



GENERAL & SERVICE-SPECIFIC GUIDANCE

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SERVICE-SPECIFIC GUIDANCE NOTE

Competitions and other games with prizes

Who should read this?

Any providers that are planning to run competition services or games with prizes. Some examples of competition services would be:

- Lotteries;
- Other games with prizes;
- An entry mechanism into a draw;
- Information about prizes and how to claim them;
- Reverse-billed auctions.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of competition services. This Service-Specific Guidance Note also alerts providers to other regulatory and/or legal restrictions that relate to competition services.

What are the key points?

The main issues for Network operators and providers to consider are:

- Consumers should be made aware of how the competition operates.
- Consumers should be fully aware of all information that is likely to affect their decision to participate.
- Promotional material should not mislead consumers.
- Further information should be made available to consumers upon request.
- Providers must ensure that the service is conducted in a fair manner.
- In the case of competitions, providers must ensure that there is an element of skill attached to the entry mechanism.



1. Consumers must be fully informed

- 1.1 All promotional material should provide clear details as to how the competition operates. Consumers must be made aware, before entering into the service, of any information that is likely to affect their decision to participate. Clear terms and conditions should include, but are not limited to:
- Information on any restrictions on number of entries or prizes that can be won;
 - The incremental cost and the full cost of participation, where this is known;
 - An adequate description, including the quality, of all prizes and other items being offered, and a clear list of the numbers of each prize on offer;
 - Information on any restrictions placed on the availability of those prizes being offered;
 - Where the prize consists of vouchers, either the value of a single voucher, or the total value, should be stated;
 - The closing date and time of the competition, except in instances where there are only instant prize winners. Please note that, if no time is provided, the service is presumed to close at midnight on the day of the competition.
- 1.2 There are limitations as to the available space for certain promotional mechanics (e.g. SMS/ WAP) and/or other space limited media. For promotional SMS texts (160 characters), we would expect to see the **important** terms and conditions (i.e. those that directly affect an individual's decision to participate) included in the body of the text.
- 1.3 As a Binary SMS message, there are usually only 30 character spaces available in a WAP-push message, restricting still further the amount of information able to be displayed. Reference should be made to the shortcode in either the body and/or preferably the title of the message with the words "FREE MSG". The embedded link as contained in the message, when activated, should take the end user to the Landing Page where the required consumer information should be displayed.
- 1.4 Providers should also note that, while a competition service does not require prior permission generally, if it employs a form of subscription service of over £4.50 in any seven-day period, then prior permission will be required. Please see the Service-Specific Guidance Note on 'Subscription services' and the instructions on prior permission available on the PhonepayPlus website at www.phonepayplus.org.uk for more information on subscriptions and applications for prior permission.

2. Promotional material should not mislead consumers

- 2.1 Any promotional material in relation to competitions services must not:
- Imply that items that can be claimed by all, or a substantial majority, of participants are prizes;
 - Exaggerate the chances of winning;
 - Suggest that winning is a certainty; or
 - Suggest or imply that consumers can only use a premium rate service in order to participate, where a free, or significantly cheaper, alternative entry route is available.

3. Further information should be available on request

- 3.1 If the following information is not included in any promotional material, it should,



where applicable, be available to consumers upon request:

- How and when winners will be informed;
- How winner information may be obtained;
- Any criteria for judging entries;
- Any alternative prize available;
- The details of any intended post-event publicity;
- Any supplementary rules

4. Services should be conducted in a fair and equitable manner

- 4.1** Providers should ensure that all correct entries have the same chances of winning. Prizes should be awarded within 28 calendar days of the closing date, unless a longer period is clearly referred to in the promotional material.
- 4.2** Providers should not change the closing date, or withhold prizes, on the grounds of an insufficient number of entries, or where entries are deemed to be of inadequate quality.
- 4.3** If there is any subjective assessment in the selection of the winning entries (e.g. tie-breakers) and/or awarding of prizes in a competition open to the public, then judging should be by a person or persons independent of the provider and any of the intermediaries involved, or by a judging panel including at least one independent member. For the avoidance of doubt, independence is defined here as being an individual who has no commercial interest in the competition or associated premium rate service concerned.
- 4.4** Unless stated, no competition service may offer specific prizes that are also offered by other competitions (also known as 'prize pools').
- 4.5** Consumers should not be subject to unreasonable costs in order to claim prizes. For example, those services which require consumers to pay over and above normal postal costs to claim prizes are unlikely to be acceptable.

5. Element of skill and free route of entry

5.1 *Element of skill – The Gambling Act 2005*

- In order for a competition not to be deemed as a lottery under the Act, the test at section 14(5) of the Act must be satisfied. Providers must be able to show that the entry mechanism has an element of skill, judgement or knowledge that can reasonably be expected to either:
 - Deter a significant proportion of those who wish to enter from doing so; or
 - Prevent a significant proportion of those who do enter from winning a prize.
- PhonepayPlus accepts that this test has been difficult to interpret and would recommend that any provider wishing to set up such a service should seek legal advice as well as advice from the Gambling Commission (0121 230 6666 / <http://www.gamblingcommission.gov.uk/>)

5.2 *Free route of entry*

- The distinction between a free draw and a lottery is that no one is required to pay over and above the normal rate to enter into a free draw. The route of entry will be free if the participant does not have to pay any premium rate charge for entering the competition (e.g. entering a free draw by post, or by telephone where the standard network rates apply).



In line with the British Association for Counselling and Psychotherapy, we would recommend that supervision occurs for a minimum of 1.5 hours per month.

- 5.3** If either the ‘element of skill’ or ‘free route of entry’ barriers exist, then the service will be deemed a competition, and not a lottery. Providers should note that a lottery requires a licence to operate. For more information on obtaining a licence, please seek advice from the Gambling Commission(0121 230 6666 / <http://www.gamblingcommission.gov.uk/>).

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.



GENERAL GUIDANCE NOTE

Complaint-handling process

Who should read this?

All Network operators and providers involved in the provision of mobile premium rate services (PRS) to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations in relation to consumer complaint handling, by way of the following:

- Clearly defining the roles and responsibilities of Level 1 and Level 2 providers in the chain;
 - **Note:** *While Mobile Network Operators ('MNOs') fall outside of PhonepayPlus' regulation with regard to complaint handling and customer service issues, they are referred to in this Guidance as their role forms an essential part of the complaint-handling process.*
- Setting out some desired consumer outcomes, along with an example of how to deliver the 'minimum standard of customer care' that would achieve them.

This General Guidance Note has been written to apply to mobile shortcode providers, as almost all complaints currently received by PhonepayPlus are in relation to shortcode services. It is not specifically intended to apply to providers of fixed-line services who may wish to seek advice separately on how the rules apply to them. This Guidance Note has been developed in conjunction with PhonepayPlus' Industry Liaison Panel (ILP) and has been agreed with the ILP prior to publication.

Obligations on providers are set out in paragraphs 2.6 and 3.1.1(d) of the [PhonepayPlus Code of Practice](#), which state the following:

2.6 Complaint handling

Outcome

"That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily."

Rules

- 2.6.1** *Level 2 providers must ensure that consumers of their services are able to have complaints resolved quickly, easily and fairly and that any redress is provided quickly and easily.*
- 2.6.2** *Level 2 providers must provide a proportionate complaints process which is easily accessible through a non-premium rate UK telephone number and must be effectively publicised.*
- 2.6.3** *Consumer complaints must be handled promptly at all stages within a process which is clear to the consumer.*
- 2.6.4** *Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner.*



2.6.5 *Consumers who remain dissatisfied with the handling of their complaint must be informed that they may complain to PhonepayPlus and be provided with its contact details.*

2.6.6 *Level 2 providers must provide upon request to PhonepayPlus such information that allows examination of how they have handled any consumer complaint.*

3.1 General responsibilities

All Network operators, Level 1 and Level 2 Providers must:

3.1.1 *ensure that PhonepayPlus regulation is satisfactorily maintained by;*

(d) taking all reasonable steps to ensure that consumer complaints are resolved quickly and fairly and that any redress is provided quickly and easily;

What are the key points?

The main issues for Network operators and providers to consider are:

- This General Guidance Note ('the Guidance') sets out PhonepayPlus' expectations with regard to the complaint-handling process for all shortcode providers/services.
- Responsibility for complaint handling lies with the Level 2 provider in the first instance.
- Level 1 providers are expected to step in and take over the process in situations where a Level 2 provider has neglected its duties in any way.
- An example step-by-step process and a suggested timetable for responses have been included in this Guidance (section 2 onwards).
- Separate information on complaint-handling processes for 'broadcast' is set out in section 5 below.





1. Desired outcomes – what we believe good complaint handling should look like

1.1 Our research has shown that consumers have certain expectations when, in their mind, an issue has arisen that gives them cause for complaint. We believe that these expectations are valid and that they are entitled to certain outcomes, as follows:

- Pursuing a complaint should not unduly cost the consumer in terms of time or money.
- For example, consumers should have to make as few calls as possible in order to find redress.
- Providers should be courteous and respectful to consumers at all times.
- Consumers should be kept informed as to the status of their complaint.
- Providers should make every reasonable effort to resolve a consumer's complaint.
- The Level 2 provider should take the lead in providing redress (in the case of a valid complaint). Where a Level 2 provider does not, and the Level 1 provider is aware of a problem, the Level 1 provider must take the initiative and proactively seek to provide redress.
- Consumers must have recourse to an objective third party to resolve disputes.

2. Example complaint-handling process – a step-by-step guide

2.1 The process outlined below has been designed by a representative sample of businesses in the premium rate value-chain and is one example of how these outcomes could be delivered. Providers are able to disregard this process in light of a process they believe will better deliver the outcomes. However, should a service be investigated for a potential breach of complaint-handling rules – and the outcomes are found to have not been delivered – PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal') is likely to look upon a failure to follow this process as an aggravating factor.

2.2 Where we mention that interaction with consumers should be carried out 'promptly' and 'within a reasonable period', please see below 'Suggested timetable for calls to be made' (section 3).

Call #1: consumer calls their Mobile Network Operator (MNO)

2.3 Research indicates that almost all consumers approach their MNO as their first port of call when they have either a complaint or query in relation to a mobile premium rate service. One of two things will then happen:

- If the consumer is satisfied that they **did** use the service, the matter would be closed, with no further action necessary.
- If, however, the consumer is given information about the service in question and then, for any reason, the consumer **does not** accept the charge(s), it would be helpful if the MNO: a) asks that the consumer safeguards the evidence (where applicable) and takes a note of the shortcode; b) offers the consumer the contact details of the Level 2 provider (or the Level 1 provider in a shared shortcode scenario); and c) invites the consumer to return to them if they do not receive the redress to which they feel entitled.





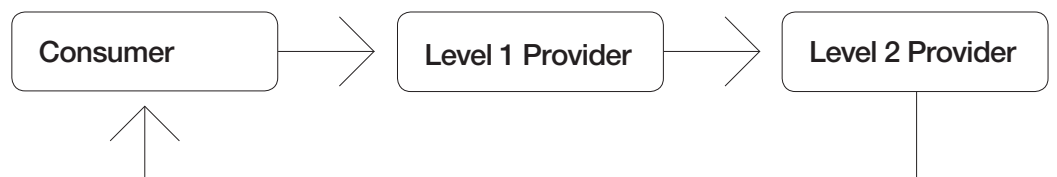
Call #2, scenario #1 (dedicated shortcode): consumer calls the relevant Level 2 provider

- 2.4** Where a Level 2 provider chooses to employ a voicemail facility or an email service, rather than a human operator upon first contact, the provider should return messages promptly. Also, where an email service is offered by a provider, a non-premium rate UK customer service number must also be available as per Rule 2.6.2 of the [PhonepayPlus Code of Practice](#).
- 2.5** Having engaged directly with a consumer, the Level 2 provider should attempt to identify and resolve their issue and communicate their proposed resolution within a reasonable period.
- 2.6** If the consumer is satisfied with the outcome of their complaint at this point, then no further steps are necessary and the matter is closed.
- 2.7** However, if the consumer remains unsatisfied with the outcome – either because the provider asserts the complaint to be invalid, or because the proposed redress is considered insufficient – then the consumer should be asked to return to their MNO, or to contact PhonepayPlus to explain the problem.



Call #2, scenario #2 (shared shortcode): consumer calls the relevant Level 1 provider

- 2.8** Having received a call from a consumer, the Level 1 provider should inform the consumer that they will receive a return call from the relevant Level 2 provider promptly. The Level 1 provider should then contact the Level 2 provider to give them the consumer's contact and complaint details, along with any other information they may have that may be useful.
- 2.9** The Level 2 provider should then contact the consumer to discuss their issue, and attempt to resolve it as per 'Call #2, scenario #1' (above). If they are unable to do so, they should refer the consumer either to the MNO, or to PhonepayPlus, as explained above.



Call #3, scenario #1: consumer chooses to return to their MNO

- 2.10** This is the final call that a consumer should have to make in relation to any issue. Where the consumer has chosen to return to their MNO, they should be advised that they will receive a return call. The MNO should then attempt to resolve the issue, working with the Level 1 provider or any other provider within the chain, should they wish to.
- 2.11** The level 1 provider, or the MNO, should then contact the consumer to offer their proposed resolution, and if the consumer is satisfied with that offer, then no further steps are necessary and the matter will be closed.

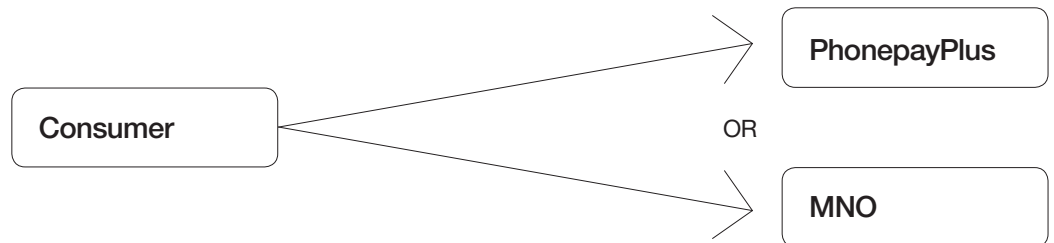


2.12 However, if the consumer remains unsatisfied with what it is that is being offered by the Level 1 Provider, or the MNO, as a solution, then they are, at this stage, requested to contact PhonepayPlus.

Call #3, scenario #2: consumer chooses to contact PhonepayPlus

2.13 We wish to make it clear that, when a consumer has been directed to PhonepayPlus, it should not be assumed that an investigation will then automatically be instigated against a provider. PhonepayPlus will consider the complaint matter and will decide, on an objective basis, whether or not to investigate the complaint. If the consumer's complaint is deemed invalid, they will be informed of this; if the proposed redress, originally rejected by the consumer, is deemed sufficient, we will recommend the consumer accepts it; if, however, the response is deemed insufficient, we will work with the providers involved to try to identify a more suitable offer.

2.14 At any stage, PhonepayPlus may decide to open an investigation into one, or several, Level 1 and/or Level 2 providers. However, all work undertaken to remedy the consumer's issue would be taken into account by the Tribunal as a potentially mitigating factor.



3. Suggested timetable for calls to be made (an example process)

3.1 Some complaints will take longer to process than others – either because the issue is more complicated than normal, or perhaps because, for reasons outside of the provider's control, they are unable to act as quickly as they would like. In practice, the Tribunal is likely to look at the facts of each case, and debate it on its merits. This is why we have purposely chosen not to give any prescriptive timelines for calls to be made within the example process shown above.

3.2 However, we think it may be helpful to offer some advice on what we expect it to look like in a typical case:

- **Call #1** – where a consumer has called their MNO and does not accept the charges, we believe that it is reasonable to ask that the consumer be invited to make a return call after **five working days**, should they have been unsuccessful in contacting the relevant provider.
- **Call #2, scenarios #1 and #2** – where the consumer chooses to leave a message or send an email – and a resolution cannot be made immediately – they should receive a 'holding response' within **one working day**. Regardless of the initial contact, where a Level 1 or Level 2 provider becomes aware of a problem, we believe that a resolution should be offered to that consumer within **five working days**.
- **Call #3, scenario #1** – the Level 1 provider (or MNO) should contact the consumer within **five working days** with a proposed resolution.





4. Guidance on what might be expected from Level 2 providers in relation to Rule 2.6.6

4.1 Rule 2.6.6 of the [PhonepayPlus Code of Practice](#) states the following:

2.6.6 *Level 2 providers must provide upon request to PhonepayPlus such information that allows examination of how they have handled any consumer complaint.*

4.2 When considering whether a Level 2 provider has dealt with a complaint in line with this Rule, PhonepayPlus is likely to request the following evidence from that provider:

- A record of the initial contact from the consumer – if this is a letter or email, then our expectation is that a copy will be provided. If the initial contact is through a telephone call, then a recording of the call should ideally be provided, or in cases where no recording is available, a time-logged record of the call, consumer details and a clear description of the consumer's issue.
- Records of any subsequent activity in relation to the consumer's complaint once it has been initially logged – this would include any internal emails relating to the complaint, a record of any key decisions or actions taken, a record of all subsequent contact with the consumer (whether via letter, email or call) and any data records which have been referenced in relation to the consumer's complaint (e.g. records showing the receipt of MO (mobile originating) messages or the dispatch of MT (mobile terminating) messages).
- Records of any final decision made in relation to the consumer's complaint, and of any refund issued (e.g. when the refund was issued, how and for what amount) – we would consider it helpful to record whether the consumer agreed with the decision, or not.

4.3 In order to ensure that such records are available to PhonepayPlus for a reasonable period while carrying out any further investigation or enquiry, providers should retain these details for three months after the consumer's initial complaint.

5. Guidance on 'broadcast' complaint-handling processes

5.1 With regard to complaints made about services operating within the 'broadcast' medium, where a complaint relates to both the editorial and the premium rate element of a service/promotion, our expectation is that the broadcaster will apply a complaints resolution process to the premium rate element which complies with any minimum requirements as set out in the rules in [PhonepayPlus Code of Practice](#) around 'Complaint handling' (paragraph 2.6).

5.2 To be clear, PhonepayPlus' rules on complaint handling would not apply to complaints which do not relate to any alleged breach of [PhonepayPlus Code of Practice](#) (for example, purely editorial complaints, which involve no element related to PRS, would not apply). Consumers should not be led to assume otherwise. Consumers who have complaints about purely editorial content should refer to the Ofcom Broadcast Code: <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/broadcastingcode2011.pdf>

6. A summary of the roles

Mobile Network Operators

Provides information to help pursue complaints.

Helps the consumer, should the Level 2 provider not provide an adequate response. This would most likely be pursued by liaising with the Level 1 provider, so that one of the two parties is able to make an improved offer to the consumer.



Ideally, provides ‘trend data’ on any problematic Level 2 providers or services/service types to PhonepayPlus.

Level 1 providers

Arranges for Level 2 providers to call consumers (shared-shortcode scenario).
Provides information to Level 2 providers, where necessary.

Attempts to resolve complaints, where the Level 2 provider has failed in their duties.

Level 2 providers

The Level 2 provider is the frontline complaint handler and, as such, it is always the Level 2 provider’s responsibility to resolve consumer complaints as quickly, fairly and easily as possible, as per the rules at paragraph 2.6 of the [PhonepayPlus Code of Practice](#).

PhonepayPlus

1. In situations where a consumer has not been able to gain a satisfactory resolution to their complaint, PhonepayPlus assesses both sides and decides on the resolution as is deemed appropriate. This may result in an investigation of potential breaches of the [PhonepayPlus Code of Practice](#).
2. Continues to take complaints from consumers at any stage during this process, and assesses possible grounds for investigation into breaches of the [PhonepayPlus Code of Practice](#).

