within 6 weeks of the close of this consultation.

2. Background

2.1 In FY201516, we received a total of 29,737 complaints from consumers, of which 14,078 were for identifiable service types. Of the complaints that could be attributed to identifiable service types, 5,482 related to online competitions and 4,082 related to adult services. That is equivalent to 39% and 29% of identifiable complaints respectively. More than 90% of these complaints were from consumers who claimed they did not request the service.

2.2 This represents a disproportionately high level of complaints. According to the Annual Market Review 2015-16 (AMR)¹, the online competition sector accounts for 4.4% of the PRS market and the adult sector accounts for 5.9% of the PRS market (by revenue, exc. VAT).

2.3 The AMR also notes that proportion of consumers that were either dissatisfied or very dissatisfied and levels of mistrust of these services are significantly above the industry average – 46% of consumers of adult services said their trust had been compromised, and 43% of consumers of non-broadcast competitions said the same, against an average of 29% for all consumers of PRS. Online competition users were also more likely to claim they have had a problem with a service than the average PRS user. This suggests that many consumers either do not fully understand these services or they are not being treated in a fair and transparent manner.

2.4 We were not alone in having concerns at the high level of complaints about these services. In response to a particularly high volume of consumer complaints in Q1 of FY2015-16, industry and PhonepayPlus agreed to form a Rapid Response Team (RRT)² to look into the issue and consider potential remedies. The RRT felt that further research was required to understand consumers' experience of such services and explore the reasons that may cause consumers to complain.

2.5 In response to this call, we commissioned qualitative, independent research to gain insight into the causes of consumer misunderstanding and to examine how greater consumer awareness of the commitment to pay might be achieved. The research³, undertaken by Craft Realities, a summary of which is published alongside this consultation, observed consumers engaging with online competition and adult services. It drew a number of conclusions, including:

- It is quite possible for a consumer to provide unintentional consent to an online competition or online adult service.
- In relation to subscription online competition and adult services, consumers can remain unaware that consent to recurring charges has been given.

¹ The Annual Market Review 2015-16 can be found at: <http://www.phonepayplus.org.uk/for-business/whitepapers>

² For the RRT's terms of reference, please see: <http://www.phonepayplus.org.uk/about-us/ilp/rapid-response-team>

³ To read a summary of '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>

- Consumers from the research are unaware that it is possible to pay for internet content via a phone bill.
- Opt in and opt out mechanisms are insufficiently robust or transparent from a consumer perspective.
- Consumers from the research regard online competition and adult services as higher risk than journeys such as PayPal/Amazon/iTunes purchase flows or SMS voting flows.
- The findings suggest issues with these services are undermining consumers' trust in their MNOs.

2.6 In light of the above complaint data, quantitative and qualitative evidence as well as continued consumer complaints about these services, we believe stronger regulatory requirements on these services may be necessary.

2.7 The following pages assesses the case for additional regulatory requirements by considering the risks posed to consumers by these services. This consultation also explores the policy solutions available to us and their potential impact on consumers and industry.

2.8 In developing proposals prior to formal consultation, we have consulted with an industry working group comprising representatives from across the value chain. We are grateful to members of that group for their contribution and input into developing proposals.

2.9 In addition to the proposals set out in this consultation we are also seeking to explore additional measures to improve consumer confidence in high risk subscription services by offering upfront solutions for redress (for example consumer refunds). Consumers have a strong relationship with their network operators and if disputed payments can be scrutinised and resolved quickly between network operators and Level 1 providers we believe consumer confidence will increase across the PRS market. In order to explore policy solutions to deliver this outcome we seek specific comments in response to the following question:

Question 1: Do you agree that additional responsibilities placed on network operators and Level 1 providers, to offer redress upfront and inspect consumer complaints and disputed PRS payments, are necessary to improve the post-transaction consumer journey and increase consumer confidence? Are there additional or other measures that could deliver this outcome?

3. Assessing online competition and adult services against the risk framework

3.1 PhonepayPlus can impose Special conditions on services that are deemed of higher risk to consumers with the purpose of ensuring the Code outcomes are met. Under normal circumstances, PhonepayPlus is required to consult stakeholders before imposing Special conditions.

3.2 As set out in the consultation on a higher risk framework⁴, when assessing whether a service poses a higher risk to consumers, PhonepayPlus will assess the service against the risk taxonomy⁵, evidencing to what extent the risks are present in a service. Where we are satisfied that the risks are apparent, we will identify whether there are mitigations already in place or whether further regulatory controls are required.

3.3 The subsequent tables track this risk assessment process for both online competition and online adult PRS. Where appropriate, it then considers the policy options available to us that may address the risks identified. We have also looked at the impact of these potential options on both consumers and the industry. Following this assessment, we have produced draft Special conditions notices that formally set out many of these policy options.

3.4 PhonepayPlus invites respondents to review the proposals set out below and respond to questions 2 to 8 found in Section 4 at page 16.

⁴ Consultation entitled '*PRS development through outcomes-focussed regulation: A Review of PhonepayPlus' regulatory framework*' published on 17 August 2016:

<http://www.phonepayplus.org.uk/for-business/public-consultations>

⁵ The 6 consumer risks in the taxonomy are: financial harm, passing off, uninformed consent, unauthorized consent, vulnerable groups and unreasonable offence.

3.3.1 Risk assessment process for online competition services

Risk	Evidence	Current Mitigations	Potential Policy Solutions	Impact Assessment
Financial Harm	<ul style="list-style-type: none"> The average complaint about an online competition service in the 2015/16FY was for charges of £42. 8% of consumer complaints about online competition services related to charges of over £100. This compares to an Average Revenue Per User (ARPU) of £13.38 (exc. VAT). The Craft consumer journey research noted that “many consumers reported that they did not discover the existence of the subscription to an online competition or adult service until weeks or months after activation” This suggests that the prevalence of the subscription model is contributing to significant levels of consumer harm. 	<ul style="list-style-type: none"> Online competition services above £4.50 per week are currently required to provide SMS receipts, with detailed information, after every charge. Online competition services below this threshold are required to send a SMS reminder message to consumers every month or after every £20.45 (inc. VAT) spent. However, these mitigations are having a limited effect. Therefore, we believe that further regulatory interventions are required. 	<ol style="list-style-type: none"> Clearer opt-out processes: the Craft consumer journey research noted that current opt-out processes were neither effective nor intuitive and consumers expect to be able to text STOP to the opt in mechanism. Consumers want opt-out mechanisms to be free and clearly labelled as such. Proposed Special conditions in Annex A: ONLC 6, ONLC 7. Provision of receipts after every charge: this would involve removing the threshold at £4.50 per week and requiring all subscription based online competition services to provide a receipt after each charge incurred by the consumer, detailing the name of the service, the cost of using the service, the opt out mechanism and contact details for the provider. Proposed Special condition at Annex A: ONLC 5. 	<ul style="list-style-type: none"> On providers: we understand there may be costs involved in reconfiguring opt-out processes. However, the current mechanism is failing consumers and therefore requires improvement. On consumers: research suggests that this is a key issue for consumers. Making it easier and more intuitive for consumers to opt-out of services is therefore a priority and likely to reduce the number of consumers suffering high levels of detriment. On providers: this should have a minimal impact on service design as most competition services contact the consumer to initiate a weekly competition entry. On consumers: this would likely reduce the risk that consumers were unaware that charges were being made, resulting in a large and unwanted bill. This is of particular relevance to pay as you go customers who may have no other record of charges e.g. a phone bill.

			<p>3. Provision of brand and domain names: currently providers are required to register numbers and contact details on our registration scheme. Consumers can then use our number checker service if they want to query a charge from a specific number. Extending this service to brand and current and recent domain names will broaden the service for consumers and make seeking redress simpler. Proposed Special condition at Annex A: ONLC 8.</p>	<ul style="list-style-type: none"> On providers: providers will have to more regularly update their PhonepayPlus registration details with 'live' information. We believe this responsibility should remain with the registered party. On consumers: we handle more than 300,000 number checks each year. More detailed information available to consumers will likely improve their ability to self-serve and seek appropriate redress.
<p>Passing Off</p>	<ul style="list-style-type: none"> The Craft consumer journey research noted the use of implied commercial affiliation "can, and does, lead consumers into the erroneous belief that, for example, an online competition is administered by the companies behind those brands." Our monitoring team have noted numerous examples of this practice. 	<ul style="list-style-type: none"> None known. 	<p>1. Clear branding: consumers should be fully aware that they are purchasing the chance to win x product from y service provider. In our view, there should be no confusion that a competition is being administered by another company. This seems contrary to the principle of transparency. Therefore, we propose to require that providers ensure prominent brand management and display. Proposed Special condition at Annex A: ONLC 3.</p>	<ul style="list-style-type: none"> On providers: some providers will have to change their marketing material and this will incur a degree of cost. We do not believe this to be a disproportionate requirement because the Code already requires providers to act in a transparent manner. On consumers: we believe this proposal will make it far clearer to consumers what they are purchasing and reduce the risk of consumer confusion.