The role of General Guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus’ Code Compliance Panel Tribunal (‘the Tribunal’). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider’s alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.





PhonepayPlus
Guidance Note

Service-Specific
Consumer refunds

GENERAL GUIDANCE NOTE

Consumer refunds

Who should read this?

All Networks operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations in relation to consumer refunds, which are required as a result of a sanction following a breach of the [PhonepayPlus Code of Practice](#) being upheld.

The following parts of the Code relate to a requirement for providers to give refunds to consumers:

2.6.4 *“Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner”*

4.8.2(i) *“[The Tribunal may] require that refunds are paid within a specified time period to all consumers who claim a refund, for the full amount spent by them for the relevant service or for a specified lesser amount, save where there is a good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.”*

4.8.2(j) *“[The Tribunal may] require in circumstances where there has been a serious breach of the Code and/or serious consumer harm, that refunds for the full amount spent or a specified lesser amount are paid within a specified time period to all consumers who have used the service, regardless of whether they have claimed a refund.”*

What are the key points?

The main issues for providers to consider are:

- The [PhonepayPlus Code of Practice](#) details two requirements in relation to consumer refunds.
- Refunds must be provided to consumers promptly and in an easily accessible manner.
- Providers may request evidence to validate a consumer's claim.



Menu



1. The two requirements

1.1 There are essentially two requirements that the [PhonepayPlus Code of Practice](#) imposes, depending on what the Tribunal has instructed. Providers must issue a refund to either:

- Consumers who have made a complaint and/or requested a refund; or
- All consumers who have used the service (this requirement generally only applies to services that have no intrinsic value and/or where there has been serious and widespread consumer harm).

1.2 The first requirement can be mandatory as part of a sanction, or requested as part of a Track 1 action plan by the Complaint Resolution Team. Where it is requested by the Complaint Resolution Team, the provider may dispute it. However, this may lead to a Track 2 investigation procedure being initiated. For more information about different investigation procedures, and the sanctions at PhonepayPlus' disposal, please read the '[Investigations & Sanctions Procedure](#)' on the PhonepayPlus website.

1.3 The second requirement will only ever be issued as a sanction from the Tribunal, and would generally only relate to cases where there has been widespread harm caused to consumers.

Where a Tribunal will issue an order for refunds to complainants

1.4 Every Tribunal will consider each case on its merits, but may order a refund to consumers who have complained to PhonepayPlus, for any of, but not limited to, the following reasons:

- An identifiable (and possibly excessive) financial detriment to consumers has occurred;
- Consumers were either deceived or misled by reckless or wilful intent;
- The product or service was not supplied or was of unsatisfactory quality;
- The marketing or promotional material misled consumers into purchasing. This would include promotional material that stated a lower price than the amount the consumer is actually charged, or stated that a service was free, when it was not.

Where a Tribunal will issue an order for refunds to complainants

1.5 A universal refund will require the provider to issue a refund to all consumers who received a premium rate charge from the service, even where they have not made a complaint. This sanction will usually only be used in circumstances where the service has no intrinsic value, and/or there has been serious consumer harm or a very serious breach of the [Code of Practice](#) has occurred.

2. Consumers to receive refunds promptly and in an appropriate manner

2.1 Where a refund is requested or ordered by a Tribunal, consumers who are entitled to a refund should receive it in 28 days or less from the date of the request or instruction. A Track 1 procedure may provide a different timeframe for a refund to be given, in which case that timeframe would take precedence. It is best practice to issue a refund as soon as is practicable.

2.2 Where refunds are ordered by a Tribunal, they are usually for the full cost of using the service; however, they may be specifically for the amount of the premium rate element of the service, or a share of the revenue received by the provider.





2.3 Providers, especially those based overseas, should be aware that they must have a mechanism in place to promptly provide refunds to consumers in UK currency.

2.4 Acceptable methods of refund are as follows (in ascending order):

- Automatic credit to the consumer's phone bill (PhonepayPlus accepts that this is not currently widely available);
- In the case of a mobile phone, a text to the consumer's handset with a code that can be used at a Post Office or bank for a cash refund;
- A cheque or postal order to the consumer's address;
- Vouchers or a free repeat use of the service, provided the consumer accepts this form of refund. (Please note that this method is not applicable where the provider has been ordered to give a universal refund to all consumers);
- Donations to charity of an equivalent total amount, where consumer contact details cannot be obtained due to withheld numbers/caller line identities ('CLIs').

2.5 Providers will be required to prove to PhonepayPlus, upon request, and in an independently verifiable form, that they have refunded consumers.

2.6 Where the money has been donated to a charity, evidence of this should be provided upon request.

3. Evidence of validation for a consumer claim

3.1 Where an instruction to refund applies only to complainants, providers are entitled to ask consumers for reasonable evidence that they are entitled to a refund, such as:

- The consumer's phone bill; and/or;
- The consumer's phone number.

3.2 Please note that requests for verification that go beyond this, for example requests to see a consumer's passport, driving licence, utility bill, etc., are not acceptable and will be seen as obstructive.

The role of general guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.





GENERAL GUIDANCE NOTE

Definitions

Who should read this?

All Network operators and providers involved in the provision of premium rate services ('PRS') to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying whether they are required to register with PhonepayPlus before operating PRS. This General Guidance Note also sets out PhonepayPlus' expectations around the [PhonepayPlus Code of Practice](#), and how any investigation procedures resulting from suspected breaches of [PhonepayPlus' Code of Practice](#) are likely to operate, depending on how a registered party is defined under the [PhonepayPlus Code of Practice](#).

What are the key points?

This General Guidance Note is designed to:

- Set out the definitions of Network operators, Level 1 providers and Level 2 providers as they appear in the [PhonepayPlus Code of Practice](#).
- Offer an explanation of where those definitions would likely apply within the most common types of value-chains for PRS.
- Explain the responsibilities attached to the definitions.
- Explain how PhonepayPlus would determine responsibility in the event of an investigation.



1. Definitions

Network operator

- 1.1** The definition of a Network operator is set out at paragraph 5.3.4 of the [PhonepayPlus Code of Practice](#), which states the following:

5.3.4 *Subject to paragraphs 5.3.5 and 5.3.6 below [which cover VoIP networks and*

those who aggregate content or resell network access through wholesale arrangements], ‘Network operator’ means, for the purposes of this Code in respect of any premium rate service, a person who falls within Section 120(10) or Section 120(11) of the [Communications] Act and:

- (a) *who is a lead network; or*
- (b) *has a direct network connection and has direct billing arrangements in respect of that connection with the lead network; or*
- (c) *through arrangements made with a lead network, provides electronic communication services to the public and bills the public directly, and can perform or can require the performance of all the obligations that are set out at section 3 of the Code; or*
- (d) *if no-one falls within (a), (b) or (c) above, the Network operator shall be the person who falls within Section 120(10) or (11) and, in respect of the premium rate service or services in question, provides or has, in the reasonable opinion of PhonepayPlus, the closest or most substantial connection with the provision of the communications network used for the provision of the premium rate service.*

A direct network connection exists when a person provides switching equipment (to currently accepted industry standards), which by interconnection arrangements made between that person and the lead network, enables the conveyance of signals between the lead network and that person.

- 1.2** The definition of a Network operator has not changed from the previous edition of the [PhonepayPlus Code of Practice](#), and remains consistent with the 2003 Communications Act. If you are unsure whether or not your company would be considered a Network operator, you should contact PhonepayPlus for further advice.

Level 1 and Level 2 providers

- 1.3** Level 1’ and ‘Level 2’ providers are terms which are new to the latest edition of [PhonepayPlus’ Code of Practice](#). They are defined in the [PhonepayPlus Code of Practice](#) at paragraph 5.3.8, as follows:

5.3.8

- (a) *A Level 1 provider is a person who provides a platform which, through arrangements made with a Network operator or another Level 1 provider, enables the relevant premium rate service to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant premium rate service.*
- (b) *A Level 2 provider is the person who controls or is responsible for the operation, content and promotion of the relevant premium rate service and/or the use of a facility within the premium rate service.*
- (c) *In respect of any relevant premium rate service where it is not clear*



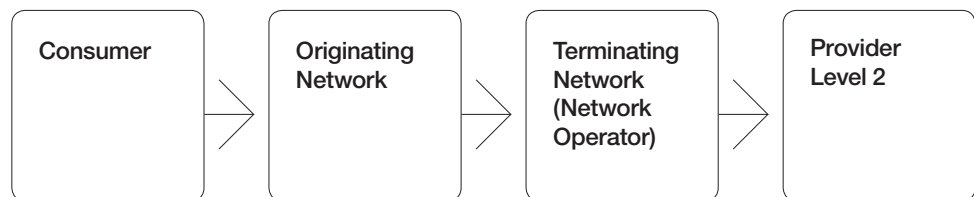


whether a person involved in any way in the provision of the service and/or who receives directly or indirectly any part of the charges made to the consumer for provision of the relevant premium rate service is a Premium rate service provider falling with (a) or (b) above, PhonepayPlus shall determine whether that person is a Premium rate service provider and whether the person is a Level 1 or Level 2 provider with reference to Guidance which it shall issue from time to time.

2. How definitions are likely to apply within PRS delivery chains

- 2.1** As the technology behind PRS has evolved, so have an increasingly diverse range of value-chains by which PRS are bought by consumers and delivered to them. A single entity may play different roles in different value-chains. So, it is important that PhonepayPlus is able to attach the correct definition, and so properly apportion responsibility, to the role a party has played in a specific value-chain.
- 2.2** Five example value-chains, in practice the most common within the PRS industry, are set out below. These are clearly marked to illustrate where PhonepayPlus would regard Network operators, any Level 1 providers, and the Level 2 provider, to be placed in each value-chain. A short explanation of these placements is provided. However, generally, the Level 2 provider will retain responsibility for the promotion of a service, and the operation of a service may be the responsibility of a Level 1 or a Level 2 provider, depending on who controls any technical platforms.
- 2.3** It is important to remember that there might potentially be any number of Level 1 providers within a delivery chain, or no Level 1 provider at all. However, there will always be one party which PhonepayPlus regards as being a Level 2 provider, and so responsible for compliance with Part Two of the [PhonepayPlus Code of Practice](#), which sets out desired outcomes for consumers and rules relating to PRS:

(a) Traditional 'voice-based' PRS (where an 09 number is used)



- 2.4** The consumer makes a call on their landline through their billing network (e.g. BT, Virgin Media, Kingston, or any of the Mobile Network Operators). This is then relayed through a Terminating Network, which for the purposes of the [PhonepayPlus Code of Practice](#) will be regarded as the Network operator, to a sole provider. This provider provides both the platform for connection to a Network operator and is responsible for the promotion/operation/content of the service itself, so, in effect, could be considered to be both a Level 1 and Level 2 provider. But, because it would be unnecessary to expect this provider to perform due diligence and risk assessment on itself, it is considered the Level 2 provider alone.

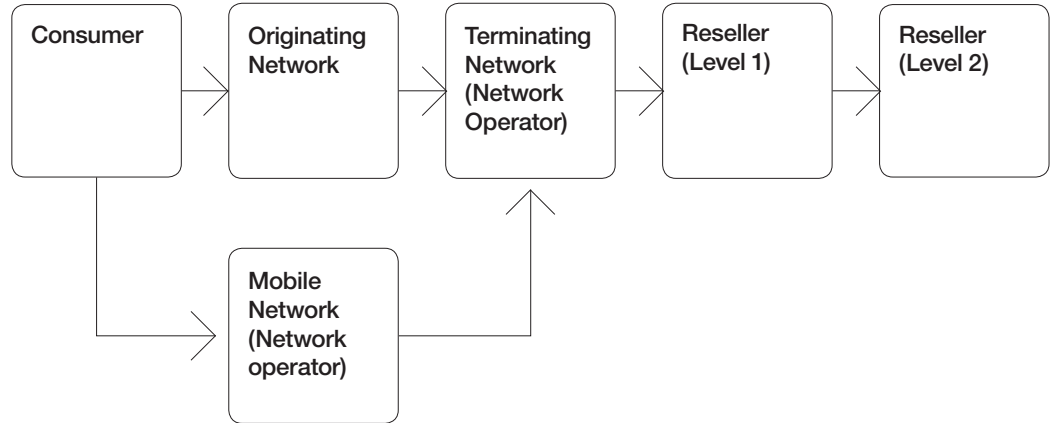
(b) Mobile 'voice-based' PRS (where a mobile shortcode is used)





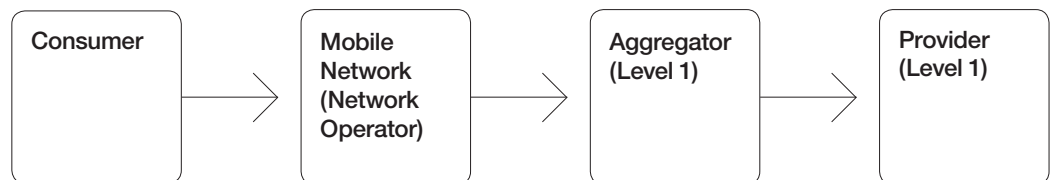
2.5 The consumer makes a call on their mobile. In this case, the Mobile Network Operator acts as both the Originating and Terminating Network; so, for the purposes of [PhonepayPlus' Code of Practice](#) is regarded as the Network operator. As in example a), there is a sole provider who provides both the platform for connection to a Network operator and is responsible for the promotion/operation/content of the service itself. As before, this provider will be regarded as the Level 2 provider.

(c) Reseller 'voice-based' PRS



2.6 The consumer makes a call on either their landline or their mobile. Depending on which, the call is relayed through a fixed-line Terminating Network, or through a Mobile Network Operator. Either of these parties would be considered the Network operator under the [PhonepayPlus Code of Practice](#). The next provider in the delivery chain is a reseller, who then relays the call onto another provider who is responsible for the promotion/operation/content of the service. In this example, the reseller would be considered a Level 1 provider, and the next provider along would be considered the Level 2 provider.

(d) Traditional 'text/download-based' PRS



2.7 The consumer sends a text to a mobile shortcode, or clicks on an icon on a WAP site, or enters their number into a website with appropriate PRS payment security; whichever of these actions they perform, it is relayed through their Mobile Network Operator, which would be considered the Network operator. The consumer's original message is relayed onto a mobile aggregator, who provides a platform for connection to a Network operator, and so would be considered a Level 1 provider. The aggregator, in turn, relays the consumer's original message, or signal of intent to purchase, onto another provider who is responsible for the promotion/operation/content of the service, and so would be considered the Level 2 provider.

(e) Reseller 'text/download-based PRS





- 2.8** The consumer sends a text to a mobile shortcode, or clicks on an icon on a WAP site, or enters their number into a website with appropriate PRS payment security, as at example d). Also, as in example d), whichever of these actions they perform is relayed through their Mobile Network Operator, which would be considered the Network operator. As before, the consumer's original message, or signal of intent, is relayed onto a mobile aggregator (considered a Level 1 provider as it has a platform for connection to a Mobile Network Operator).
- 2.9** However, this time, the message is relayed onto a provider acting as a reseller (i.e. the mobile aggregator provides a connection to another Level 1 provider at a wholesale rate). This provider, and any providers like it further along a delivery chain, would also be considered to be a Level 1 provider, as they provide a platform for connection to another Level 1 provider, without themselves being the party responsible for promotion/operation/content of the service. Lastly, in this example, the reseller relays the message onto a further provider who is responsible for the promotion/operation/content of the service, and they are considered to be the Level 2 provider.

3. Responsibilities

Registration

- 3.1** Anyone who is classed as a Network operator, Level 1 provider or Level 2 provider must register with PhonepayPlus prior to being involved in the provision of any PRS (see section 3.4 of the [PhonepayPlus Code of Practice](#)). Because one party which is registered with PhonepayPlus can potentially perform different roles within different delivery chains, there is no need for registrants to class themselves as being a Network operator, Level 1 provider or Level 2 provider upon registering.

Other responsibilities

- 3.2** Beyond registration, Network operators and Level 1 providers have a number of responsibilities as set out within Part Three of the [PhonepayPlus Code of Practice](#). These are most notably, but not limited to, the following:

- Due diligence on clients with whom they directly contract;
- Risk assessment and control of clients with whom they directly contract;
- Ensuring in the context of their roles that services are of adequate technical quality.

- 3.3** Level 2 providers have a different set of responsibilities. These are most notably, but not limited to, the following:

- Compliance with Part Two of [PhonepayPlus' Code of Practice](#), which sets out outcomes and rules relating to individual services;
- Registering the services which they provide with PhonepayPlus (see paragraph 3.4.12 of the [PhonepayPlus Code of Practice](#). We currently define registration of a service as provision of customer contact details for premium rate numbers, shortcodes or other access codes on which PRS are operated);
- Ensuring in the context of their roles that services are of adequate technical quality.

How is responsibility for promotion, operation and content defined? What about sub-contractors beyond a Level 2 provider?

- 3.4** Paragraph 5.3.8(b) of the [PhonepayPlus Code of Practice](#) refers to a Level 2 provider as a person *“who controls or is responsible for the operation, content and promotion of the relevant premium rate service and/or the use of a facility within the relevant premium rate service.”*





3.5 PhonepayPlus is aware that not all entities who we would deem to be Level 2 providers will generate all the promotion or content, or perform all the operation of their services, in-house. A significant number of Level 2 providers will sub-contract with other entities to undertake promotional functions (whether in print, broadcast, SMS or the web), to support or supply certain technical platforms involved in the provision of a service, or purchase content which the Level 2 provider will then package and sell under their brand.

3.6 In such circumstances, PhonepayPlus **does not** regard a party which is sub-contracted to provide only one or two of the functions of promotion, operation and content as a provider. Rather, these entities are regarded as affiliates. Affiliates are not required to register with PhonepayPlus and are not considered to be directly regulated by [PhonepayPlus' Code of Practice](#). Rather, the Level 2 provider to whom the affiliate is sub-contracted will be considered to retain responsibility for that affiliate's actions.

What about where some operational aspects of a service are handled by a Level 1 provider?

3.7 PhonepayPlus is aware that, in some circumstances, certain technical aspects of a service will be handled by a Level 1 provider further up the delivery chain from the Level 2 provider. Examples could include, but are not limited to, occasions where a Level 1 provider's technical platform handles the sending of SMS-based marketing, or where the Level 1 provider's platform processes a consumer's instruction to stop a service and ensures no further billing takes place.

3.8 In these cases, where the failure of such an operational component has led to a breach of [PhonepayPlus' Code of Practice](#), we would regard the Level 1 provider as the party responsible for the technical failure, and so the breach itself. The Level 2 provider who would ordinarily be responsible for the service in its entirety would not be held in breach for this particular aspect of any consumer harm. However, they may still be considered responsible for other aspects of consumer harm which arose in connection with the service.

What about the role of TV broadcasters who run premium rate services as part of their programming?

3.9 Broadcast PRS on TV will continue to be subject to prior permission from PhonepayPlus. That is, providers can only run PRS as part of broadcast programming if they have obtained permission from PhonepayPlus prior to operating. This licence is awarded subject to certain conditions around arrangements to ensure 'Connectivity, Capacity and Coherence' within the PRS broadcasting events themselves.

3.10 The responsibility to obtain prior permission sits with the Level 1 provider, not the broadcaster with whom they contract. So, even though the broadcaster could be thought of as the Level 2 in a Broadcast PRS value-chain, the reality is that responsibility remains with the Level 1 as part of the conditions of their prior permission.

3.11 For more information about how to apply for prior permission to operate Broadcast PRS, please see the PhonepayPlus website www.phonepayplus.org.uk.





4. How PhonepayPlus will define Level 1 and Level 2 providers during an investigation

- 4.1 In the event that PhonepayPlus investigates an alleged breach of the [PhonepayPlus Code of Practice](#), it will first request information from various parties within the relevant value-chain to determine each party's role in the service. In most cases, it will be clear fairly quickly whether a party or sole trader is either a Level 1 or Level 2 provider; however, the information we request should include the provider's opinion and reasoning as to where they fall within the value-chain. This is in order that PhonepayPlus can fully consider this issue before any decision is made.
- 4.2 Where this is not the case, paragraph 5.3.8(c) of the [PhonepayPlus Code of Practice](#) permits PhonepayPlus to determine whether a registered party is a Level 1 or Level 2 provider for the purposes of any investigation into their actions. Where the need to determine whether someone is a Level 1 or Level 2 provider arises, then PhonepayPlus will consider each example on a case-by-case basis, taking the following non-exhaustive factors into account:
- Whether the promotion, operation and content have been sub-contracted to a single party further along the delivery chain;
 - Whether the provider controls and promotes a platform to which other parties connect to provide a service (e.g. international call routing);
 - Whether the provider controls any technical platforms which operate specified aspects of a service.
- 4.3 The key factor to remember during this process is that PhonepayPlus will look to identify the responsibilities of each party in the delivery chain, in order that any breaches can be correctly raised against the party responsible for them.

The role of general guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.





GENERAL GUIDANCE NOTE

Due diligence and risk assessment and control on clients

Who should read this?

All Network operators and providers involved in the provision of premium rate services ('PRS') to consumers.

What is the purpose of the Guidance?

Under the [PhonepayPlus Code of Practice](#), all Network operators and providers must carry out due diligence and risk assessment on any parties they contract with that form part of a value-chain delivering premium rate services to consumers. Due diligence and risk assessment and control represent separate, and distinct, processes that take place prior to the commencement, and throughout the duration, of a commercial agreement. This General Guidance Note is designed to clarify PhonepayPlus' expectations as to how these processes should be performed in practice.

What are the key points?

PhonepayPlus believes that due diligence and risk assessment and control processes are central to good business practice. These processes are particularly important in the premium rate services market, where services are delivered to consumers through partnerships between Network operators and providers, which can, on occasion, include many different parties.

PhonepayPlus' expectation is that each party in a PRS value-chain will carry out due diligence prior to contracting with another party to provide a PRS. This should include an understanding of that party's history of compliance with [PhonepayPlus' Code of Practice](#), including any breaches of the Code of Practice. Once contracted, we expect there to be ongoing risk assessment and control mechanisms in place, appropriate to the roles of the parties involved, which ensure that the [PhonepayPlus Code of Practice](#) is complied with.

The procedures set out in this General Guidance Note are designed to assist Network operators and providers in developing due diligence and risk assessment and control processes that are fit for purpose, recognising that any systems implemented must be proportionate and relevant to their business operation.





1. Due diligence – ‘know your client’

- 1.1 Due diligence constitutes the process of checks and safeguards that should be undertaken before any binding legal contract or commercial arrangement is entered into. PhonepayPlus is aware that due diligence is common practice in the industry and does not seek to impose a rigid formula as to how it should be undertaken. Through the implementation of the new industry-wide Registration Scheme, Network operators and providers should find it easier to carry out basic due diligence searches on their partner providers.
- 1.2 There is no single or prescribed standard as to what constitutes effective due diligence, but we expect to see a proactive stance being taken by all registered parties to know who they are contracting with.
- 1.3 A comprehensive explanation as to what we mean by ‘registered parties’ is provided in the General Guidance Note on [‘Definitions of those involved in providing PRS’](#).

¹For more information on the Registration Scheme, see <http://www.phonepayplus.org.uk/output/cp-code-registration.aspx>

2. Undertaking effective due diligence

- 2.1 The level and standard of due diligence should be consistently applied to all new clients. The [PhonepayPlus Code of Practice](#) requires that effective due diligence processes are in place. It does not prescribe the process, or the information to be gathered, so the examples set out below are to illustrate the kinds of information gathering and other actions both Network operators and providers could take, before a binding commercial agreement is formed:
- Contact details for a client’s place of business;
 - Copies of each client’s current entry (and first entry, if different) in the Companies House register;
 - Names and addresses of all owners and directors;
 - Names and addresses of all individuals who receive any share from the revenue generated by the client;
 - Undertakings from the client that no other party is operating in the capacity of a shadow director under the Companies Act, if appropriate;
 - The names and details of any parent or ultimate holding company which the client is a part of, if appropriate; and
 - To make clients aware of PhonepayPlus and requiring adherence to the [PhonepayPlus Code of Practice](#).
- 2.2 There are many well-established and longstanding client relationships in the industry that have operated for years, to the satisfaction of both parties, and we do not expect providers to suddenly begin the due diligence process again in these cases.
- 2.3 When considering entering into contracts to provide premium rate services with well-known organisations, it is still critical that proper due diligence is carried out, particularly to ensure that the responsibilities under [PhonepayPlus’ Code of Practice](#) are well understood.





3. Registration Scheme

3.1 A key reason for developing an industry-wide Registration Scheme has been to help facilitate and support good standards of due diligence and risk assessment and control by requiring all Network operators and every provider operating in the premium rate industry to register with PhonepayPlus. Those who register will also be required to provide certain details of any services they operate (defined at present as being the customer care numbers for individual premium rate numbers/shortcodes/access codes, with additional optional service information).

3.2 We would expect providers to consult the Registration Scheme as a cross-check against any information collected about potential clients and their recent history of compliance with the [PhonepayPlus Code of Practice](#). But the simple fact of having referenced PhonepayPlus' Registration Scheme is not enough to demonstrate effective due diligence, nor does it prove that a thorough or robust analysis has been made to ascertain the risk posed by a particular client.

4. Risk assessment and control

4.1 All parties in the PRS value-chain bear a proportionate responsibility to avoid consumer harm by assessing the risk of any harm occurring and putting reasonable controls in place to prevent it.

4.2 Risk assessment and control is the business process that puts in place systems to assess and manage the level of risk that a particular client and/or their service(s) may pose. Unlike due diligence, PhonepayPlus considers that the extent of any risk assessment needs to be proportionate to where the contracting party sits in the value-chain. The essence of undertaking a robust analysis of risk assessment is to encourage providers to make a commercial judgment as to the regulatory risk posed by a contracting party throughout the lifetime of a contractual arrangement. Where a commercial judgment has been taken, and an assessment of 'risk' made, our expectation is that reasonable steps and/or 'controls' should be implemented to help pre-empt, where possible, the likelihood of consumer harm.

4.3 For example, a Mobile Network Operator will be expected to carry out due diligence and risk assessment on any mobile aggregators they contract with. The aggregator would then carry out due diligence and risk assessment on any providers they contract with, and so on, until they reach the party who controls or is responsible for the operation, promotion and content of the PRS, defined as a Level 2 provider in the [PhonepayPlus Code of Practice](#).

4.4 We would expect Network operators to have in place risk assessment processes in relation to Level 1 providers with whom they contract (that is a provider who sub-contracts to other parties). This might include a process for keeping under review the extent to which the Level 1 provider is associated with significant breaches by a number of its Level 2 clients, or a system to detect extraordinary patterns of use in relation to the services being offered across their network.

4.5 Network operators should also satisfy themselves that their Level 1 clients have in place effective systems for due diligence and risk assessment and control, so as to protect their own end-users from harm.

4.6 Where the risk profile of certain services or market sectors is known to be high, for example live adult entertainment or Network operators who deal with clients specialising in certain number ranges (such as 070), we would expect Network operators and providers to be particularly vigilant. This level of vigilance would also be expected where the service type has an extensive history of breaches, whether by the potential client or not.





- 4.7** We would also expect there to be consideration given to the length of time a provider had been active in the UK PRS market, particularly as this relates to knowledge of their responsibilities under the [PhonepayPlus Code of Practice](#) and how to operate their services in a way that pre-empts and prevents consumer harm. We would expect providers who are new to the market to be alerted to the requirement to register with PhonepayPlus.
- 4.8** We would expect Network operators to consider whether Level 1 clients with extensive breach histories require the imposition of preventative controls, or restrictions on the types of PRS they are allowed to offer.
- 4.9** All providers, wherever they sit in the value-chain, bear a responsibility, where they discover instances of consumer harm, to report it to PhonepayPlus at the earliest available opportunity. As well as helping PhonepayPlus to assist in protecting consumers, this will assist in resolving issues quickly. Should the harm involved mean that an investigation is necessary, the co-operation shown by Network operators and providers in mitigating harm to consumers will be a significant factor when weighing evidence.
- 4.10** The enforcement of the [PhonepayPlus Code of Practice](#) is not intended to make individual Network operators or providers culpable for every breach or occurrence of non-compliant activity; nor is it designed to place onerous conditions or blanket requirements upon Network operators to monitor the actions of individual clients all of the time. Rather, the level of ‘foresight’ required of a party who is further up the value-chain (i.e. at the Network operator and/or Level 1 provider level) will always be proportionate to how much control the contracting party has over the operation, promotion and content of the PRS.

5. Risk assessment and control of a client who is a Level 1 provider

- 5.1** In respect of a client who is a Level 1 provider, PhonepayPlus considers that the following steps might be taken as part of any risk assessment and control:
- Obtaining information about a client’s history of compliance with the [PhonepayPlus Code of Practice](#)², specifically any previous rulings made by PhonepayPlus, especially in respect of previous due diligence or risk assessment and control failings, and monitoring any patterns of breaches by their clients;
 - Checking whether any of the directors or other associated individuals have been involved, or connected, with other companies that have had previous rulings made against them by other regulators (e.g. Advertising Standards Authority; Gambling Commission; Financial Services Authority; Information Commissioner’s Office; Ofcom, including whether client is on Ofcom’s ‘Number Refusal List’ or ‘Under Assessment List’; etc.). Should such rulings exist, then the practices that led to them being investigated should be considered as risks that might reoccur;
 - Inspecting the processes Level 1 providers have in place to assess the parties they contract with to comply with their own due diligence and risk assessment and control responsibilities;
 - Taking action to ensure that the client quickly addresses any issues which are identified. Obviously, what ‘action’ the Network operator and/or Level 1 then decide to enforce will be determined, and be made proportionate, to the contractual relationship in place. Therefore, it is important that the contracting party understands the requirements placed upon them to ensure they continue to assess their own clients operating further down the value-chain.

² We recognise that some Level 1 providers will have had previous breach histories recorded against them under the 11th edition of the PhonepayPlus Code of Practice, where they were legally responsible, but the harm was caused by a client they contracted with. This will be made clear on the Registration Scheme, so that informed discussions around risk assessment can take place between prospective commercial partners.



- 5.2** The exact level and detail that a Network operator or Level 1 provider might wish to obtain and consider at any particular point may change as circumstances in the market change, or, if there has been a significant structural reorganisation altering the composition of the Level 1 provider concerned (e.g. the acquisition and/or merger with another company, creation of a holding company structure, change of a director(s)). This could potentially impact upon alter the commercial relationship that may have previously been entered into. The key point to stress is that the risk assessment process is something that should be reviewed and responded to, where the circumstances make it reasonable to do so.
- 5.3** In the event of an investigation, we would expect to see evidence of risk assessment and control of the type described below (at paragraph 6.2 of this General Guidance Note). Depending on the circumstances of the value-chain, this plan may relate to a Level 2 provider or a Level 1 provider. Examples of where an investigation might arise include where continuous monitoring had exposed a significant number of breaches associated with the Level 1 provider's clients or a type of service, or where PhonepayPlus had conducted an investigation into potential breaches of the obligations contained in Part Three of the [PhonepayPlus Code of Practice](#).
- 5.4** Where a Network operator is intending to allocate a range of numbers to a client, who is the Level 1 provider in the value-chain, and that client is intending to operate as a 'reseller' (i.e. a client who sells numbers onto another party and then takes a share of service revenue), PhonepayPlus would expect to see, as part of any process of risk assessment and control, that a written record is kept of whom, and on what date, the numbers were exported.
- 5.5** 070 numbers should not be used for PRS. Where a range of 070 numbers is allocated to one individual provider, a registered party may wish to ask what these numbers are being used for; perhaps reporting to PhonepayPlus any traffic flow that may indicate the use of 070 for PRS.
- 6. Risk assessment and control of a client who is a Level 2 provider**
- 6.1** If a registered party contracts directly with a client who is responsible for ensuring the consumer outcomes of the [PhonepayPlus Code of Practice](#) (Part Two) are met (the client being considered by PhonepayPlus to be a Level 2 provider), we would expect the risk assessment and control to be of a nature that ensures that the consumer outcomes that [PhonepayPlus' Code of Practice](#) requires are able to be met.
- 6.2** PhonepayPlus suggests that the following steps might be taken to help a Network operator and/or Level 1 provider to properly assess the level of risk posed by a Level 2 client. The list provided is not exhaustive, nor does it account for other potential factors that could constitute a 'risk' as part of any up-to-date assessment:
- Obtaining information about a client's breach history, specific to any previous rulings made by a PhonepayPlus Tribunal (made accessible on the Registration Scheme);
 - Obtaining information about a client's previous trading history (for instance, this might include rulings made by the Office of Fair Trading);
 - Identifying the types of services being offered by the client and the risk such service types might pose, given previous adjudications which relate to them. This should be coupled with a policy of keeping up-to-date with PhonepayPlus' regulatory expectations in respect of particular service types (e.g. reference to Service-Specific Guidance, General Guidance, Compliance Updates and any other information made public by PhonepayPlus);
 - Seeking evidence of any prior permission certificate, where a service type is known to require it;
 - Informing PhonepayPlus, where it is feasible to do so, of any spikes in traffic



(or other practice) which may suggest or indicate potential consumer harm, where this has been notified or discovered;

- Checking whether any of the directors, parent company directors or other associated individuals have been involved, or connected, with other companies that have had previous rulings made against them by PhonepayPlus or other regulatory bodies (e.g. Advertising Standards Authority; Gambling Commission; Financial Services Authority; Information Commissioner's Office; Ofcom, including whether client is on Ofcom's 'Number Refusal List' or 'Under Assessment List'; etc.). Should such rulings exist, then the 'practices' that led to them being investigated should be considered as risks that might reoccur;
- Making an assessment of risk based on the promotional material the client is using. For new relationships, until confidence has been built up, draft promotional material and/or service content might be subject to advance review. An example would be that a major consumer brand using press advertising is likely to carry less risk than a new entrant using web-based, affiliate marketing.
- In instances of doubt or where further clarification is needed, advising clients that promotional material and/or any copy advice can be forwarded to PhonepayPlus for free compliance advice.

6.3 Having ascertained this information, it might follow that a registered party is in a position to develop a plan of action (made bespoke to a particular client) to sit alongside the contract, or an equivalent commercial arrangement that has been entered into. This could be made available upon request by PhonepayPlus and used as mitigation in the event of a formal investigation being raised.

6.4 The formulation of an action plan could be based on the following;

- To periodically test and/or monitor certain 'risks' that would normally be associated to a particular service category (e.g. for a subscription service, it may be prudent to test the clarity of promotions, whether reminder messages have been sent and that 'STOP' commands have been responded to);
- The frequency of such testing should reflect the risk posed by both the client and the service type. For example, a client with no breach history, or where none of the directors are linked to other companies with breaches, and low-risk service types (such as football score updates), would require far less monitoring than a client with an extensive breach history that provides a high-risk category of service (e.g. a subscription-based lottery alerts system with a joining fee);
- 'Mystery shopper' testing could be used as, and when, appropriate;
- Internal mechanisms to encourage 'whistle-blowing' by staff, where appropriate;
- Putting in place internal checks that correlate with unusual patterns of activity which may indicate consumer harm (e.g. spikes in traffic and/or consumer complaints made directly to the provider about one specific service);
- Having a procedure to alter and address instances of non-compliant behaviour;
- Producing a compliance file, comprising of a written record of the assessment, the subsequent action plan and evidence of any monitoring and/or testing required by the plan having taken place. This record does not necessarily need to be lengthy (although this will depend on the client and the actions taken under the plan), but should be made available to PhonepayPlus upon request.

6.5 Any assessment of risk should be an ongoing process and reconsidered in light of any new information. This might include updates to a client's breach history, a change in an individual client's approach to compliance or alterations to the company structure (e.g. the acquisition/amalgamation of another company, the creation of a holding company structure, appointment of new company directors, changes to the company name, etc.).





7. Other parties in the value-chain

7.1 From time to time, parties may fall outside the PhonepayPlus definitions of regulated parties in the PRS value-chain, yet may be contracted with specific tasks, either in the promotion or operation of a premium rate service. In such instances, the registered party who contracts with such an entity will likely be considered a Level 2 provider, as they will ultimately be responsible for the actions of these affiliates. Network operators and Level 1 providers may wish to confirm whether affiliate companies are being used by their clients, the purpose for which they are being used and what controls are in place to ensure that the [PhonepayPlus Code of Practice](#) is not breached.

8. Failure to meet the required standard

- 8.1** The standard that will always be applied, where consumer harm has occurred, is to determine on a case-by-case basis whether the risk that harm might arise was reasonably identifiable and controllable. PhonepayPlus will seek to examine what actions were taken by the provider that contracted with the party which caused the consumer harm to ensure this risk was managed appropriately.
- 8.2** Where a Network operator or Level 1 or 2 provider is unable to provide evidence to PhonepayPlus that adequate due diligence was carried out, or that an adequate level of risk assessment and control took place, a PhonepayPlus Tribunal is likely to classify this as a serious or very serious breach of the [PhonepayPlus Code of Practice](#) for the purposes of apportioning sanctions, dependent on other evidence and considerations in the case.
- 8.3** Where such a breach is upheld, the PhonepayPlus Tribunal may enforce a range of sanctions, including that a compliance audit to be undertaken by an independent third party to address those failings and to bring a Network operator's, or registered party's, compliance framework up to the required standard. For more information around investigations, and the role of sanctions, please refer to the '[Investigations & Sanctions Procedure](#)'.

The role of general guidance

General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.





PhonepayPlus
Guidance Note

Service-Specific
Lower cost

SERVICE-SPECIFIC GUIDANCE NOTE

Lower cost services

Who should read this?

All Network operators and providers involved in the provision of lower-cost premium rate services to consumers.

What is the purpose of the Guidance?

To assist networks and providers by clarifying PhonepayPlus' expectations by way of the following:

- Explaining how outcomes relate to lower-cost services;
- Offering advice on how consumer complaints should be processed.

The majority of lower-cost services provide a benefit to consumers and businesses by allowing the utilisation of intelligent routing of calls and automation of simple requests. However, many consumers feel annoyed and frustrated on occasions when they are surprised by the cost of their call, or are kept on hold for an unnecessary length of time.

Commercial pressures go a considerable way to ensuring consumers get fair treatment because, in most cases, consumers who have a bad customer service experience are free to take their business elsewhere. However, minimum standards, particularly in relation to transparency and pricing, as well as fairness, are required, in order to provide consumers with the information they need in order to make these judgments.

What are the key points?

Lower-cost services are those which cost no more than 10p per minute plus network extras. 0871, 0872 and 0873 numbers are always included within the definition of lower-cost services. The main issues for Network operators and providers to consider are:

- Network operator and Level 1 provider duties before connecting services;
- Level 1 and 2 provider exemptions from the PhonepayPlus Registration Database;
- Service exemptions from the Registration Database;
- Prior permission requirements for chat services and international call routing services;
- Practical pricing in promotions;
- Pricing in greetings;
- Queuing and keeping consumers on hold;
- Complaint handling;
- Spending caps; and
- Call recording and monitoring requirements.