<p>Uniformed Consent</p>	<ul style="list-style-type: none"> • This appears to be the greatest risk in the online competitions market place. • 39% of identifiable complaints received by PhonepayPlus in FY201516 related to an online competition service, 90% of complainants claimed not to have requested the service. • The AMR suggests that consumer mistrust of online competitions is significantly above market average – 43% of users claimed to have had their trust compromised compared to an industry average of 29%. • The Craft consumer journey research found that “consumers can, and do, unintentionally provide consent to online competition and adult PRS”. • Similarly, the Jigsaw Consumer Journey research found that “there is widespread unawareness that it is possible to be charged to your phone bill when subscribing to services on the internet.”⁶ 	<ul style="list-style-type: none"> • Limited mitigations in place, PayforIt requires a double opt-in but this does not appear to be sufficient in its current guise. • Therefore, in our view, further regulatory interventions need to be considered. 	<ol style="list-style-type: none"> 1. Double opt in: already required for subscription services charged above £4.50/week, this requirement is largely followed below this threshold. We believe it is appropriate to mandate this requirement for online competition services regardless of cost. Proposed Special condition at Annex A: ONLC 2. 2. Clear point of purchase: the Craft consumer journey research states that the majority of research participants wanted “a distinctive, dedicated point of purchase screen”. I.e. any purchase screens should be clearly differentiated from the rest of the consumer journey, be neutral in design and display key information in a prominent fashion. This is consistent with other payment mechanics. We considered whether there should be a link to consumer’s phone bill at this stage in the consumer journey, however industry feedback has suggested that this would not have the intended impact. Proposed 	<ul style="list-style-type: none"> • On providers: little impact. This is largely delivered by the market already. • On consumers: little impact. This is largely delivered by the market already yet risks remain prevalent. • On providers: purchase screens will need to be redesigned to reflect new requirements. This is likely to require development time. • On consumers: consumers expect a clear point of purchase. This requirement would deliver this and therefore would likely reduce consumer confusion and better meet expectations.
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⁶ To read the Jigsaw research: <http://www.phonepayplus.org.uk/for-business/~media/Files/PhonepayPlus/Research/Consumer%20Research/PhonepayPlus%20Consumer%20Journey%20February%202014.pdf>

			<p>Special conditions at Annex A: ONLC 1, ONLC 4.</p> <p>3. Passwords, registration or PIN entry: Craft noted that consumers expect any purchase of digital services to involve “a user authentication step ideally including some form of password protection”. This is consistent with consumer expectation that there should be a degree of friction in the purchase process. Therefore we propose that online competitions services require either a password entry, registration or PIN entry in order to complete a purchase, at least in the first instance (i.e. when signing up to a subscription service). Proposed Special condition at Annex A: ONLC 2.</p>	<ul style="list-style-type: none"> On providers: this will clearly have an impact in that it will add greater friction and complexity into the purchase process. And it may impact on conversions as fewer consumers choose to go through this process. On consumers: this is a clear consumer expectation and would likely reduce the risk of uninformed consent.
<p>Unauthorised Consent</p>	<ul style="list-style-type: none"> Individual companies from within the PRS industry claim that the online entry of a consumer’s MSISDN can easily be fabricated. 		<p>1. Double MO opt in: any double opt in must come from a consumer’s handset and not another device. However, we do not believe this is evidentially justifiable at this stage.</p>	<ul style="list-style-type: none"> On providers: this will have an impact on the PSMS sector as opposed to the PFI sector of the market. Given the impact on the market, we proposed not to consult on this proposal. On consumers: this shouldn’t have an impact on consumers.