Menu



1. Network operator and Level 1 provider duties before operation (due diligence and PhonepayPlus Registration)

- 1.1** The objective of due diligence is to ensure the identity and suitability of potential providers to offer premium rate services ('PRS') to consumers is established. If you have any doubt about your status under the [PhonepayPlus Code of Practice](#), information can be found in the General Guidance Note on '[Definitions of those involved in providing PRS](#)'.
- 1.2** Under the [PhonepayPlus Code of Practice](#), Network operators and Level 1 providers must (amongst other things):

3.1.1 *ensure that PhonepayPlus regulation is satisfactorily maintained by;*

- *taking all reasonable steps in the context of their roles, including the adoption and maintenance of internal arrangements to ensure that the rules set out in Part Two are complied with and the outcomes achieved in respect of all premium rate services with which they are concerned, and*
- *carrying out their own obligations under the Code promptly and effectively and*
- *taking all reasonable steps to prevent the evasion of, and not to undermine, the regulation of premium rate services, and*
- *taking all reasonable steps to ensure that consumer complaints are resolved quickly and fairly and that any redress is provided quickly and easily;*

3.3.1 *perform thorough due diligence on any party with which they contract in connection with the provision of premium rate services and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances.*

- 1.3** In the context of lower-cost services, such as 0871, it is entirely appropriate that the burden of due diligence is lighter than on other premium rate numbers. Accordingly, we consider the outcomes (above) to be met if Network operators and Level 1 providers:

- Bring PhonepayPlus' Code of Practice to the attention of the next party in the delivery-chain only (i.e. not the whole delivery-chain to the consumer);
- Verify the identity of the provider and retain the provider's address and contact information;
- Make arrangements in their contracts to be able to withhold payment to clients for a period of 30 days from the date of a consumer's connection, unless we instruct you to withhold it for longer;
- Ensure that the next party has either assigned responsibility for customer service to another party or has sufficient arrangements in place itself; and
- Ensure that, if the connection is provided directly to a Level 2 provider (and not to an intermediary), and is relating to a category of service that requires prior permission, then that provider holds that permission from PhonepayPlus.

2. Level 1 and Level 2 provider Registration

- 2.1** PhonepayPlus has exempted providers who only provide lower-cost services from the requirement to register with PhonepayPlus. For the avoidance of confusion, if a provider makes other higher-rate premium rate services available, then they must register.

- 2.2** Network operators that offer a connection for lower-cost services must contact us – in order to better understand their responsibilities with regard to directions and levy payments.

3. Level 2: Service Registration (Number Checker)





3.1 PhonepayPlus has exempted providers of lower-cost services from the requirement to register their services. However, if a provider offers services which require prior permission, they must register these services only.

3.2 We will continue to populate the Number Checker with the most-checked, lower-cost numbers on behalf of Level 2 providers. Providers of lower-cost services may voluntarily register their business and their services, if they believe this will be of benefit to their consumers.

4. Level 2: Prior permission

4.1 Some lower-cost services require prior permission in order to operate:

3.10.1

PhonepayPlus may require that particular categories of service must not be provided without its prior written permission...

4.2 If you are a Level 2 provider, you should supply your permission certificate to the party providing your connection.

4.3 The following services currently require prior permission to operate at a lower cost:

- Live 1-2-1 entertainment conversations;
- Multi-party chat;
- International call routing services (where provided on 087 or 09 ranges, or otherwise classified as Controlled PRS under Ofcom's PRS condition).

4.4 Prior permission will include special conditions and further rules for services that present higher risks of harm to consumers. Further information is available on the PhonepayPlus website.

5. Price information on promotions

5.1 The Code states that Level 2 providers must ensure that:

2.2.1

Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

5.2 The general rule is that promotions for lower-cost services should state pricing information clearly, prominently and in close proximity to the call to action. For more information on this, please see the General Guidance Note on ['Promotions and promotional material'](#).

5.3 Industry respondents to consultations on lower-cost services have stated that there are many circumstances where pricing information is difficult to include in a particular promotion. Reasons stated have included: lack of space (with business cards and letterheads), extra expense (for example, where a fleet of vans all promote a lower-cost number) and collateral/materials which pre-date regulation. Consumers also have stated a preference for hearing pricing information on connection.

5.4 For these reasons, where it is **not practical** to include pricing in promotions, it is acceptable to provide pricing information immediately on connection. For the avoidance of doubt, we consider it is always practical to provide price information in a text message, print promotion, paid-for listings and web promotion. It may not be practical to change information on stock that has already been distributed or





stationery intended for business use (such as business cards or letterheads).

- 5.5** If a provider has any doubt about the practicality of including pricing information, they can contact PhonepayPlus for further guidance.

6. Price information on connection

- 6.1** Callers who regularly use the same lower-cost service can become frustrated by hearing the same pricing message repeatedly. Therefore, when it is reasonable to assume that a consumer is the same repeat caller and can be identified by a unique number – such as a MSISDN (mobile number) – rather than a geographic number, (which may be shared within a household), providers of lower-cost calls only have to issue pricing information on the first three occasions, and then again on every fifth occasion. If more than six months have elapsed since the last call was made from the MSISDN, then the price information cycle referred to above should be started again.
- 6.2** Pricing information can be stated by an operator immediately on connection, or preferably, included in the greeting message. Where this introduction is not prolonged, this information can be provided, if necessary, in the chargeable portion of the call; long introductions in the chargeable portion of the call can constitute an undue delay. For more information, see the General Guidance Note on [‘The avoidance of undue delay’](#).
- 6.3** When providing pricing information on these occasions, the provider should state that “calls from mobiles will cost considerably more”.

7. Queuing or keeping consumers on hold

- 7.1** Research shows that at least a quarter of consumers calling 0871 numbers have had cause for complaint. More than half of complaints (57%) relate to the time spent held in a queue. Of those:

- 14% think it unacceptable to be kept on hold at all;
- 42% think it unacceptable to be kept on hold for more than two minutes; and
- 49% think it unacceptable to be kept on hold for a simple query¹.

¹ See [Analysys Mason research](#), June 2009

- 7.2** If consumers are held in a queue while they wait for an operator to become available, they should be given a suitable indication of the length of the likely delay. They will then be in a position to make an informed decision as to whether to remain on the call, or to try again another time.
- 7.3** Where providers believe that a delay is likely to occur, they should consider implementing processes to ensure that consumers will understand right from the outset how long the delay is likely to be.
- 7.4** This could be done in a number of ways, for example:
- Stating an estimation of the length of the delay (in minutes).
 - Telling the caller they have been placed in a queue and where they are in relation to others in the queue.
- 7.5** Alternatively, providers could offer to call the consumer back at the company’s expense, when an operator becomes available. We understand that, in unique circumstances (for example, an extreme weather event, or other emergency), providers may experience delays to a service and will not have had time to prepare a response. In these cases, it may be sufficient to include a general pre-call announcement, explaining the delay but without an accurate estimate of the wait.





- 7.6** However, we would expect this to be the exception to a service's operation, not the rule. While we do not intend to specify the exact extent to which the estimate is accurate (e.g. to the nearest minute), we will certainly expect providers to ensure that consumers are able to make an informed decision as to whether to stay on the line.
- 7.7** We understand that a number of factors affect the delivery of a service, and that consumers' expectations of different services may vary. For individual cases that relate to undue delay only, we will allow providers 30 days to satisfy complainants, before considering any investigation into a service. The provider will be asked to provide evidence that:
- There was no delay;
 - The consumer was accurately informed of the delay and consented to it; or
 - There were other factors that made the delay justifiable (see below).
- 7.8** In the case of investigations, the Tribunal will be asked to consider various factors, including the following:
- Might consumers reasonably expect a high level of demand from other callers and, therefore, be prepared to accept a more lengthy delay? For example, when tickets to a major concert become available for the first time;
 - Were there extraordinary events that precipitated a sudden surge in demand? For example, a flood that prompted a high volume of calls to an insurance claims line;
 - How important is that call to the consumer, and how long would they reasonably be expected to wait? For example, a local health service providing information and support to patients;
 - Is there choice in the market? Could consumers choose to look to other providers to provide a better service?;
 - Was there an extraordinary internal event that affected call wait times? For example, was there a higher-than-average number of staff away sick at the time of the call in question?

8. Handling complaints

- 8.1** The general rule is that promotions for all services should effectively publicise a UK non-premium rate telephone number (such as 01, 02, 03 or 084) for customer service purposes:

2.6.2

Level 2 providers must provide a proportionate complaints process which is easily accessible through a non-premium rate UK telephone number and must be effectively publicised.

- 8.2** Lower-cost services are exempt from this requirement. Research and consultation has shown that it is confusing for consumers to have many different customer enquiry numbers on promotions. Additionally, due to the generally lesser risk of generating high charges on lower-cost services, it is not proportionate to require a separate non-premium rate number, as this rule requires. Therefore, lower-cost service providers may use the same access number for delivery of the service as used for customer enquiry purposes.
- 8.3** This means that the same access number used to provide the lower-cost service can also supply the route of customer service enquiry – provided the complaints process remains a proportionate and effective means of resolving consumer enquiries.
- 8.4** When a provider makes a refund (for whatever reason), they should always include the cost of any calls made at a premium rate in order to resolve the query within that



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refund.

8.5 For individual cases that relate to undue delay only, we will continue to direct consumers to the party responsible for customer service in the first instance, and then allow 30 days to satisfy these complaints, before commencing any investigation into a service.

8.6 For compliance issues relating to pricing and transparency, we will contact providers immediately.

8.7 For more information on our expectations in relation to complaint handling, please see General Guidance Note on the '[Complaint-handling process](#)'.

9. Service spending caps

9.1 Unless a lower-cost service requires prior permission and a condition is placed to the contrary, there is no spending limit on lower-cost services.

10. Call recording and monitoring

10.1 Unless a lower-cost service requires prior permission and a condition is placed to the contrary, there is no need to record or monitor calls. If a call is recorded or monitored, then the service should state this information immediately following connection. For more information, please see the General Guidance Note on '[The conduct of live services](#)'.

The role of General Guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.



Menu



PhonepayPlus
Guidance Note

General
Method of exit
from a service

GENERAL GUIDANCE NOTE

Method of exit from a service

Who should read this?

All Network operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations by way of the following:

- Clearly explaining how consumers can stop a service; and
- Offering guidance on various methods of exit not covered in [PhonepayPlus' Code of Practice](#).

What are the key points?

The main issues for providers to consider are:

- Consumers must be able to exit a service in a simple way;
- Once consumers have chosen to exit a service, no further charges must be incurred;
- Consumer should be able to opt out of multiple services easily;
- Use of 'STOP' command and 'STOP ALL';
- Virtual chat and subscription services are subject to specific rules – only method of exit rules are covered below;
- MMS opt-out.



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1. Definition of a method of exit from a service

- 1.1 The definition of method of exit from a service is set out at paragraph 2.3.11 of the Code, which states the following:

2.3.11

Where the means of termination is not controlled by the consumer there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.

2. Use of the 'STOP' command

- 2.1 The most common and easily implemented system for consumers to exit a service is through the use of the 'STOP' command. This command should be recognised through both the capitals variation of 'STOP' and the lowercase variation of 'stop', and any combination thereof.
- 2.2 With regard to how the 'STOP' command should work in practice, we consider it best practice that consumers should be able to text 'STOP' to the mobile shortcode the service was initially requested from, or from which it is receiving (chargeable) messages, in order to stop the service. For example, if a consumer enters a service on 89XXX, they should be able to text 'STOP' to that same shortcode to opt out.
- 2.3 We accept that this may not always be possible – either for technical reasons, or because of the cost to a provider of doing so. However, where we discover that separate shortcodes for requesting a service and opting out from it are being used, then consideration will be given to a provider's motive for doing so as part of any investigation. Any actions which are likely to confuse consumers may be considered unacceptable by a PhonepayPlus Tribunal.
- 2.4 For the avoidance of doubt, we would always expect the consumer to be able to text 'STOP' to the same shortcode from which they are being billed.
- 2.5 While there is a good understanding that texting 'STOP' to a service will result in the service stopping, there will be occasions where a consumer may not be aware of the 'STOP' command. In such circumstances, consumers may text 'please stop', 'stop texting me' or other variations containing the word 'stop'.
- 2.6 We accept it is not always possible to recognise these variations immediately when a consumer wishes to exit. However where a consumer has legitimately tried to cancel a service and failed (either because they have mis-typed 'STOP', or because they have texted some other variation), then once this becomes clear to the provider, best practice would be for consumers to be retrospectively refunded for any charges subsequent to their first clear attempt to opt out, and immediately removed from the service.
- 2.7 Some providers use 'STOP' and a keyword (for example, 'STOP tones'). While there is no problem with using this method, 'STOP' on its own must also work.
- 2.8 While this document recognises that there are certain forms of technology that make a 'STOP' command difficult or impossible to put into effect (e.g. MMS-based texting, voice shortcodes), PhonepayPlus recommends in the strongest possible terms that providers continue to use the 'STOP' command as a method of exit, where it is technically possible and practical (i.e. it does not add extra cost to the consumer) to do so.





- 2.9** Where providers would like to use an alternative to 'STOP' in promotional material, then they are strongly advised to contact PhonepayPlus before beginning promotion or operation. In these circumstances, we would consider representations on a case-by-case basis. Providers should be aware that, even if PhonepayPlus advised that the use of a command other than 'STOP' was acceptable in promotions, the shortcode itself would still have to respond to the 'STOP' command in addition to any other exit words.
- 2.10** Where it is technically possible and practical for a service to be exited through use of the 'STOP' command, providers are strongly advised to seek advice from PhonepayPlus before using any alternative means for method of exit from a service. Providers are advised that a PhonepayPlus Tribunal may take the view that the method of exit is not simple, where the method of exit is through a different mechanic than that used to deliver the service. For example, it would not be appropriate to require consumers to use the web, or a telephone call, to exit a text-based service. Exceptions to this advice are set out below.
- 2.11** Providers of text marketing or other forms of electronic marketing should note that this document does not reference opting out from marketing. Providers should refer to the General Guidance Note on ['Privacy and consent to charge'](#) for further information.

3. Instances where a consumer is subscribed to more than one service operating on the same shortcode

- 3.1** From time to time, a consumer will concurrently be subscribed to more than one premium rate service using the same access shortcode. The consumer will have opted into the services by texting keywords, which allow the provider to differentiate between the services on a single shortcode (known commonly as 'shared' shortcodes).
- 3.2** While it is rare that consumers will be subscribed to multiple services on the same shortcode, where consumer comes to exit one service, it is important providers can operate with certainty that they are complying with the [PhonepayPlus Code of Practice](#). The principle issue is, where a consumer wishes to only exit one of the multiple services to which they are subscribed, they typically cease receiving any chargeable messages from the shortcode, as the shortcode cannot immediately differentiate between services where a 'STOP' command is sent.
- 3.3** Where a consumer is subscribed to more than one service on a single shortcode, PhonepayPlus advises that the following actions would be acceptable, where the consumer sends a single 'STOP' command:

To unsubscribe the consumer from all services they are subscribed to on that shortcode.

To send the consumer a text which clearly states that they are subscribed to multiple services, and informs them that they have been unsubscribed from the last service they opted into, and that they can unsubscribe from all services by replying with the words 'STOP ALL'. As soon as the consumer replies with 'STOP ALL', they should be unsubscribed from all services on that shortcode. An example of a text that informs consumers compliantly would be the following:

You txted STOP. You're subscribed to more than 1 service on this code, and we stopped [insert name]. To stop other services, txt STOP again or STOP ALL.





4. MMS and voice shortcodes

- 4.1 As referred to earlier in this document, PhonepayPlus recognises that there are certain forms of technology that make a 'STOP' command difficult, or impossible, to put into effect.
- 4.2 The two most recognisable examples at the moment are voice shortcodes, which do not respond to a 'STOP' command as they are configured for voice-based (or IVR) services, and MMS shortcodes. MMS shortcodes do respond to 'STOP' commands; however, MMS messages are very data-rich, and the cost of replying to an MMS message can often be considerably higher than the standard cost of sending a text. PhonepayPlus believes this would disadvantage a consumer wishing to exit a service.
- 4.3 For these reasons, PhonepayPlus is unlikely to raise an investigation into a service using a voice or MMS shortcode on the grounds that the 'STOP' command does not work, provided consumers are given another clear, phone-based method of opting out of the service, which takes effect with no further charge once the consumer has exited. An example would be to provide a fixed-line phone number that a consumer could call to exit the service.

The role of General Guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.





GENERAL GUIDANCE NOTE

Privacy and consent to charge

Who should read this?

All Network operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist networks and providers by clarifying PhonepayPlus' expectations by way of the fulfilling the following Rules of the [PhonepayPlus Code of Practice](#):

2.3.3

Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.

2.4.1

Level 2 providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy.

What are the key points?

This Guidance is set out in three parts:

- Part One – Consent to charging;
- Part Two – Consent to marketing;
- Part Three – General formatting for marketing.

The main issues for providers to consider are:

- How to robustly verify consent to charge or market.
- The recommended procedure for consumers to buy premium rate services ('PRS') via a website, or other downloadable application.
- The recommended procedure for obtaining consumer consent to future marketing.





PhonepayPlus
Guidance Note

General
Privacy and
consent to charge

PART ONE – CONSENT TO CHARGING

1. Why is the capability to verify your right to charge important?

- 1.1** Premium rate services allow a charge to be generated to a consumer's pre-paid credit or communications (telephone) bill directly and remotely. A major concern in recent years is the delivery of reverse-billed messages to consumers' phones, without them having requested a charge (unsolicited, reverse-billed texts).
- 1.2** We treat matters such as these with the utmost seriousness and will always work closely with the appropriate authorities (such as the Serious Fraud Office and the local police) and continue to provide them with the evidence they require in order to criminally prosecute those who commit offences.
- 1.3** Without prejudicing the primacy of such criminal cases, we will also do our utmost to secure refunds for those consumers affected and will also ensure that providers of such 'services' do not profit from them at the expense of the PRS market's reputation.
- 1.4** For this reason, it is essential that providers can provide robust evidence for each and every premium rate charge.

Where a Tribunal will issue a 'universal' refund to all consumers

- 1.5** A universal refund will require the provider to issue a refund to all consumers who received a premium rate charge from the service, even where they have not made a complaint. This sanction will usually only be used in circumstances where the service has no intrinsic value, and/or there has been serious consumer harm or a very serious breach of the Code of Practice has occurred.

2. What is robust verification of consent to charge?

- 2.1** Robust verification of consent to charge means that the right of the provider to generate a charge to the consumer's communication bill is properly verifiable (see section 5 below). By 'properly verifiable', we mean a clear audit trail that categorically cannot have been interfered with since the record, either of consent to purchase or simply of consent to future marketing (see Part Two for guidance around consent to marketing), was created.

For non-geographic numbers and voice shortcodes

- 2.2** In the case of calls to non-geographic numbers (such as 09 or 0871), or to voice shortcodes, robust verification can take the form of an originating Network operator's record of the consumer's initiation of the call.
- 2.3** In cases where a consumer disputes such a charge, all else being equal, we will accept that the charge was valid, if such a record by an originating Network operator is submitted.

For other charges to a mobile device

- 2.4** For charges to mobile communications devices, robust verification is more complicated. The safest way to generate a charge is to rely on the consumer initiating the transaction with a Mobile Originating message (or 'MO') to a shortcode. In this way, the billing Mobile Network Operator's ('MNO') record is sufficiently robust to verify the charge.