Vulnerable Groups	<ul style="list-style-type: none"> Average costs incurred per complaint involving minors (£75) and the elderly (£60) are higher than the average costs across all complaints 	<ul style="list-style-type: none"> Vulnerability guidance was published in June⁷. 	We do not propose specific solutions at this stage although we will keep this under review.	
Unreasonable Offence	<ul style="list-style-type: none"> Not applicable. 			

⁷ To read the vulnerability guidance: http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Consultation-PDFs/000_2016/Vulnerability-Guidance/Vulnerability-Guidance.pdf

3.3.2 Risk assessment process for online adult services

Risk	Evidence	Current Mitigations	Potential Policy Solutions	Impact Assessment
Financial Harm	<ul style="list-style-type: none"> The average complaint about an online adult service in the 2015/16FY was for charges of £76. 7% of consumer complaints about online adult services related to charges of over £100. This compares to an ARPU of £38.52 (exc. VAT). The Craft consumer journey research noted that “many consumers reported that they did not discover the existence of the subscription to an online adult service until weeks or months after activation”. This suggests that the prevalence of the subscription model is contributing to significant levels of consumer harm. 		<ol style="list-style-type: none"> Clearer opt-out processes: the Craft consumer journey research noted that current opt-out processes were neither effective nor intuitive and consumers expect to be able to text STOP to the opt-in mechanism. Consumers want opt-out mechanisms to be free and clearly labelled as such. Proposed Special condition at Annex B: ONLA 5, ONLA 6. Provision of receipts after every charge: this would involve removing the threshold at £4.50 per week and requiring all subscription services to provide a receipt after each charge incurred by the consumer, detailing the name of the service, the cost of using the service and contact details for the provider. Proposed Special condition at Annex B: ONLA 4. 	<ul style="list-style-type: none"> On providers: there may be costs involved in reconfiguring opt-out processes. However, the current mechanism is failing consumers and therefore requires improvement. On consumers: research suggests that this is a key issue for consumers. Making it easier and more intuitive for consumers to opt-out of services is therefore a priority and likely to reduce the number of consumers suffering high levels of detriment. On providers: the impact on service design will depend in part on whether providers already contact consumers weekly as part of the service. If they do the impact will be minimal. If they do not then the costs involved in messaging will increase, which can be offset in part by bulk messaging savings. On consumers: this would likely reduce the risk that consumers were unaware that charges were being made, resulting in a large and unwanted bill. This is of particular relevance to pay as you go customers who may have no other record of charges e.g. a phone bill.

			<p>3. Provision of brand and domain names: Currently providers are required to register numbers and contact details on our registration scheme. Consumers can then use our number checker service if they want to query a charge from a specific number. Extending this service to brand and current and recent domain names will broaden the service for consumers and make seeking redress simpler. Proposed Special condition at Annex B: ONLA 12.</p>	<ul style="list-style-type: none"> On providers: providers will have to more regularly update their PhonepayPlus registration details with 'live' information. We believe this responsibility should remain with the registered party. On consumers: we handle more than 300,000 number checks each year. More detailed information available to consumers will likely improve their ability to self-serve and seek appropriate redress.
Passing Off	<ul style="list-style-type: none"> We do not believe this to be a prevalent issue in the online adult market place. 			
Uniformed Consent	<ul style="list-style-type: none"> This appears to be the greatest risk in the online adult market place. 29% of identifiable complaints received by PhonepayPlus in FY201516 related to an online adult service, 96% of complainants claimed not to have requested the service. The AMR suggests that consumer mistrust of adult is significantly above market average – 46% of users claimed to have had their trust compromised compared to an industry average of 29%. 		<ol style="list-style-type: none"> Double opt in: this is required for subscription services charged above £4.50/week. This requirement is largely followed below this threshold. We believe it is appropriate to mandate this requirement for online adult services regardless of cost. Proposed Special condition at Annex B: ONLA 2. Clear point of purchase: the Craft consumer journey research states that the majority of research participants wanted “a 	<ul style="list-style-type: none"> On providers: little impact. This is largely delivered by the market already. On consumers: little impact. This is largely delivered by the market already yet risks remain prevalent. On providers: purchase screens will need to be redesigned to reflect new requirements. This is likely to require development time.

	<ul style="list-style-type: none"> • The Craft consumer journey research found that “consumers can, and do, unintentionally provide consent to online competition and adult PRS”. • Similarly, the Jigsaw Consumer Journey research found that “there is widespread unawareness that it is possible to be charged to your phone bill when subscribing to services on the internet.” 		<p>distinctive, dedicated point of purchase screen”. I.e. any purchase screens should be clearly differentiated from the rest of the consumer journey, be neutral in design and display key information in a prominent fashion. This is consistent with other payment mechanics. We considered whether there should be a link to consumer’s phone bill at this stage in the consumer journey, however industry feedback has suggested that this would not have the intended impact. Proposed Special conditions at Annex B: ONLA 1, ONLA 3.</p> <p>3. Passwords, registration or PIN entry: Craft noted that consumers expect any purchase of digital services to involve “a user authentication step ideally including some form of password protection”. This is consistent with consumer expectation that there should be a degree of friction in the purchase process. Therefore we propose that online adult services require either a password entry, registration or PIN entry in order to complete a purchase, at least in the first instance (i.e. when signing up to a subscription</p>	<ul style="list-style-type: none"> • On consumers: consumers expect a clear point of purchase. This requirement would deliver this and therefore would likely reduce consumer confusion and better meet expectations. • On providers: this will clearly have an impact in that it will add greater friction and complexity into the purchase process. And it may impact on conversions as fewer consumers choose to go through this process. • On consumers: this is a clear consumer expectation and would likely reduce the risk of uninformed consent.
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			service). Proposed Special condition at Annex B: ONLA 2.	
Unauthorised Consent	<ul style="list-style-type: none"> We do not believe this to be a risk in this market that cannot be managed by the Code. 			
Vulnerable Groups	<ul style="list-style-type: none"> By virtue, 'adult' content, is considered unsuitable for minors. 	<ul style="list-style-type: none"> The purchase of adult content is required to be age verified. The PRS industry achieves this through age verified mobile contracts at MNO level. 	<ul style="list-style-type: none"> We do not propose to require additional controls beyond those already required. 	
Unreasonable Offence	<ul style="list-style-type: none"> Adult services are deemed indecent in the Communications Act 2003⁸. 	<ul style="list-style-type: none"> The purchase of adult content is required to be age verified. The PRS industry achieves this through age verified mobile contracts at MNO level. 	<p>We do not propose to require additional controls beyond those already required. Existing requirements are detailed at proposed Special conditions at Annex B: 7-11. However, it is clear that some minors who have age verified handsets/contracts passed on by parents can circumnavigate current controls. Going forward we intend to consider whether this weakness can be addressed.</p>	

⁸ See sections 3(4)(h) and 319(2)(a) and (f) of the *Communications Act 2003*, Article 27 of the *Audiovisual Media Services Directive*, and Article 10 of the *European Convention on Human Rights*.

4. How to respond

We now seek your views on the contents of this consultation. Responses to the questions should be emailed to Jonathan Levack via our Consultations email by the deadline of **12 October 2016** (consultations@phonepayplus.org.uk).

Question 1: Do you agree that additional responsibilities placed on network operators and Level 1 providers, to offer redress upfront and inspect consumer complaints and disputed PRS payments, are necessary to improve the post-transaction consumer journey and increase consumer confidence? Are there additional or other measures that could deliver this outcome?

Question 2: Do you agree with us that Special conditions are necessary for online competition and adult services? Please provide an explanation to support your response.

Question 3: Do you agree with our assessment of the risks posed to consumers by these services and our policy proposals as set out at pages 7 to 11 and 12 to 15? Please provide an explanation to support your response.

Question 4: Do you consider our definition of online competitions and online adult PRS in the Special conditions notices to be clear and accurate? Please provide an explanation to support your response.

Question 5: Do you have any views on current age verification arrangements for adult services? If so, please share them and provide an explanation to support them.

Question 6: Do you think the proposals made and detailed in the Special conditions notices at pages 17 and 21 will reduce the risk of consumer harm? Please provide an explanation to support your response.

Question 7: Do you consider the proposed Special conditions notices to be fair and proportionate? Please provide an explanation to support your response.

Question 8: Can the draft Special conditions notices be improved? Please provide an explanation to support your response.

Annex A: Draft Notice of Special conditions for online competition premium rate services

Online competition services

Notice of Special conditions

This Notice is being issued to inform all providers involved, or intending to be involved, in the provision of online competition services that Special conditions apply. Level 2 providers are required to comply with the PhonepayPlus Code of Practice, and the Special conditions set out below, which are imposed under paragraph 3.11.1 of the Code.