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For charges generated by entering a mobile number on a website

For the avoidance of doubt, this section applies to the consent evidence required for services initiated from a web page and where premium SMS is the chosen billing mechanic. This section does not apply to 'web' Payfort.

- 2.5** Some services are initiated by a consumer entering a mobile number on a website, or a mobile website (i.e. a website browsed on the mobile handset). In recent years, consumers have not appreciated that doing so can result in a charge being generated to their mobile device, or that the entry of their number can be taken as being consent to future marketing by the provider concerned.
- 2.6** As a result, some consumers have entered a mobile number belonging to someone else (either by mistake or deliberately) and this has generated a charge to a second – unwitting – consumer. Even if there are no chargeable messages, just free marketing messages, the unwitting consumer often feels that their privacy has been invaded (see Part Two for further information around marketing).
- 2.7** For this reason, we recommend that consumers should always be encouraged to initiate services, or future marketing, with an MO. Failing that:
- All costs should be clearly stated and be proximate and prominent to the field where the consumer is to enter their number;
 - After entering the number, a Mobile Terminating message ('MT') should be sent to the consumer. As an example this should state:

"FreeMsg: Your PIN is [e.g. 0911], please delete if received in error"

- 2.8** An MT message, in these circumstances, should not promote the service itself (e.g. use its name), or give the consumer the option to reply YES to initiate the service. In addition, this method would require robust systems for verifying any PIN once entered (see paragraph 2.12 below for further details).
- 2.9** It is more difficult to verify where a charge is generated by a consumer browsing the mobile web, or by using software downloaded to their device. In these circumstances, where the consumer may only have to click on an icon to accept a charge, the MNO has no record of an agreement to purchase, and so robust verification is not possible through an MNO record alone.
- 2.10** In both of the instances set out above, we would expect providers to be able to robustly verify consent to charge (or to marketing, see Part Two of this General Guidance Note). Factors which can contribute to robustness are:
- An opt-in is PIN-protected (e.g. the consumer must enter their number to receive a unique PIN to their phone, which is then re-entered into a website);
 - A record is taken of the opt-in, and data is time-stamped in an appropriately secure web format (e.g. https or VPN);
 - Records are taken and maintained by a third-party company which does not derive income from any PRS. We may consider representations that allow a third-party company which receives no direct share of PRS revenue from the transaction, but does make revenue from other PRS, to take and maintain records. It will have to be proven to PhonepayPlus' satisfaction that these records cannot be created without consumer involvement, or tampered with in any way, once created;
 - PhonepayPlus is provided with raw opt-in data (i.e. access to records, not an Excel sheet of records which have been transcribed), and real-time access to this opt-in data upon request. This may take the form of giving PhonepayPlus password-protected access to a system of opt-in records;
 - Any other evidence which demonstrates that the opt-in cannot be interfered with.





- 2.11** Providers who are considering using a method of verifying consent to charge, which employs a method that does not involve independent Network operator records of consent, are advised to contact PhonepayPlus before they begin to operate it.
- 2.12** While it is not a requirement of compliance with the [PhonepayPlus Code of Practice](#), we would recommend that providers using PIN-based opt-in to verify purchases of PRS, or an opt-in to marketing, consider whether opt-ins can also be linked to the web-based advertising which the consumer will have seen, prior to giving consent to be charged. This provides certainty, where there is a complaint that not only has the consumer opted into charging, but also that they could not have been misled by any advertising when they did so.

For pay-per-page, or pay-per-image, viewed

- 2.13** Some charges, or opt-ins to marketing, are generated once consumers click on a mobile internet site – often to view an image or a page. Consent to receive a charge, or opt in to marketing, must be subject to robust verification, as set out above. These services are also subject to prior permission. Please see the PhonepayPlus website www.phonepayplus.org.uk for further information on prior permission and contact PhonepayPlus for additional guidance in this area.

PART TWO – CONSENT TO MARKETING

3. When does Guidance on privacy apply?

- 3.1** Providers should refer to this General Guidance Note on privacy when communicating with consumers ('marketing') – whether by electronic means, or by paper. This Guidance Note does not apply to communications that take place during the delivery, or provision, of a service.
- 3.2** Marketing covers a wide range of activities – not just to the offer for sale of goods and services, but also the promotion of an organisation's aims and ideals. Accordingly, communications that promote charitable donations, or promote a political ideal, and are related to a premium rate service, are also included within the scope of this General Guidance Note.

4. The right to privacy

- 4.1** Mobile phones can provide a personal connection to an individual (rather than to a household) – a connection that many individuals strongly feel should be protected from unwanted communications. Yet, it has never been easier to reach a high number of individuals with a simple database and a connection to a communications network. PhonepayPlus receives regular complaints from consumers about PRS marketing which they have not opted in to receive and, as such, feel intrudes upon their right to privacy.
- 4.2** Consumers have a fundamental right to privacy – enshrined in law, through the Privacy and Electronic Communications Regulations 2003 ('PECR'). In the UK, the Information Commissioner's Office ('ICO') is the body charged directly with enforcing PECR. We work closely with the ICO in order to define what constitutes acceptable and auditable consent to marketing. We may refer cases to the ICO, when appropriate, but will also treat invasions of consumers' privacy through paragraph 2.4 of the [PhonepayPlus Code of Practice](#).





4.3 PECR's principles (which are applied more generally to all marketing relating to a premium rate service) are that:

- Where there is no explicit consent, the marketer must have obtained the individual's details through a sale, or negotiations for a sale, and the individual must have been given the opportunity to refuse such marketing, when their details were collected (a practice known as 'soft' opt-in);
- Soft opt-in marketing materials only concern similar products to the individual's initial purchase, or area of interest (e.g. it would not be appropriate to promote adult services to someone who had only previously purchased ringtones);
- Consumers who have given soft opt-in permissions must be given a simple means of opting out at the time of initial purchase, and in each subsequent promotion; and
- Where the individual's details are to be passed to third parties, they must be clearly informed of this, and positively confirm their acceptance (a practice known as 'hard' opt-in).

4.4 While it is not mandatory to use hard opt-in for consent to marketing which is not from third parties, hard opt-in can also be used in this way.

5. Verifying consent for soft and hard opt-in

Soft opt-in

5.1 Where a provider markets to a consumer using a soft opt-in obtained during negotiations for a sale, we consider there is less potential detriment, although not an absence of detriment, than where a provider charges the same consumer. As such, we do not consider that the need to provide auditable verification of opt-in is as great as with charging. However, this is subject to the following criteria:

- The consumer was given a clear opportunity to opt out of marketing on each occasion, and was opted out of all future marketing, if they exercised this option. An example would be a promotional SMS that contains the words "to stop future marketing reply STOP".

5.2 If this criterion is met, we will look at any complaints on a case-by-case basis. Low levels of complaints, which might suggest any unsolicited marketing is a result of mistaken entry of mobile numbers into websites, or a similar error, may be dealt with informally.

5.3 However, where consumers complain about unsolicited marketing in significant volume, or in any volume about marketing which contains no opt-out facility, PhonepayPlus will examine such complaints on the basis of a balance of probability, unless the provider can provide auditable proof of opt-in, in the same way as that set out for charging in Part One of this General Guidance Note. For the avoidance of doubt, the retention of a record of an IP address, or MSISDN (mobile) number, used to browse a website will not be considered sufficient in these circumstances.

Hard opt-in

5.4 In order to reach a greater number of consumers, some providers trade or purchase consumers' personal data. In these circumstances, further protection is necessary because the connection between the consumer and the business they first interacted with, and subsequently with the provider who is now marketing to them, is remote and indirect.

5.5 Sharing of data in these circumstances includes any transfer – including renting, or trading or even disposing free of charge. A third party is any other, distinct legal person – even in the same group of companies or partners in a joint venture.



- 5.6** For this reason, promotions designed to gain a hard opt-in must draw each consumer's attention specifically to the issue of consent, and that consent must involve a positive step beyond mere purchase of the service by the consumer, to be valid.
- 5.7** For example, if one provider wishes to purchase a marketing list from an unrelated provider, then evidence of a hard opt-in for each number on that list should be obtained.
- 5.8** When obtaining consent via a website, using a pre-checked tickbox is not sufficient for this purpose.
- 5.9** In this context, a compliant example is an empty box that a consumer must tick in order to consent. Next to this, a clear explanation should be made of how the data will be used in future. If this explanation is not clear enough, then the hard opt-in is likely to be invalid.
- 5.10** A good example of compliant consent is: *"I want to hear from other companies so that they can send me offers to my phone. Please pass my details onto them so that they can contact me."*
- Where this text is placed next to an unchecked box which the consumer checks, and where there is a robust and independent audit trail of the data which supports the consumer having provided their consent, then it is likely this would be regarded as compliant.
- 5.11** A hard opt-in can also be obtained via a conversation. However, a recording of the conversation, or of key-presses during the call, should be retained to provide robust verification.
- 5.12** Providers using marketing lists should ensure that each number marketed to has a valid opt-in, gathered no more than six calendar months ago. Providers should ensure that they can robustly verify (see the whole of section 5 of this General Guidance Note) each and every consumer's opt-in, and ensure that none are currently suppressed. Please note that, where a hard opt-in is used to market to consumers who have not previously purchased from a provider, or been in 'negotiations for a sale', then we will expect opt-in to be robustly verifiable in the event of any complaints, no matter how small or large the scale; this is in contrast to the approach to soft opt-in set out at paragraphs 5.1-5.3 of this General Guidance Note.

PART THREE – GENERAL FORMATTING FOR MARKETING

6. Format for marketing SMS

- 6.1** When marketing via SMS, providers should follow this format to minimise any risk of invading privacy. The message should begin 'FreeMsg'.
- 6.2** The message should state contact information of the initiator of the message (not any affiliate or publisher). This can be in the metadata of the SMS (so, if consumers can text back to the shortcode on which the communication was sent, then this is likely to be sufficient). The message should also include a means of refusing future marketing. A best practice example of a message compliant with these guidelines would be: *"FreeMsg: to receive more guidance on privacy contact us on 0845 026 1060, to end marketing reply STOP"* [116 characters].



7. Format for marketing via WAP link

- 7.1 'Binary' messages which contain WAP links are restricted by technology to 30 characters. Alternatively, a WAP link can be inserted into a standard SMS message. Given the restraints that a 30-character limit places on informing consumers, we would advise, as best practice, that, where PRS is being marketed, then a standard SMS message should be used. However, if information on opting out of marketing messages is prominently displayed immediately on the WAP landing page, then a WAP link message, reading as follows, is likely to be regarded as being compliant: e.g. "FreeMsg: click for guidance" [27 characters].

8. When a consumer texts 'STOP'

- 8.1 When a consumer sends 'STOP'¹, or other word as notified to the consumer as a valid marketing opt-out contained in the marketing message, then all marketing must cease. For more information, see the General Guidance Note on ['Method of exit from a service'](#).
- 8.2 When a consumer texts 'STOP' in connection with an ongoing paying commitment – be it for a subscription, or as an element in a virtual chat service – the consumer must not receive any further charge. For more information, see the Service-Specific Guidance Note on ['Subscription services'](#).
- 8.3 However, in this circumstance, the provider may still send marketing messages. If, at this point, the consumer then sends 'STOP' (again), then all marketing must cease. If a consumer sends 'STOP ALL' at any point, then consent for all contact has been removed. At this point, the mobile number should be suppressed. Suppressing a number does not mean deleting it – it means recording the fact that no further messages should be sent. If a number is deleted, it could be received from a third party, then marketed to again, which would be in breach of the rules. For this reason, providers should store the date of suppression, as well as the number.

9. Assumed withdrawal of consent

- 9.1 Consumers' recollection of giving their consent to be marketed to deteriorates over time, and what could have been an interesting promotion immediately after their initial contact, could much later constitute an intrusion. On this basis, we advise that marketing should happen soon after consent is given, and that no consumer should be marketed to more than six months after the date of their last consent². There may be some types of service which can legitimately market longer, such as services centred around a specific date in the annual calendar, such as a consumer's birthday or Valentine's Day, or the start of a new football season. However, the consumer will need to be clearly informed upon consenting to marketing that they may be marketed to the next year/season.

10. How does the Telephone Preference Service ('TPS') apply?

- 10.1 The TPS allows consumers to register their telephone numbers for a prior indication that they do not wish to be contacted by telephone. This means that, if a company is marketing a premium rate service by telephone, they should cross-refer their database to the TPS. If the date of the TPS preference declaration post-dates their consent (only relating to a soft opt-in, not to a hard opt-in), then their number should be suppressed. If the consent was provided after the TPS preference declaration, then they can be marketed to. The TPS does not apply to the sending of MMS or SMS messages, but does apply equally to telephone calls made to mobile and landline telephone numbers.





PhonepayPlus
Guidance Note

General
Privacy and
consent to charge

The role of general guidance

General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.

¹ Or other suitable opt-out, where appropriate.

² This is shorter than the duration suggested by the ICO, which recommends 12 months. However, six months is a more appropriate length of time for the mobile market because this matches the length of time a telephone number must be quarantined before it is recycled by a Mobile Network Operator.



Menu



GENERAL GUIDANCE NOTE

Promotions and promotional material

Who should read this?

All Networks operators and providers involved in the provision of premium rate services (PRS) to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations in relation to various outcomes and rules within [PhonepayPlus' Code of Practice](#) that concern promotions or promotional material.

2.2.1

Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

What are the key points?

The rules set out in the [PhonepayPlus Code of Practice](#) cover a range of different elements around promotion. The main issues for providers to consider are:

- Pricing information;
- Misleading promotions;
- Inappropriate promotions;
- Expectations around specific promotional mechanics (promotional text messages, cross-promotion within a service and web-based promotion).





1. Why is the capability to verify your right to charge important?

- 1.1 There is a vast range of potentially different types of PRS. Each of these may need to give slightly different information to a consumer within their promotion(s), in order to ensure consumers have all the information they would reasonably need before purchasing.
- 1.2 In addition, there are a range of different types of promotional material, ranging from promotions that are self-contained (such as a print-based advert, inviting a consumer to call or text an access number), to promotions that have a number of components that lead a consumer toward a purchase. An example of this would be a text message with a link to a mobile website, where the consumer subsequently makes purchases using a secure payment method. In this latter case, there would be a number of steps between the first promotion and a purchase, and so a number of opportunities to ensure consumers were aware of all information necessary, prior to purchase.
- 1.3 Because of this complexity, PhonepayPlus recommends that providers familiarise themselves with the entire contents of this Guidance. However, as a basic starting point, the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:
- The total cost of the service, including price per minute and/or text, and any initial charges (such as a joining fee);
 - The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
 - Whether the service bills by subscription – i.e. carries a repeat charge which ends only upon termination by the consumer.

2. Pricing information

- 2.1 Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase. The principle rule around transparency of pricing in the [PhonepayPlus Code of Practice](#) is Rule 2.2.5, which states the following:

2.2.5

In the course of any promotion of a premium rate service, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.

How should pricing information be generally presented?

- 2.2 As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged. Examples of unclear descriptions would include the following:

- 'premium rate charges apply',
- '100ppm',
- '1.50 GBP'
- '50p/min'





- 2.3** PhonepayPlus strongly recommends the price should be expressed in conventional terms, such as ‘50p per minute’, ‘£1.50/msg’ or ‘£1.50 per text’. PhonepayPlus accepts there may be different conventions, based upon the amount of space available (for example, in a small print ad, or a single SMS promotion); however, pricing should remain clear. Variations on this, such as charges being presented in per second formats, or without reference to a ‘£’ sign (where the rate is above 99p), may breach the [PhonepayPlus Code of Practice](#).

What about SMS promotions where the handset or Mobile Network Operator cannot technically provide a ‘£’ sign?

- 2.4** PhonepayPlus accepts that there are still a proportion of older handsets in use, which are not technically capable of displaying a ‘£’ sign. Given this number gets smaller with each passing year as people upgrade their handsets for new ones, we do not see this as a standalone reason to allow ‘GBP’ in SMS advertising. However, where an SMS promotion containing a ‘£’ sign has failed to display properly, and led to consumer confusion and/or financial detriment, we would look to resolve such cases informally with the provider, and arrange a refund for the consumer without recourse to raising a breach.

For charges generated by entering a mobile number on a website

For the avoidance of doubt, this section applies to the consent evidence required for services initiated from a web page and where premium SMS is the chosen billing mechanic. This section does not apply to ‘web’ Payfortit.

- 2.5** Where it is technically impossible for a particular Mobile Network Operator to deliver SMS containing a ‘£’ sign, then providers are recommended to contact PhonepayPlus and discuss other options for clearly displaying pricing information within SMS promotions.

What about network or data charges to the consumer in addition to the PRS charge?

- 2.6** The overall charge to a consumer for calling a PRS will often exceed the actual cost of the PRS itself advertised by the provider or promoter. This can be for one of two reasons:
- Because many non-BT networks, both mobile and fixed, levy supplementary charges on voice-based calls.
 - The possibility exists that consumers could incur data charges when downloading content to a mobile device, or when browsing a mobile internet site beyond the landing page.
- 2.7** While consumers may have a general awareness that calls from mobile phones and some landline networks may cost more than others, or that they may incur data charges if they do not have a data-inclusive contract with their Mobile Network Operator, it is necessary to include information in the promotional material, stating these possibilities to consumers.

Cost types table

Prominent and proximate

- 2.8** Pricing information where consumers are unlikely to see it, or where it is hard to find, is unlikely to be judged as ‘prominent’, or ‘proximate’, by a PhonepayPlus Code Compliance Panel Tribunal (‘PhonepayPlus Tribunal’).





- 2.9** 'Proximate' is a new term within this edition of the [PhonepayPlus Code of Practice](#), and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of information not being proximate is providing pricing information which is too far from the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion.
- 2.10** Lack of prominence, or proximity, most often takes place online (both web and mobile web), where the price is provided in small print elsewhere on the page from the call to action. We have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'standalone' information; the price is sometimes provided separate from the page with the call to action, or lower down on the page in such a way as to make the consumer have to scroll down to see the price. Any of these practices are unlikely to be viewed as compliant with [PhonepayPlus' Code of Practice](#) by a PhonepayPlus Tribunal.
- 2.11** Lack of prominence, or proximity, also takes place in print, where, as online, the price is provided in small print elsewhere on the page from the call to action. As with online advertising described in the paragraph directly above, we have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'standalone' information. As before, in such cases, a PhonepayPlus Tribunal is likely to uphold a breach of [PhonepayPlus' Code of Practice](#) for lack of pricing prominence.
- 2.12** In some cases, PhonepayPlus accepts that prominence may take precedence over proximity. An example would be a print or web page which clearly and prominently stated that all numbers/shortcodes/other access codes on the page cost £X/£X per minute or Xp/Xp per minute. In this case, there would be no need for there to be an individual price in close proximity to all the numbers/shortcodes/other access codes on the page. However, we stress that examples of prominence and proximate being mutually exclusive in this way are rare, and that providers who have any doubt should contact PhonepayPlus before they begin to provide services.

Legible and visible

Font size and presentation

- 2.13** Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, 'close examination' will differ for the medium, whether on a static webpage, a fleeting TV promotion, in a publication, or on a billboard where you may be at a distance or travelling past at speed.
- 2.14** The use of colour (see immediately below) also needs to be considered, as this could affect the need for close examination, regardless of font size.

Use of colour

- 2.15** There are a number of instances when the combination of colours used in promotional material reduces the clarity of information and the ease with which it can be seen. Providers should take care to ensure that the colour combinations (including black on white) used for the presentation of the price do not adversely affect the clarity.