Under paragraph 3.11.3 of the Code, “*a breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code*”.

‘Online competition services’ are those premium rate competition services (PRS) that are provided fully or partially online, including services that initiate a PRS transaction online, where the primary promotion is online and presents a consumer with a chance to win a prize by competing with other entrants, and which is paid for on a pay to enter or subscription basis.

As presented in guidance, some examples of competition services would be:

- (a) Lotteries;
- (b) Other games with prizes;
- (c) An entry mechanism into a draw;
- (d) Information about prizes and how to claim them.

‘Online’ refers to those services consumed on personal computers or mobile devices (such as smartphones, tablets, etc.) whether accessed via a Wi-Fi connection or directly through mobile internet (2G, 3G, 4G, etc). If the consumer is given the choice to consume the digital products or services online or to download them for off-line use, the service must still comply with these Special conditions.

IMPORTANT NOTE

Those services that fall within the definition of a subscription service must comply with the relevant actions and/or thresholds set under paragraph 3.12 of the Code. Please ensure services meet these obligations at all times. The current notice issued under paragraph 3.12.6 of the Code is found on our website:

- <http://www.phonepayplus.org.uk/~media/Files/14th-Code-of-Practice/Notice-of-Specified-Service-Charges-and-Durations-of-Calls-July-2016-final.pdf>

Special conditions

Imposed under Annex 2, Paragraph 1.1(b), (k), and (n):

(b) requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;

(k) information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);

(n) requirements for caller agreement before a high risk service proceeds before the caller is charged

Point of purchase

ONLC 1 The point of purchase must be separated from service interaction, including its promotion, in a clear and effective way to allow the consumer to consider their purchase. At the point of purchase, PRS providers must:

- (a) Clearly signpost the point of purchase by making it distinctive from other aspects of the service (such as by design and colour scheme) and take all reasonable steps to make that distinction abundantly clear, avoiding any confusion between service promotion and the point of purchase;
- (b) Ensure that consumers, when committing to a purchase, explicitly acknowledge that the purchase implies an obligation to pay;
- (c) Ensure that consumers are made aware, in a clear and prominent manner and directly before the consumer commits to a purchase, of the cost of the service, and the frequency of charges; and
- (d) Indicate that the PRS payment will be added to the consumers phone account.

Consent to charge – ‘double opt-in’

ONLC 2 At the point of each purchase and prior to delivering the PRS charge, including an initial charge of a subscription service, providers are required to obtain consent to charge from the consumer in the form of a positive, recorded and auditable response where the costs and name of the premium rate service have been presented clearly to the consumer.

PRS providers must establish such consent via one of the following means of consumer interaction:

- (a) Use of a secure PIN loop system to confirm each transaction initiated and confirmed by the Level 1 provider⁹ through interaction with the consumer,

⁹ This function may be undertaken by a Network operator where it contracts directly with a Level 2 provider, in the absence of a Level 1 provider.

whether the transaction is a one-off purchase or the initial agreement to enter a subscription; or,

- (b) Use a password system, the password being selected and controlled by the consumer, to confirm each transaction, whether the transaction is a one-off purchase or the initial agreement to enter a subscription.

Promotional material

ONLC 3 PRS providers must clearly identify the brand of the current service offered to and used by the consumer - this may be achieved by prominent brand management and display, which may include requiring consumers to become account holders of the branded service and signing in prior to entering individual competitions.

ONLC 4 Payment options, where relevant, should clearly indicate PRS payment places charges on the users phone account (mobile or otherwise).

Receipts

ONLC 5 Each time the consumer incurs a charge to access content whether this involves a single charge or a recurring charge, a receipt must be sent to them in either SMS or email formats as soon as is reasonably practicable. This receipt must detail the name of the service, the cost of using the service or products purchased, and the name and contact details of the provider.

Opt-out processes

ONLC 6 PRS providers must establish effective opt-out processes for subscription services by using one of the following protocol, dependent on billing mechanism used by the PRS provider:

- (a) Operator billing platforms must put in place the following arrangements:
 - (i) Dedicated shortcode(s) are to be available for STOP and STOP ALL requests, to be controlled by the Level 1 providers (otherwise known as Accredited Payment Intermediaries);
 - (ii) Receipts and billing period reminders must be free of charge to the consumer and labelled with the dedicated zero-rated shortcode enabling consumers to reply to the message to send STOP if desirable;
 - (iii) The opt-out process must be free of charge for the consumer;
- (b) Premium SMS platforms must put in place the following arrangements:

- (i) Shortcode(s) used for charging consumers must also receive STOP and STOP ALL requests;
- (ii) Reminders must be free of charge to the consumer and labelled with the same zero-rated shortcode enabling consumers to reply to the message to send STOP, if the consumer chooses to do so;
- (iii) The opt-out process must be free of charge for the consumer.

ONLC 7 Where embedded links within PRS messages are used to form part of any opt-out process, the Level 2 provider (or relevant intermediary operating a centralised opt-out process) must:

- (a) Establish a dedicated webpage to deal with only:
 - (i) method of exit;
 - (ii) data protection; and,
 - (iii) privacy requirements;
- (b) Provide a link to the dedicated webpage in receipts & billing period reminders – such links must not be provided less than once per month in frequency.

Imposed under Annex 2, Paragraph 1.1(m) and (x):

(m) the provision of defined information to PhonepayPlus and the intervals at which it is to be given and the manner to which it is provided;

(x) providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

ONLC 8 PRS providers operating these services are to notify PhonepayPlus within 48 hours of launching the service, if not done so before. On notification, PRS providers must provide information relating to:

- (a) Brand identification;
- (b) PRS numbers used for the service, including the dedicated number chosen for STOP and STOP ALL requests;
- (c) Customer care services details;
- (d) Identity of all Level 1 providers involved in the provision of the PRS, including those managing the method of exit.

Annex B: Draft Notice of Special conditions for online adult premium rate services

Online adult premium rate services

Notice of Special conditions

This Notice is being issued to inform all providers involved, or intending to be involved, in the provision of online adult premium rate services (PRS) that Special conditions apply. Level 2 providers are required to comply with the PhonepayPlus Code of Practice, and the Special conditions set out below, which are imposed under paragraph 3.11.1 of the Code.

Under paragraph 3.11.3 of the Code, “*a breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code*”.

Online adult PRS are defined as follows:

Premium rate sexual entertainment services, whether provided on single or subscription fee structures, which are accessed online, including but not limited to relevant live streaming services that are paid for via the consumers phone account.

‘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 (see paragraph 5.3.34 of the Code).

‘Online’ refers to those services consumed on personal computers or mobile devices (such as smartphones, tablets, etc.) whether accessed via a Wi-Fi connection or directly through mobile internet (2G, 3G, 4G, etc). If the consumer is given the choice to consume the digital products or services online or to download them for off-line use, the service must still comply with these Special conditions.

IMPORTANT NOTE

Those services that fall within the definition of a subscription service must comply with the relevant actions and/or thresholds set under paragraph 3.12 of the Code. Please ensure services meet these obligations at all times. The current notice issued under paragraph 3.12.6 of the Code is found on our website:

- <http://www.phonepayplus.org.uk/~media/Files/14th-Code-of-Practice/Notice-of-Specified-Service-Charges-and-Durations-of-Calls-July-2016-final.pdf>

Special conditions

Imposed under Annex 2, Paragraph 1.1(b), and (n):

(b) requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers;

(k) information that is required to be given to callers in promotional material or at various stages before and during provision of a high risk service (including as to receipts);

(n) requirements for caller agreement before a high risk service proceeds before the caller is charged

Point of purchase

ONLA 1 The point of purchase must be separated from service interaction, including its promotion, in a clear and effective way to allow the consumer to consider their purchase. At the point of purchase, PRS providers must:

- (a) Clearly signpost the point of purchase by making it distinctive from other aspects of the service (such as by design and colour scheme) and take all reasonable steps to make that distinction abundantly clear, avoiding any confusion between service promotion and the point of purchase;
- (b) Ensure that consumers, when committing to a purchase, explicitly acknowledge that the purchase implies an obligation to pay;
- (c) Ensure that consumers are made aware, in a clear and prominent manner and directly before the consumer commits to a purchase, of the cost of the service, and the frequency of charges; and
- (d) Indicate that the PRS payment will be added to the consumers phone account.

Consent to charge – ‘double opt-in’

ONLA 2 At the point of each purchase and prior to delivering the PRS charge, including an initial charge of a subscription service, providers are required to obtain consent to charge from the consumer in the form of a positive, recorded and auditable response where the costs and name of the premium rate service have been presented clearly to the consumer.