What about promotions that are broadcast on the radio? Are they expected to follow everything set out above?

2.16 No. While some of the guidance around prominent, proximate, legible and visible set out above is still relevant, some of it would be impossible for a radio broadcaster to implement literally. Those promoting PRS on the radio should instead ensure that pricing information, and any other key information, is clearly and plainly spoken in close proximity to the PRS being promoted. Providers may wish to consider the following caveats:

- Where a PRS is advertised during an on-air commercial, pricing and other key information should be provided on every occasion the commercial airs.
- Where a PRS is advertised during a radio programme, PhonepayPlus accepts that there is no need to mention the price every time the PRS is mentioned. However, the price should be mentioned in close proximity to the service at least once during the average listening time for that radio station (e.g. if a radio station knows that the typical length of time listeners tune in is 25 minutes, pricing and other key information should be mentioned, in close proximity to a promotion, at least once every 25 minutes). Radio broadcasters may be asked to provide evidence of their average listening time as part of an investigation by PhonepayPlus.
- Where a radio station broadcasts wholly or principally in a foreign language, it may be acceptable to provide pricing and other key information in that language, rather than English. However, we would recommend that providers contact PhonepayPlus for further advice before beginning a promotion of this type.

What about promotions that are just a way of attracting consumers to a further promotion, such as banners, WAP links or 'WAP-push'?

2.17 PhonepayPlus is aware that there are some promotional mechanics, such as the three listed above in this heading, where it may not be possible to list pricing information due to a lack of available character space. In these circumstances, we would refer to rule 2.2.1 of the Code, which states the following:

2.2.1

Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

2.18 PhonepayPlus interprets this to be that the consumer must be informed of the price, and indeed any other necessary information, prior to purchasing. In other words, as long as the consumer is clearly informed of the price prior to purchase, then there is no need to inform the consumer in each individual part of a cumulative promotional process.

2.19 We consider it best practice to inform the consumer of the price at every stage of promotion, where it is technically possible to do so, but not to do this would not necessarily be considered to be in breach of the [PhonepayPlus Code of Practice](#). In the case of banners and WAP links (both of which take a consumer to a website when they are clicked on), and WAP-push (which immediately directs the consumer to a website without them first clicking), we accept that there is no technically possible way of informing the consumer of the price at that stage, and so, provided the consumer is then redirected (without charge) to a website or other promotional mechanic where they are informed of the price prior to making a purchase, this is unlikely to breach the [PhonepayPlus Code of Practice](#).





3. Misleading promotions

- 3.1 If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, an important term or condition likely to affect their decision to use the service.

Rule 2.3.2 of the Code states the following:

2.3.2

Premium rate services must not mislead or be likely to mislead in any way.

- 3.2 PhonepayPlus expects that all promotions must be prepared with a due sense of responsibility to consumers, and promotions should not make any factual claims that cannot be supported with evidence, if later requested by PhonepayPlus to do so.
- 3.3 Some examples of promotions that would be likely to be considered misleading by a PhonepayPlus Tribunal are as follows:

Omission of subscription information

- 3.4 Promotions that do not make it clear and prominent that the service they are promoting will be charged using a subscription mechanic are likely to be found in breach of the [PhonepayPlus Code of Practice](#). Where there is a subscription, then the frequency of billing should be made clear (see the Service-Specific Guidance Note on [‘Subscription services’](#) for further information).

Implication that a service is free of charge

- 3.5 Promotions should not state that a service is free of charge, or imply such, when the service, in fact, carries a charge. An example would be promotional material which promoted a PRS, stating something along the lines of:
“No credit card needed. Just a short call to hear your password.”
- 3.6 Where a service offers bonus or extra downloads once a consumer has made a purchase, or has entered into a subscription, then it should be clear and prominent that this free element is conditional upon a purchase. Providers should not use words, such as ‘free’, ‘extra’ or ‘bonus, in promotional material, in a font that is bigger or more prominent than the cost of the service, when the two are on the same page.

What about the use of ‘free’ in Search Engine Optimisation (SEO)?

- 3.7 As the web is now the fastest growing form of advertising for PRS, websites offering PRS may seek to ensure their site appears at, or near, the top of a list of search engine results. One way of doing this is to ensure a website promoting premium rate services contains the metatag ‘free’ (or variations) in order to attract the ‘crawler’ software used by search engines.
- 3.8 Where a metatag, such as ‘free’, is used, and none of the content on the actual website it relates to is actually free, then this is highly likely to be found to be misleading, and in breach of the [PhonepayPlus Code of Practice](#).
- 3.9 Where a metatag, such as ‘free’, is used and part of the material on the website it relates to is free of charge, then it is likely a PhonepayPlus Tribunal may still consider the initial promotion to be misleading. For this reason, we recommend the following step is taken:





- When a consumer clicks on the search engine link, the first webpage they are directed to clearly explains that not all services are free of charge, and explains which services are free and which are not.

3.10 For avoidance of doubt, ‘freemium’ refers to services which offer PRS free for a specified period, or part of a PRS for free – such as one level of a video game – with subsequent access being charged. In these cases, PhonepayPlus would consider it acceptable to promote the free element of the service, provided the following was also true of the service:

- The promotion should clearly state what is and isn’t free – i.e. any use of the word ‘free’ (or variations) must be clearly qualified in a way that is immediately visible, understandable, and proximate;
- The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences. If both of these have been clearly provided before the consumer consents to the free trial, then there is no need to remind the consumer before charging commences;
- Charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service is at an end. Charging should not commence some time after this point, where the consumer may be likely to have forgotten their initial opt-in to the free element.

Promotions which mislead as to the service on offer

- 3.11** No promotion, with particular emphasis on SMS- or MMS-based promotion, should imply that the consumer will be making a one-off purchase, when they will, in fact, be entered into a subscription, or mislead the consumer as to the service they are being invited to purchase.
- 3.12** An example of this would be a service that advertised itself as an ‘IQ test’ or ‘love match’, where the consumer was then invited to text or click to obtain more in-depth results, only to find that these results carry a further charge, or enter the consumer into an unwanted subscription.

Where a service uses separate devices for billing and delivery of content

- 3.13** In cases where a consumer participates in a service, or receives content, via one device, but is billed for the service via another device, it should be clear to the consumer they will be charged in this way.
- 3.14** Confirmation of a purchase should be sent to both the device that delivers the service and the device that the charge is attributed to.

What about premium rate services that involve the purchase of ‘virtual currency’, which is then used on other services?

- 3.15** Premium rate services that invite consumers to purchase a form of virtual currency should be absolutely clear as to the service(s) in which this currency can be used, and as to whether unused currency carries an expiry date. Where services automatically ‘top up’ a consumer’s virtual currency account once all the currency has been spent (with another PRS charge to the consumer), this should be clear to the consumer, prior to purchase.
- 3.16** Any provider who does not see the service they intend to offer covered in the examples above, and may have doubts as to whether what they are intending to promote could be misleading, should contact PhonepayPlus for further case-by-case advice at compliance@phonepayplus.org.uk.





4. Inappropriate promotions

4.1 Rules 2.5.6 and 2.5.7 of the Code state the following:

2.5.6

Level 2 providers must ensure that their services are not promoted in an inappropriate way.

2.5.7

Level 2 providers must use all reasonable endeavours to ensure that promotional material is not targeted at or provided directly to those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful.

4.2 In determining whether promotional material or content are likely to be inappropriate, PhonepayPlus will seek to take a pragmatic approach. We are aware of the need to balance innovation in promotion to as large an audience as possible, with the need to prevent consumers, especially children, from seeing or receiving inappropriate material. Examples of where promotions might be considered inappropriate include, but are not limited to, the following:

- Inappropriate services being advertised in children's publications (such as live chat, chat and dating, virtual text chat services, or other services where usage is restricted to over-18s).
- Inappropriate imagery or language/text in children's publications (e.g. sexual, violent, or adult images or language).
- Targeted promotions (e.g. text messages) which are inappropriate to the consumer's previous opt-in. For example, a consumer who had previously taken part in a competition, or subscribed to a football score update, should not be sent adult promotional material or promotions for adult services.
- Promotional material that takes advantage of vulnerability (e.g. an illness, bereavement or financial difficulty) or vulnerable groups (e.g. children, older people, people with learning difficulties, those who have English as a second language).

5. Other promotional expectations

Promotional messages to a consumer's mobile phone

5.1 PhonepayPlus' previous research has indicated that consumers take greater caution with marketing sent directly to their mobile handsets than they do with other promotions in general. Their biggest concerns can be summarised as follows:

- They will be charged as soon as they open a message, and so sometimes consumers do not open a message, even to opt out of future marketing.
- Where a message contains a WAP link (i.e. an SMS, MMS or, most often, a binary message containing only a link to a mobile website, which the consumer has to click in order to access it) or a 'WAP-push' (i.e. an SMS, MMS or binary message which contains coding that immediately directs the web browser on the consumer's phone to a mobile website), then consumers are worried that they will be charged as soon as they click on the WAP link, or have already been charged as a result of the 'WAP-push'.
- They have no easy way of opting out of future marketing – this is especially true of 'WAP-push' messages. For further detail around marketing opt-in, please see the General Guidance Note on ['Privacy and consent to charge'](#).

5.2 In order to alleviate these concerns and build consumer trust, and with regard to Rule 2.3.2 of the [PhonepayPlus Code of Practice](#) (the requirement not to mislead), we set





out the following expectations as a guideline to compliance in this area:

- Where promotional text messages (SMS, MMS or binary) contain a link or a 'push' to a mobile website, and there is a charge beyond normal network data rates for accessing that website, then the consumer should be informed of this charge before they click on the link.
- Similarly, promotional messages containing a link to a mobile website should not contain any information which would be likely to mislead a consumer.
- Promotional text messages should make it clear if a reply to them will result in a consumer incurring a PRS charge.
- Where consumers are sent text messages which promote a PRS and do not carry any charge, then the consumer should be clearly informed, either within the title of the message or in the first words of the message itself, that the promotional message is free. A PhonepayPlus Tribunal is likely to regard the words 'FreeMsg' as acceptable to do this.

Cross-promotion within service messages

5.3 From time to time, providers may insert promotions for other services within service messages to a consumer who is already subscribed to a PRS. These promotions may appear within messages that carry a PRS charge, or within free reminder or access messages. Where this happens, consumers will sometimes become confused as to which part of a message relates to the promotion, and which part relates to the service to which they are already subscribed. This can cause them to miss spend reminders, or other information that would inform them about the service they are subscribed to.

5.4 In order to build consumer trust, and with reference to Rule 2.3.2 of the [PhonepayPlus Code of Practice](#) (see above), we set out the following expectations as a guide to compliance in this area:

- Promotions within reminder or service messages should ensure that the promotional material is placed after the information concerning the service the consumer has already subscribed to.
- In addition, the promotional part of the message should be clearly flagged as being separate from the other information with the message. To do this effectively, we would strongly suggest that the words 'ADVERT' or 'PROMO' are inserted directly before the promotional part of the message.

Web-based promotion of PRS

5.5 Web-based promotion is the fastest growing area of PRS promotion, both in terms of market share and innovation. Increasingly, PRS is promoted on websites and social networking brands, such as Facebook and Twitter, and consumers are often invited, or required, to enter their mobile phone number in order to access content. Below we clarify expectations around web-based promotion, in terms of likely compliance with the [PhonepayPlus Code of Practice](#).

Prominence of key information on-screen

5.6 Once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see section 2 of this Guidance), or click on a link to another webpage. The PhonepayPlus Tribunal is likely to take the view that scrolling up or down to read key terms and conditions, or requiring the consumer to click on a link to view them, is in breach of Rule 2.2.5 of the [PhonepayPlus Code of Practice](#).





- 5.7 Level 2 providers should ensure that consumers do not have to scroll, regardless of screen resolution, to view the key terms and conditions of a service, or click on a link to view key terms and conditions. Key terms and conditions should be placed prominently on all website pages of the service that a consumer has to click through.

Web-based entry of mobile phone numbers

- 5.8 PhonepayPlus has continued to receive a significant number of complaints regarding unsolicited messages. These arise, in part, from a consumer's phone number having previously been entered on a website, but are more often as a result of unsolicited promotion to consumers, often masked by the existence of a website on which a provider claims the consumer has entered their phone number.
- 5.9 PhonepayPlus recognises that there are risks associated with web opt-in which are separate from promotion – i.e. proving a consumer's opt-in in an independently auditable way. For more information on how an opt-in, to either charging or future marketing, can be proven in a way that is acceptable to PhonepayPlus, please refer to the General Guidance Note on '[Privacy and consent to charge](#)'. *"I want to hear from other companies so that they can send me offers to my phone. Please pass my details onto them so that they can contact me."*

Where this text is placed next to an unchecked box which the consumer checks, and where there is a robust and independent audit trail of the data which supports the consumer having provided their consent, then it is likely this would be regarded as compliant.

- 5.10 However, it is important to not only be able to prove consumer opt-in to marketing for PRS, but also make the process of opt-in, where a consumer enters their number, as transparent as possible. With this in mind, PhonepayPlus recommends that, where consumers are required to enter their mobile phone number online, transparency can be achieved by structuring the page as outlined below:
- A brief statement that confirms where any service content (e.g. an IQ test result) will be displayed (e.g. mobile handset, next screen, etc.);
 - A brief summary of the key terms and conditions. For example, subscription services should state that it is a subscription service and the full cost of participating in the service.
- 5.11 After prompting a consumer to enter a mobile telephone number onto a website, the next page of that website generally then requires a user to text a keyword to a shortcode. PhonepayPlus would expect all key terms and conditions, pricing and any subscription information to be included on this page.

Promotion through social networking sites

- 5.12 Where social networking sites (e.g. Facebook, Twitter, etc.) have been used to promote PRS, PhonepayPlus has noticed that personal data (which is available elsewhere on the social networking site) is sometimes manipulated in order to make promotional statements that are untrue. This is highly likely to be considered misleading by a PhonepayPlus Tribunal.
- 5.13 For example, consumers should not be invited to participate in a premium rate service on the grounds that their social networking friend (e.g. 'John Smith', whose connection to the consumer would be publicly displayed on the social networking site) has challenged them to an IQ service, when 'John Smith' has never participated in the service. *"FreeMsg: to receive more guidance on privacy contact us on 0845 026 1060, to end marketing reply STOP"*



Viral marketing

- 5.14** Viral marketing can be defined as marketing where a potential consumer is invited, or offered an inducement, to forward the marketing onto friends or contacts in order to ensure the marketing reaches the maximum possible number of people.
- 5.15** The most common form of viral marketing seen with regard to PRS is where consumers are either invited, or incentivised, to forward a promotional SMS, MMS or binary message to others; less common is a form of marketing where consumers are invited, or incentivised, to input the mobile numbers of others on a provider's website. The risk with both these mechanics is that those who have been forwarded marketing by other consumers will see this as unsolicited, and/or an invasion of their privacy.¹
- 5.16** Providers should be clear that, where PhonepayPlus receives complaints regarding the forwarding of viral marketing, it will still regard this as the provider's responsibility. However, we would suggest the risk can be mitigated by taking the following steps:
- To include sufficient warning, especially on a website, that anyone to whom a promotion is being forwarded should be interested in the PRS on offer;
 - To identify the full name (i.e. first name and surname) of the consumer who has forwarded a promotional SMS, MMS or binary message (e.g. "John Smith thought you would be interested in this") at the start of it;
 - To state words to the effect in any forwarded promotional SMS, MMS or binary message that "if you have received this message in error, then please ignore it".
- 5.17** Lastly, where PRS services are promoted through 'Twitter', we would strongly recommend that any access codes provided within the 'tweet' are accompanied by clear pricing and other key information, where the 'tweeter' is an employee of the provider, has clear links to the service or may otherwise financially benefit from the service.

6. Controlling risk when using affiliate marketers

- 6.1** Rules 2.5.6 and 2.5.7 of the Code (inappropriate promotion) refer to usage of 'reasonable endeavours' by Level 2 providers. While other rules governing promotion do not specifically refer to reasonable endeavours, we accept that a Level 2 provider will often subcontract promotion to affiliates (who are not required to register with PhonepayPlus).
- 6.2** In these circumstances, PhonepayPlus recognises that the Level 2 provider, while retaining responsibility for the promotion under the [PhonepayPlus Code of Practice](#), may not have immediate, day-to-day control of each individual action that an affiliate takes. However, the use of affiliates to market PRS products on a provider's behalf does carry a greater risk than marketing which is under the direct, day-to-day control of the provider.





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General
Promotions and
promotional
material

The role of general guidance

General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.



Menu



GENERAL GUIDANCE NOTE

The appropriate use of number ranges

Who should read this?

All Network operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations around the appropriate use of premium rate number ranges, by way of the following:

- Offering a clear explanation of the different types of premium rate number and their charges;
- Defining the type of service that each number range is permitted to be used for; and
- Explaining how certain number ranges fall within PhonepayPlus' regulation where 'inappropriate use' is deemed to have occurred.

Expectation is placed on individual providers to ensure that their services only operate on the appropriate premium rate number ranges. It can be assumed that any number range not listed within this General Guidance Note – either in relation to appropriate use or its inappropriate use – is not a range that is currently regulated by PhonepayPlus. This Guidance Note will be updated as, and when, new ranges are added to, or previous ranges are removed from, PhonepayPlus' regulation.

The obligation on providers to ensure they use the appropriate number range for their services is set out in paragraph 3.9.2 of the [PhonepayPlus Code of Practice](#), which states the following:

Rule 3.9.2

Where certain premium rate number ranges, shortcodes or other means of access to services have been designated by either Ofcom or a Network operator for use only for particular purposes or for the provision of particular categories of service, or where Ofcom or a Network operator has restricted certain premium rate number ranges, shortcodes or other means of access to services from being used for particular purposes or for the provision of particular categories of service, those number ranges, shortcodes or means of access must not be used in contravention of these restrictions. Ofcom's designations will have precedence over any issued by a Network operator.

What are the key points?

The main issue for Network operators and providers to consider is:

- All premium rate services must operate on a number or mobile shortcode from within the appropriate number range.





1. Why it is important for services to operate on the appropriate number ranges

It is a requirement for providers to ensure that appropriate number ranges are used for the operation of their services for the following reasons:

- Number recognition (including per minute call charges) – in order for trust to be built in the premium rate market, consumers must be given the opportunity to gain an understanding of the types of service that number ranges are associated with, and this includes the cost that they will be charged per minute for calling those services. For example, consumers should be able to easily recognise that an ‘09’ or ‘118’ prefixed number is associated with a service that will be charged at a ‘higher rate’ (i.e. that they will be paying for a ‘service’, when dialled). Likewise, they should have some knowledge that an ‘0871/2/3’ prefixed number will be charged at between 5p and 10p per minute (i.e. a ‘lower rate’, but that they will still be paying for a ‘service’).
- Consumer protection and call barring – certain number ranges are blocked from being dialled from a mobile phone by default; number ranges that are reserved for either sexual entertainment services (‘SES’) or gambling services – see below for the full list of ‘adult’ reserved number ranges. This block may be removed by adult consumers if they contact their Mobile Network Operator. Consumers can also request ‘call barring’ be put in place on their landline and/or mobile phones, meaning that their phone will be disabled from the dialling of either specific ‘09’ prefixed numbers (i.e. SES-prefixed numbers), or from the dialling of ‘09’ prefixed numbers in general.

2. Full list of premium rate numbers and their defined service use

Prior permission is required from PhonepayPlus prior to the operation of many of the categories of service referenced below – providers should refer to the PhonepayPlus website www.phonepayplus.org.uk for more information on prior permission.