PRS providers must establish such consent via one of the following means of consumer interaction:

- (a) Use of a secure PIN loop system to confirm each transaction initiated and confirmed by the Level 1 provider¹⁰ through interaction with the consumer, whether the transaction is a one-off purchase or the initial agreement to enter a subscription; or,
- (b) Use a password system, the password being selected and controlled by the consumer, to confirm each transaction, whether the transaction is a one-off purchase or the initial agreement to enter a subscription.

Promotional material

ONLA 3 Payment options, where relevant, should clearly indicate PRS payment places charges on the users phone account (mobile or otherwise).

¹⁰ This function may be undertaken by a Network operator where it contracts directly with a Level 2 provider, in the absence of a Level 1 provider.

Receipts

ONLA 4 Each time the consumer incurs a charge to access content whether this involves a single charge or a recurring charge, a receipt must be sent to them in either SMS or email formats as soon as is reasonably practicable. This receipt must detail the name of the service, the cost of using the service or products purchased, and the name and contact details of the provider.

Opt-out processes

ONLA 5 PRS providers must establish effective opt-out processes for subscription services by using one of the following protocol, dependent on billing mechanism used by the PRS provider:

(a) Operator billing platforms must have in place the following arrangements:

- (i) Dedicated shortcode(s) are to be available for STOP and STOP ALL requests, to be controlled by the Level 1 providers (otherwise known as Accredited Payment Intermediaries);
- (ii) Receipts and billing period reminders must be free of charge for the consumer and labelled with the dedicated zero-rated shortcode enabling consumers to reply to the message to send STOP if desirable;
- (iii) The opt-out process must be free of charge for the consumer;

(b) Premium SMS platforms must have in place the following arrangements:

- (i) Shortcode(s) used for charging consumers must also receive STOP and STOP ALL requests;
- (ii) Reminders must be free of charge for the consumer and labelled with the same zero-rated shortcode enabling consumers to reply to the message to send STOP, if the consumer chooses to do so;
- (iii) The opt-out process must be free of charge for the consumer.

ONLA 6 Where embedded links within PRS messages are used to form part of any opt-out process, the Level 2 provider (or relevant intermediary operating a centralised opt-out process) must:

(a) Establish a dedicated webpage to deal with only:

- (i) method of exit;
- (ii) data protection; and,
- (iii) privacy requirements;

(b) Provide a link to the dedicated webpage in receipts & billing period reminders – such links must not be provided less than once per month in frequency.

Imposed under Annex 2, Paragraphs 1.1(f) and (g):

(f) steps to be taken to ensure that a high risk service is not used by or promoted in such a way as to make it particularly attractive to persons under the age of 18 years old or younger;
(g) the denying of access by users under the age of 18 years old to a high risk service or by all users where the relevant handset is not verified as being owned by someone aged 18 years old or over.

- ONLA 7** Promotions for online adult PRS must not appear in media targeted at persons under the age of 18.
- ONLA 8** Promotions for online adult PRS must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectations of those responding to the promotion.
- ONLA 9** That online adult PRS are promoted clearly as being adult services, and not for under-18s.
- ONLA 10** That services are not promoted in places where they are likely to be particularly attractive to children, or which are easily accessible to them.
- ONLA 11** All providers of services must take steps to verify the age of consumers before they can access the service itself. This includes, but is not necessarily limited to, use of an age verification question and operators trained to identify any other indication that a caller may be under 18, or under 16 as applicable.

Imposed under Annex 2, Paragraph 1.1(m) and (x):

(m) the provision of defined information to PhonepayPlus and the intervals at which it is to be given and the manner to which it is provided; [and]

(x) providers of higher risk services to notify PhonepayPlus at commencement of such services and provide any related information required by PhonepayPlus within a specified time period.

- ONLA 12** PRS providers operating these services are to notify PhonepayPlus within 48 hours of launching the service, if not done so before. On notification, PRS providers must provide information relating to:
- (a) Brand identification;
 - (b) PRS numbers used for the service, including the dedicated number chosen for STOP and STOP ALL requests;
 - (c) Customer care services details;
 - (d) Identity of all Level 1 providers involved in the provision of the PRS, including those managing the method of exit.