2.1 Fixed-line service use (as designated by Ofcom):

- **098x/0908x/0909x** – although any type of service may operate on these number ranges, this is something that is rarely seen in practice as they are reserved for SES, which can be charged at between 10p and £1.50 per minute. All fixed-line SES must only operate on this number range to avoid operating in breach of Rule 3.9.2 of the [PhonepayPlus Code of Practice](#).
- **All other 09x (090x/091x) ranges** – while the 091 range is often used for international call routing services, this range and all remaining 090 number ranges can be used for the operation of any type of service, other than SES (see above). Services can be charged at between 10p and £1.50 per minute.
- **0871/2/3** – these number ranges can also be used for the operation of any service type, other than SES. Services can be charged at between 5p and 10p per minute. Any services operating on a 0871/2/3 number at less than 6p per minute are not regulated by PhonepayPlus, unless they are SES, chatline services or services operated by internet dialler software.
- **118xxx** – this number range is reserved for directory enquiry (‘DQ’) services, which can be charged at various different price points, depending on the provider’s business model.
- **Reverse-charged** – Although these services tend to operate on the 0800 number range and are therefore free to dial from landline phones, the person receiving the call will have to pay. Calls costs vary. Please note that some reverse-charged services also incorporate the use of shortcodes charged to mobile users receiving a call.





2.2 Mobile shortcode service use (as designated by the Mobile Network Operators):

- **69x/79x/89x** – these shortcode ranges are reserved for SES (adult services which require consumer age verification prior to use). They can be charged at either between 10p and £10 per text message received by a consumer, or at between 10p and £5 per minute when operating as a SES voice shortcode (i.e. a consumer dials the shortcode from a mobile phone to receive a voice-based SES, as opposed to texting the shortcode to receive a text-based SES).
- **60000-68999 and 80000-88999** – these shortcode ranges can be used for the operation of any service type, other than SES. As with the above ranges, charges can be between 10p and £10 per text message received by a consumer, or between 10p and £5 per minute when operating as a voice shortcode, which a consumer can dial for a voice-based service. Services operating above £1.50 per minute require permission from PhonepayPlus prior to commencing operation – please refer to the PhonepayPlus website www.phonepayplus.org.uk for further information on prior permission.
- **70x** – this shortcode range is reserved exclusively for charity services. Charges can be between 10p and £5 per text message received by a consumer, with the applicable charity receiving a specified percentage of the charge (this amount must be clearly specified within the service promotional material).
- **Gambling services** – this service type may operate on any shortcode range but, as with SES, requires consumers to be age-verified prior to use. PhonepayPlus' permission is also required prior to commencing operation of these services.

Please note: any other shortcode ranges not specifically referenced above – **71000 to 77999**, for example – are currently dormant.

2.3 List of non-premium rate numbers which will fall under PhonepayPlus' regulation where 'inappropriate use' (misuse) is deemed to have occurred:

- **070x** – this number range is primarily used for personal 'follow me' services. They are defined by Ofcom as: "enabling End-Users to be called or otherwise contacted, using a single Personal Telephone Number, and to receive those calls or other communications at almost any Telephone Number, including Mobile Numbers". For example, plumbers or locksmiths might use them as a single point of contact and have calls diverted to different mobile phones, or landlines, at different times.

2.4 070 numbers cost the caller up to 50p per minute to call from a BT landline. PhonepayPlus only regulates 070 numbers in situations where: a) they are found to offer premium rate-style services and/or there is evidence of misuse; and b) where the cost of the call exceeds 10p per minute.

2.5 Over the last few years, there have been many misuse issues with services operating on the 070 number range, with the main problem being 'missed call' services. This is where a consumer receives a missed call to their mobile, or landline, phone from an 070 number, believes it to be a missed call from a 'normal' mobile phone number, calls it back and is met with either a recorded ringing tone, or a voice message, both of which charge up to 50p per minute from a BT landline (more from a mobile). This practice is also known as 'wangiri'.

2.6 Several instances of 'wangiri' and other 070 number misuses have resulted in formal investigations, with high fine sanctions being imposed by a PhonepayPlus Code Compliance Panel Tribunal. 070 numbers look like international numbers and normal mobile phone numbers, and providers are advised to read the Ofcom's 'Guidance on the acceptable use of 070 numbers' prior to their operation.





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ranges

0870x / 0845x / 0843x / 0844x / 0871/2/3 (where charged at less than 6p per minute) – these are low-cost number ranges (typically under 5p per minute from a BT landline) that are only regulated by PhonepayPlus where: a) a SES is found to be operating; or b) it is a chatline service; or c) it is a service operated using internet dialler software. All SES **must only** operate on the appropriate number ranges, as noted above.

076x – this number range is reserved for radiopaging services. In the same way as with 070 numbers (see above), PhonepayPlus will investigate this number range where there is evidence of misuse – upon receipt of consumer complaints about ‘missed call’ services, for example.

¹ <http://stakeholders.ofcom.org.uk/telecoms/numbering/guidance-tele-no/070-guidance>

The role of general guidance

General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus’ Code Compliance Panel Tribunal (‘the Tribunal’). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider’s alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.



Menu



GENERAL GUIDANCE NOTE

The avoidance of undue delay

Who should read this?

All Networks operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations by way of the following:

- Clearly explaining the factors that might constitute undue delay once a consumer has chosen to engage with a premium rate service (including what undue delay might look like with regard to the different service types); and
- Offering advice on how undue delay can be best avoided.
- Web/instant messaging (with messages being exchanged via the web or a form of instant messaging service, but charged via premium rate).

The obligation on providers to avoid undue delay is set out in paragraph 2.3 of the [PhonepayPlus Code of Practice](#), which states: What are the key points?

Rule 2.3.4

Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.

What are the key points?

The main issues for providers to consider are:

- Except in exceptional circumstances (see section 4 below), service introductory messages should not exceed 30 seconds in length for any type of service. Providers should contact PhonepayPlus where they believe they have a valid reason for a longer message.
- Generally, queuing is not permitted on any type of service (exceptions are made for the use of the 'eavesdrop' facility and for 'lower-cost services', as well as for 'emergency situations' – all of which are set out in the document).
- 'Holding' or delaying consumers from reaching key information is not permitted on any service.
- Any products purchased through a premium rate service must be delivered in a timely fashion, where it is possible to do so.





1. What constitutes undue delay

- 1.1 Once a consumer has chosen to engage with any type of premium rate service, the service should either offer prompt engagement with the service itself, or the service goods purchased should be promptly delivered (pay-for-product services), where this is possible.

The following (a-e) is a list of the different ways that services might find themselves operating under undue delay:

(a) Queuing (applicable to all live services)

- 1.2 A live service that employs any variation of a queuing system that prevents (either with intention, or otherwise) a consumer from immediately engaging with that service is likely to be considered to be operating under undue delay.
- 1.3 While providers may argue that the employment of a call queuing system is of benefit to consumers – if it spares the consumer the frustration or expense of having to redial a service, for example – compliance with the [PhonepayPlus Code of Practice](#) requires that no premium rate service be designed specifically to operate in this way. This includes services that may have been programmed to inform callers of their position in a queue.
- 1.4 If a temporary queuing system must be employed by a service (i.e. it can be proven by a provider that there was **no other option available at that time**), then the queuing should be:
- Kept to an absolute minimum; and, critically,
 - It should not be the ‘norm’ – meaning that the service must not have been designed in such a way as to allow call queuing as normal practice, but rather, there were circumstances at a particular point in time that made it absolutely unavoidable (refer to section 4 below for an explanation and example).
- 1.5 There are some instances of call-queuing systems being permanently acceptable. The ‘eavesdrop’ facility (see section 3 below) that is sometimes employed by live 1-2-1 chat and live psychic/tarot services is one, typically promoted on TV and/or on a live internet stream. Please also refer to the section ‘Services operating on lower-cost numbers’ (section 5 below), as live services operating on these number ranges also permit call-queuing.

(b) Problems with pre-recorded services

- 1.6 We are aware of some pre-recorded services that have been designed with the intention of keeping the consumer engaged with a service for either as long as possible, or for an ‘*unreasonable*’ length of time.
- 1.7 For example, a consumer might call a premium rate number in order to gain a key piece of information as per the service’s promotion, only to be held back (i.e. kept ‘on hold’) from hearing it for several minutes. During this time, the consumer might hear either vaguely relevant, or perhaps completely irrelevant, information, before eventually reaching the key piece of information they had been waiting for, and expecting to hear, much earlier in the call.
- 1.8 Some pre-recorded services are also known to include lengthy promotions for other services, before the key service information is heard by the caller.





1.9 Providers should note that, if there is no valid reason to hold back a consumer from gaining the key service information on a premium rate service, whether intentionally or by design, then any such service is likely to be considered to be operating under undue delay. Callers should be able to reach the promoted service, or its key service information, simply and without delay, once they have chosen to engage with it.

**(c) Overly long service introductory messages
(applicable to all service types)**

1.10 Introductory messages are those that are heard by callers immediately upon connection to a premium rate service. They give information, such as the cost of the service per minute and the name of the provider providing that service. It should be noted that introductory messages do not include service ‘menus’, which are covered separately in ‘d) Problems with live and pre-recorded services using a ‘menu’ facility’, below.

1.11 Long introductory messages can often lead to consumers being unduly delayed in reaching the service they have chosen to engage with. Examples of this type of delay include:

- Introductory messages that contain more information than that which is required under the [PhonepayPlus Code of Practice](#) – for example, service introductory messages that give out postal addresses and/or customer service telephone numbers, or perhaps services that choose to give over-complicated service instructions that consumers cannot skip through.
- The recorded human voice within the introductory message, taking long pauses in between sentences, resulting in the message becoming overly long and purposely drawn-out (well over a minute long in many instances).
- The use of recorded ringing tones on connection (i.e. excessive recorded ringing that charges the caller).
- The promotion of other services within the introductory message, either relevant or otherwise, which consumers are not given the option to skip through.

1.12 Except in ‘Unavoidable, exceptional and emergency circumstances’ (see section 4 below), we do not believe that any service introductory messages should need to last longer than 30 seconds in length for any type of service. Any services currently in operation that have introductory messages lasting longer than 30 seconds should therefore consider altering them so as to fit within this guidance.

1.13 Providers who believe they have a valid reason for using introductory messages that are longer than 30 seconds – for example, providers operating pay-for-product services or PIN entry services – should contact PhonepayPlus to discuss the services on their individual merits.

1.14 Generally, when a consumer dials a service, they should hear the relevant regulatory messages required for that service category upon connection, directly followed by either immediate connection to the service itself (for example, connection to an operator), or connection to a service menu (where a service employs such a facility).

(d) Problems with live and pre-recorded services using a ‘menu’ facility

1.15 Service menus are often heard by callers after they have heard the service introductory message. They typically offer the caller a variety of options within the one service, which can be selected and engaged with – for example, “press ‘1’ for ‘weather updates’, press ‘2’ for ‘local news updates’, press ‘3’ for ‘sports updates’”, etc.





1.16 Services that use a menu facility should ensure that the information and descriptions contained within each option are **kept as brief and relevant as possible**. We are aware of instances where some services offer very long and drawn-out descriptions at the beginning of each separate menu option selected by a caller, with the apparent intention of holding the caller on the line for much longer than is required. Providers are advised that this should be avoided, and that any service menus currently operating in this way should be altered/shortened in length. We believe that all menu options should be concise and relevant. Any providers of the opinion that the menu options within their services that are currently in operation cannot be shortened, for whatever reason, or are unsure of exactly what is being asked of them, should contact PhonepayPlus to discuss.

**(e) Products not being delivered in a timely fashion
(pay-for-product, including SMS)**

1.17 Services that sell goods or products through the use of premium rate services as their payment mechanism must ensure that those products are delivered promptly where it is possible to do so, once a consumer has chosen to engage with the service. An example of where this may not be possible might be a situation where tickets have been purchased for an event and those tickets were not due to be printed until several months afterwards. We would expect consumers to be clearly informed within the service promotional material of the expected timeframe for delivery.

1.18 Where digital services are concerned, we would expect 'products' to be delivered promptly, unless there is a staggered delivery system being used. Providers should note that, in the event of an investigation, we may ask for evidence of delivery dates and times, as well as any other relevant information.

2. Calls made outside of service hours or to services that may have expired

2.1 This scenario applies either to services that are only available at certain hours of the day, or to services that have a shelf-life – examples include services that perhaps employ live operators who are unavailable 24 hours a day, competition services that have reached their expiry date or services that are no longer available.

2.2 Although not compulsory to do so, providers may wish to add a short message to their service for callers that call 'out of hours', which contains the hours of operation or the reason for the service's unavailability, where any of the above scenarios are relevant. It may be preferable for consumers to be given a reason for their call not being connected, so as to avoid any potential for confusion.

3. Use of an 'eavesdrop' facility

3.1 An 'eavesdrop' facility is that which allows the consumer the opportunity to listen in on the live call taking place between an operator and another consumer, while waiting to speak live with the same operator (i.e. listening in on the call(s) taking place in front of them, while they are effectively waiting in a queue).

3.2 Eavesdrop' is typically used in conjunction with live 1-2-1 chat and psychic/tarot services that operate on TV, the internet via a live stream or via a 3G mobile handset (i.e. services that are operator-based and allow for the live visuals to be viewed in conjunction with live audio of the conversation between operator and consumer).

3.3 This is something that is permitted, provided that consumers are informed in advance (i.e. a consumer must not be advised that they are being put through to speak with a live operator, only to be put through to the 'eavesdrop' facility). Instead, it should be made abundantly clear to the consumer that the on-screen operator is already on a call. The consumer is then able to make the choice of either staying on the line listening





in, until such time as the on-screen operator is free to take their call, choosing another menu option (where there is such a facility on the service), or choosing to hang up and try again later.

3.4 We are also aware of some ‘eavesdrop’ services that only allow the caller to listen in on the operator’s side of the conversation, meaning that the caller’s side of the conversation cannot be heard. This is not permitted – providers should note that callers selecting an ‘eavesdrop’ facility must be able to hear both sides of a conversation talking place between an operator and a caller at all times.

3.5 Services using an ‘eavesdrop’ facility should also ensure that callers are aware that their live conversations may be ‘eavesdropped’ on by other callers.

4. Unavoidable, exceptional and emergency circumstances

4.1 PhonepayPlus may allow some flexibility to the consideration of undue delay in circumstances that might be deemed as being either ‘unavoidable’, or ‘exceptional’, in nature (i.e. an emergency, which had the effect of causing undue delay to consumers). An example might be the first day of an occurrence of a natural disaster, which has caused an airport and various helplines operating on live premium rate numbers to receive hundreds, or thousands, more calls than would have normally been accounted for. In a circumstance such as this, it is clear that a service is unlikely to have been able to function as normal on that day.

4.2 Any separate instance of an ‘unavoidable’, or ‘exceptional’, circumstance which a provider claims caused their service to operate with a delay to consumers, would be judged on its own merits, where brought to the attention of PhonepayPlus.

5. Services operating on lower-cost numbers

5.1 Many of the requirements are different for lower-cost numbers (including 0871/2/3) – providers should refer to the General Guidance Note on [‘Lower-cost services’](#) for full advice.

5.2 If consumers are held in a queue while they wait for an operator to become available, they must be given a suitable indication of the likely delay. They will then be in a position to make an informed decision as to whether to remain on the call, or to try again another time. Where providers believe that a delay is likely to occur, they should consider implementing necessary processes to ensure that consumers will understand right from the outset how long the delay is likely to be. This could be done in a number of ways, for example:

- Stating an estimation of the length of the delay (in minutes).
- Telling the caller they are placed in a queue and where they are in relation to others in the queue.

5.3 Alternatively, providers could offer to call the consumer back at the company’s expense when an operator becomes available. We understand that, in unique circumstances (for example, an extreme weather event, or other emergency), providers may experience delays to a service and will not have had time to prepare a response. In these cases, it may be sufficient to include a general pre-call announcement, explaining the delay, but without an accurate estimate of the wait.

5.4 However, we would expect this to be the exception to a service’s operation, not the rule. While we do not intend to specify the exact extent to which the estimate is accurate (e.g. to the nearest minute), we will certainly expect providers to ensure that consumers are able to make an informed decision as to whether to stay on the line.



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5.5 We understand that a number of factors affect the delivery of a service, and that consumers' expectations of different services may vary. Where a service is investigated, it is likely that we would seek answers to the following questions:

- Might consumers reasonably expect a high level of demand from other callers and, therefore, be prepared to accept a more lengthy delay? For example, when tickets to a major concert become available for the first time;
- Were there extraordinary events that precipitated a sudden surge in demand? For example, a flood that prompted a high volume of calls to an insurance claims line;
- How important is that call to the consumer, and how long would they reasonably be expected to wait? For example, a local health service providing information and support to patients;
- Is there choice in the market? Could consumers choose to look to other providers to provide a better service?;
- Was there an extraordinary internal event that affected call wait times? For example, was there a higher than average number of staff away sick at the time of the call in question?

The role of general guidance

General Guidance does not form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.



Menu



GENERAL GUIDANCE NOTE

The conduct of live services

Who should read this?

All Networks operators and providers involved in the provision of premium rate services to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations by way of the following:

- Clearly explaining the service requirements that must be implemented by all live services; and
- Offering guidance on miscellaneous live service-related matters that are not covered in the [PhonepayPlus Code of Practice](#).

What are the key points?

The main issues for providers to consider are:

- Live services are defined as those that allow for a two-way conversation to take place.
- All live services must give the name of the provider and pricing information on connection.
- Calls must be terminated where a caller is suspected of being under the age of 18.
- Calls must also be terminated where a caller is suspected of either not being, or not having the permission of, the bill-payer.
- All live services must terminate when a caller has spent £25.54 plus VAT, unless a specific service exemption has been granted.
- Live entertainment services and multi-party chat services are subject to separate and specific rules – all of which are covered in detail below, from section 4 onwards.





1. Definition of a live service

- 1.1** Live services are defined as those that enable a consumer to speak with a real person (i.e. a service that involves a two-way or multi-way live voice conversation). There are many different types of live service – technical support, counselling and professional advice services being a few examples – all of which fall under either some, or all, of the advice in this General Guidance Note.
- 1.2** A further class of live services are live entertainment services. These are services defined as being either 1-2-1 chat services (sexual or non-sexual), or psychic/tarot services – services that allow the caller to speak live with an operator for ‘entertainment purposes’. Similarly, multi-party chat services are also classed as ‘live services’; the difference being that they enable two or more persons (the participants) to simultaneously conduct a telephone conversation with one another in a monitored chat-room.
- 1.3** **Please note:** providers of either live entertainment services or multi-party chat services should note that, while the whole of this General Guidance Note is applicable to these two categories of service, they should pay careful attention to sections 4-9, where specific guidance is located.
- 1.4** Providers should also note that some categories of live service require prior permission from PhonepayPlus before being allowed to operate. Providers should refer to the PhonepayPlus website www.phonepayplus.org.uk for further information on prior permission and for a list of these categories and service-specific information that relates to them. Providers should also consult the General Guidance Note on ‘[The avoidance of undue delay](#)’ and the General Guidance Note on ‘[Promotions and promotional material](#)’ for advice on these areas and the way in which they might relate to live services.

2. Introductory messages – information that callers must hear on call connection (Part 1)

- 2.1** All live services must include introductory messages (i.e. messages that are heard by callers on call connection), detailing the call cost per minute and the name of the provider that is providing the service.
- 2.2** This information tends to be given by way of either an automated recorded message given out prior to connection to an operator, or by way of a standard statement recited by a live operator – with either being acceptable.
- 2.3** **Please note:** providers operating services at 10p per minute or less should refer to the General Guidance Note on ‘Lower-cost services’ with regard to introductory messages.

3. Maximum call durations/spend limits

- 3.1** All live services are subject to a maximum call spend limit of £25.54 plus VAT (i.e. **£25.54 plus VAT per call***), unless a provider has been granted specific permission for a service or service category to operate above this limit (see paragraph 3.3 below). Calls must be terminated either by an automated mechanism, or by an operator manually keeping track of the call length and personally terminating the call. Callers may then call a service back at this point, should they wish to continue using it.
- 3.2** For example, where a service is operating on a number that costs £1 per minute, the call **must** be terminated at 30 minutes; 20-minute termination at £1.50 per minute; and so on.





- 3.3** Any providers wishing to operate services over the £25.54 plus VAT call spend limit should contact PhonepayPlus in order to discuss applying for permission to do so.
- 3.4** There are also some less common exceptions that generally apply to service types that require prior permission before being permitted to operate (counselling services or consumer credit services, for example). Providers should ensure they are aware of the categories of live service that require prior permission, along with any individual maximum call duration/call spend requirements.
- 3.5** ***Please note:** any additional network charges that may be added on to the per minute charge of the call outside of the control of the provider are **not** something considered as part of this rule and are **not**, therefore, something that providers are considered to be responsible for under the [PhonepayPlus Code of Practice](#).

The following sections only apply to providers of live entertainment services and multi-party chat services – prior permission is required from PhonepayPlus to operate these types of services

4. Introductory messages – information that callers must hear on call connection (Part 2)

- 4.1** Providers of live entertainment services (sexual and non-sexual 1-2-1 chat and psychic/tarot services) and multi-party chat services must also provide some extra information within their introductory messages, as well as the **price per minute** and the **name of the provider** providing the service information, applicable to all live services.
- 4.2** The extra information required is a condition of providers' individual prior permission certificates and has been broken down into service types, as follows:

Live 1-2-1 chat services and multi-party chat services of a sexual nature must:

- State that all calls to the service are recorded;
- State that callers must be over the age of 18 to use the service;
- State that callers should either be the bill-payer, or have the bill-payer's permission;
- State that call details may appear on the telephone bill.

Live 1-2-1 chat services and multi-party chat services of a **non-sexual nature**, and live psychic/tarot services must:

- State that all calls to the service are recorded.

- 4.3** **Please note:** the General Guidance Note on '[The avoidance of undue delay](#)' offers detail on the appropriate length of service introductory messages.

5. Underage callers and unauthorised use of the telephone

- 5.1** Live premium rate services are only allowed to be used by callers who are over the age of 18. If an operator has reasonable grounds to suspect the caller of being under the age of 18, PhonepayPlus recommends that the following procedure be implemented:





- The operator should ask the caller their age and date of birth;
- The operator should ask the caller any other questions that they think are appropriate their employment status, for example). Operators should also listen out for details said in conversation that might imply that the caller is underage and perhaps probe the caller further, where appropriate – a caller might mention their homework or revision, for example;
- If the caller hesitates in responding, their replies are inconsistent or the operator is still not satisfied, then the caller should be regarded as being under 18 and the call should be terminated;
- Callers unwilling to engage in conversation with an operator should also have their call terminated ('silent callers').

5.2 Providers are also expected to take all **reasonable steps** to identify and terminate calls being made without the authority of the bill-payer. PhonepayPlus recommends that operators try to follow this procedure:

- Any caller who appears to be using the service excessively, either by making a large number of calls, or one or more very long call(s), should be warned by the operator of the potential costs of the call(s). This also includes any caller who appears to be calling from work, where the service is not considered to be work-related;
- Having received a warning, a caller who stays on the line should be asked whether they are responsible for paying the telephone bill or whether they have the bill-payer's permission to use the telephone. If there is any reason for the operator to doubt the truth of the response, then the call should be terminated by the operator immediately.

6. Use of an 'eavesdrop' facility

- 6.1** An 'eavesdrop' facility is that which allows the consumer the opportunity to listen in on the live call taking place between an operator and another consumer, while waiting to speak live with the same operator (i.e. listening in on the call(s) taking place in front of them, while they are effectively waiting in a queue).
- 6.2** 'Eavesdrop' is typically used in conjunction with live 1-2-1 chat and psychic/tarot services that operate on TV, the internet via a live stream or via a 3G mobile handset (i.e. services that are operator-based and allow for the live visuals to be viewed in conjunction with live conversation between operator and consumer).
- 6.3** This is something that is permitted, provided that consumers are informed upfront (i.e. a consumer **must not** be advised that they are being put through to speak with a live operator, only to be put through to the 'eavesdrop' facility). Instead, it should be made abundantly clear to the consumer that the on-screen operator is already on a call. The consumer is then able to make the choice of either staying on the line, listening in until such time as the on-screen operator is free to take their call, choosing another menu option (where there is such a facility on the service) or choosing to hang up and try again later.
- 6.4** We are also aware of some 'eavesdrop' services that only allow the caller to listen in on the operator's side of the conversation, meaning that the caller's side of the conversation cannot be heard. This is not permitted – providers should note that callers selecting an 'eavesdrop' facility must be able to hear **both sides** of a conversation live as they take place between an operator and a caller, at all times.
- 6.5** Services using an 'eavesdrop' facility should also ensure that callers are aware that



their live conversations may be 'eavesdropped' on by other callers.

7. Compensation arrangements (bonds)

- 7.1** All providers operating live entertainment services and multi-party chat services are required to join the PhonepayPlus Compensation Scheme ('Compensation Scheme') – a scheme that allows a consumer to claim for compensation where their telephone has been the subject of unauthorised use (please also refer to section 8 below).
- 7.2** Entry into the Compensation Scheme will mean a provider lodging a bond with a financial institution. This is usually a bank, but it does not necessarily have to be. Providers should contact PhonepayPlus if they are considering lodging a bond with a financial institution that is not a bank. PhonepayPlus will then make the necessary checks on that organisation, prior to making a decision as to whether it can be used for bond purposes.
- 7.3** Typical bond levels are set at between £12,000 and £17,000 for 1-2-1 chat services, between £10,000 and £15,000 for psychic/tarot services and between £12,000 and £20,000 for multi-party chat services. Then, after one year of service operation, provided that PhonepayPlus is not aware of any problems with the services or any unpaid claims by providers (see section 8 below), bond levels may be dropped to the minimum level of £5,000 (£10,000 for multi-party chat) for 'good behaviour'.
- 7.4** It is the Code Compliance Panel Tribunal ('the Tribunal') that will determine the individual bond level for providers, while considering their applications for live entertainment services and multi-party chat services. In order to do this, the Tribunal will consider various factors in relation to the service being applied for, as well as the provider applying to operate the service.

8. Claims for compensation

- 8.1** Claims for compensation can be made by any person whose connection to the electronic communications network (i.e. their telephone line) has been the subject of unauthorised use. When claims are received by PhonepayPlus, in the first instance, the relevant provider(s) will be given an opportunity to settle them to the satisfaction of the claimant.
- 8.2** If the provider(s) does not settle them to the satisfaction of the claimant within a reasonable time, the matter will be referred to an independent adjudicator who will determine the matter in accordance with their procedures and who may require that the provider(s) pays the claim, or part of it, together with an administration charge.
- 8.3** If the independent adjudicator finds in favour of the claimant and the provider refuses to pay the claim, then steps will be taken by PhonepayPlus to recover the monies owed directly from the provider's bond (which is the reason that bonds have to be in place for providers of live entertainment services and multi-party chat services).
- 8.4** Alternatively, the adjudicator may find that the provider is not required to pay the claim(s); in this instance, there would be no cost to the provider and the claimant would not be eligible for any reimbursement.





9. Call recording

- 9.1** All calls made to live entertainment services and multi-party chat services **must** be recorded in their entirety using recording equipment that has been pre-approved by PhonepayPlus.
- 9.2** Calls made to multi-party chat services may be individually recorded, or there must be a continuous recording of the conversations taking place in each separate chat-room within a service (where applicable/where an individual service has more than one chat-room). With regard to the latter scenario and to explain further, as each individual call into a service would not be being recorded, the provider must be able to supply to PhonepayPlus, where requested:
- A time- and date-stamped record of the date and time of a caller's entry into a service;
 - The time- and date-stamped time(s) that a caller may have changed/jumped from 'room to room' within a service; and
 - The time- and date-stamped time of each consumer's exit from a service.
- 9.3** The provider must also be able to supply any required segments of call recordings from any chat room within their service(s). For example, a full recording of 'Chat Room 1' from 9am-10.30am dated 1 January 20xx.
- 9.4** *Why must calls be recorded?*
Call recording is vital so as to allow for the investigation of complaints and the administration of the Compensation Scheme.
- 9.5** *For what period of time must recordings be kept?*
All recorded calls must be kept by providers for a period of 12 months. They must not be destroyed or deleted before then, but providers are free to delete recordings after a period of 12 months has lapsed.
- 9.6** *Recording Equipment*
All recorded calls must be time- and date-stamped and 'tamper-proof'. They must also be provided to PhonepayPlus in a format that can be easily played back, when copies of recordings are requested. Finally, recording equipment must be able to monitor the Calling Line Identity ('CLI') of each caller.
- 9.7** Providers can choose to use pre-approved recording equipment suppliers to install recording equipment in conjunction with their services – a full list of current approved suppliers, together with their contact details, can be seen below at **Annex A** (please note that there are also some approved suppliers that have chosen not to be added to the list).
- 9.8** Alternatively, providers may be considering using recording equipment that **has not yet** been pre-approved by PhonepayPlus – typically through a not-yet-approved supplier, or perhaps via equipment that the provider has personally developed. PhonepayPlus employs an independent technical consultant for the verification of any such equipment. This consultant can be booked to carry out an inspection (either via an online check or in person, depending on the type of equipment). If approved, your equipment can be added to our approved list of suppliers, should you wish.
- 9.9** Some services combine live chat with live video. An example would be a 3G mobile phone service that allows consumers to call a service and take part in a live 1-2-1 conversation with an operator, while simultaneously being able to view the operator on the screen of the phone.



- 9.10** Providers operating any such service should note that PhonepayPlus **only** requires the audio part of the service/call to be recorded. There is no requirement to also record the visual part of any service. While the list of approved suppliers at **Annex A** does show that some approved suppliers have the ability to record the audio and visual parts of a service, we have provided this for information only because it was considered that some providers may wish to record the visual parts of services for their own reasons. These suppliers have only had the audio part of their equipment approved by PhonepayPlus, as there was no requirement for the visual aspect to be checked/approved.
- 9.11** If you have any questions in relation to recording equipment that are not covered in this General Guidance Note (i.e. questions of a technical nature), you should contact PhonepayPlus for advice.

The role of general guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.



PhonepayPlus
Guidance Note

General
The conduct of
live services

Audio and visual recording equipment

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Menu



PhonepayPlus
Guidance Note

Service-Specific
Advice

SERVICE-SPECIFIC GUIDANCE NOTE

Advice services

Who should read this?

Any providers planning to offer advice services to consumers. The following are examples of services that are likely to be defined as advice services:

- Legal advice;
- Counselling;
- Midwifery advice;
- Employment advice (please see the Service-Specific Guidance Note on [‘Employment services’](#));
- Financial advice.

This list is non-exhaustive and providers who are unsure as to whether they are offering an advice service should contact PhonepayPlus for further advice.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus’ expectations around the use of advice services. This Service-Specific Guidance Note also provides detailed guidance for those running professional advice services, including legal and counselling services.

What are the key points?

The main issues for providers to consider are:

- Any relevant and current qualifications of operators should be conveyed to consumers. Where operators of the service do not hold any relevant qualifications, the source of information by which the advice is being given should be clearly stated.
- Information should be conveyed in a professional and responsible manner.
- Where advice given may need individual interpretation, it should be clearly stated in promotional material that consumers should not act on such advice without first consulting a suitably qualified practitioner.
- Counselling and professional advice services (i.e. legal, medical, accounting, etc.) have further particular conditions that must be met.
- Professional advice services, including legal and counselling services, require prior permission from PhonepayPlus before they can operate. For more information on prior permission please see the instructions available on our website at www.phonepayplus.org.uk.



Menu



1. Vulnerable customers

- 1.1 Advice services should not take advantage of vulnerable groups or those in vulnerable circumstances. Providers found to be doing so are likely to be in breach of paragraph 2.3.10 of the [PhonepayPlus Code of Practice](#).

2. Qualifications to provide advice

- 2.1 All promotional material should detail and explain the source of information by which the advice is being given. Additionally, in the promotional material or at the beginning of the service, the consumer should be made aware of the following:
- Any relevant and current professional qualification of a person supplying advice and the professional body by whom that person is accredited;
 - Why that qualification is relevant (if not immediately obvious), and the status of that qualification; and
 - Any relevant experience of the person(s) or organisation supplying the information or advice.
- 2.2 Even where operators have no relevant qualifications, the source of the advice being given should be made clear to the consumer.

3. Professional advice services

Professional advice services require prior permission from PhonepayPlus before they can operate.

- 3.1 PhonepayPlus defines professional advice services as those which involve the provision of specialist advice to consumers by one or more qualified professionals. These are persons whose occupations require knowledge and skill obtained through extensive study and specialised training (e.g. doctors, lawyers, vets, accountants, etc.) and who may be members of a relevant professional body.
- 3.2 Operators of professional advice services should have relevant, current and appropriate qualifications. Evidence of such should be provided. Those giving advice should have a membership with the relevant professional body, where there is one – for example, solicitors giving legal advice should hold an unconditional practising certificate from the Law Society.
- 3.3 Professional Indemnity Insurance should be in place to cover the service and the operators providing consumers with advice.

4. Legal advice services

Legal advice services require prior permission from PhonepayPlus before they can operate.

It is likely that a legal advice service will be granted prior permission if the following conditions are met:

4.1 Qualifications:

Services staffed by solicitors (for the avoidance of doubt, this provision does not relate to services staffed by barristers, trainee solicitors or legal executives).

- If general legal advice is being offered, operators should be solicitors with a





- minimum of three years' qualified experience.
- Solicitors giving advice should hold an unconditional practicing certificate from the Law Society.
- Where a service is promoted as specialising in a particular area of law – for example, employment or housing law – there is no requirement as to the level or length of experience required of solicitors taking calls.
- However, solicitors with less than three years' qualified experience must be supervised at all times by solicitors of at least three years' qualified experience.

4.2 Services staffed by operators other than solicitors:

- Where this type of service is aimed at members of the public, providers must be in possession of the Community Legal Service Quality Assurance Mark, covering the areas of practice to which the service relates.
- The areas of legal advice being offered must be clearly stated. Please note that the term 'lawyer' will not be acceptable as this is not sufficiently precise.
- Services that concern very specific areas of the law, staffed by non-solicitors, can be granted prior permission by PhonepayPlus, provided that the service does not promote to vulnerable consumers and the qualifications or experience of the operators are clearly stated in promotional material.

4.3 Advice concerning barristers:

- The Bar Standards Board states that a practising barrister is not permitted to provide legal services aimed directly at the public, unless provided through the public access scheme. For more information about the public access scheme, please contact the Bar Standards Board.
- Non-practising barristers are usually individuals who are either unqualified (i.e. they have not completed the appropriate training) or do not provide legal services, as defined by the Bar Standards Board. For further details on the definition of legal services, please contact the Bar Standards Board.
- The Bar Standards Board rules do not restrict non-practising barristers from providing advice, however, they generally preclude the use of the word 'barrister' to describe the individual's status.
- Providers who wish to employ barristers to staff legal advice services aimed at the general public or to industry are strongly advised to seek advice from the Bar Standards Board before beginning the service.

4.4 Other requirements:

- Providers must show evidence of Professional Indemnity Insurance, which fully covers the service offered.
- Consumers should be made aware of other, free of charge, legal advice that may be available to them, either before, or upon using, the legal advice service.

5. Counselling services

Counselling services require prior permission from PhonepayPlus before they can operate.

It is likely that a counselling service will be granted prior permission, if the following conditions are met:

5.1 One-off counselling services:

Qualifications:





- Operators should hold a formal qualification, at Diploma level or equivalent, and should be members of an appropriate professional body.
- Evidence of any training in relation to counselling over the telephone should be provided.
- As with other advice services, details of relevant qualifications should be provided in promotional material.
- If operators are to be giving advice on a particular topic (e.g. eating disorders), then such operators should have appropriate and relevant experience. Evidence of such experience should be made available upon request.

5.2 Supervision

- An appropriate structure of supervision should be demonstrated, including supervision of the standard of the service at management level; oversight of operators; supervision for operators which is readily available, whether they are working in a call centre or in isolation; and regular group supervision.
- In line with the British Association for Counselling and Psychotherapy, we would recommend that supervision occurs for a minimum of 1.5 hours per month.

5.3 Repeated/addicted callers:

- All reasonable steps should be taken to prevent consumers becoming 'addicted' callers.
- Evidence of steps taken by providers may be required by PhonepayPlus, before prior permission can be granted.

5.4 Maximum call duration:

- The duration of a call to this type of service should not last longer than 20 minutes, unless prior permission has been granted that allows otherwise.

5.5 Ongoing counselling services:

Qualifications

- Operators should hold a formal qualification, at Diploma level or equivalent, and should be members of an appropriate professional body.
- Evidence of any training in relation to counselling over the telephone should be provided.
- As with other advice services, details of relevant qualifications should be provided in promotional material.
- If operators are to be giving advice on a particular topic (e.g. eating disorders), then such operators should have appropriate and relevant experience. Evidence of such experience should be made available upon request.

5.6 Supervision

- An appropriate structure of supervision should be demonstrated, including supervision of the standard of the service at management level; oversight of operators; supervision for operators, which is readily available whether they are working in a call centre or in isolation; and regular group supervision.

5.7 Maximum call duration

- The duration of a call to this type of service should not last longer than one hour, unless prior permission has been granted to allow otherwise.



5.8 Number of sessions

- Counselling services should be carried out over a limited number of sessions, with the agreement of the counsellor and the consumer, with a review being carried out at the end of every four sessions.
- Arrangements should be made for a non-premium rate means for a potential consumer to set up an agreement with a counsellor. A written agreement, to be entered into by the consumer and the counsellor, should be signed by both parties prior to the commencement of premium rate counselling sessions. This agreement should set out:
 - the cost of the calls;
 - the length of the sessions;
 - how many sessions could, or will, be held prior to review;
 - why this number of sessions is appropriate; and
 - the benefits that the number of sessions will provide to the consumer.
- Following the agreed number of sessions, a review should be carried out and any further agreements reached should be made in writing. In the event of a dispute, PhonepayPlus may generally ask to see such an agreement, while accepting that the interaction between counsellor and consumer is confidential.
- Mock-up samples of both the initial advertising for the service (which should not include the premium rate number) and the agreement to be entered into by counsellor and consumer (which should include the premium rate number, pricing information, etc.) should be submitted to PhonepayPlus with any application for prior permission.

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 adjudge 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.



PhonepayPlus
Guidance Note

Service-Specific
Betting tipster

SERVICE-SPECIFIC GUIDANCE NOTE

Betting tipster services

Who should read this?

Any providers that are planning to offer betting tipster services.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of betting tipster services, which are defined by PhonepayPlus as those premium rate services where either an individual, or company, provides knowledge and/or specific information, based on the outcome of an uncertain event that is likely to be relied upon by a consumer.

What are the key points?

The main issues for providers to consider are:

- Promotional material should state that any claims can be substantiated with supporting evidence.
- Providers should be careful about insinuating any element of certainty.
- Providers should be aware that, if the service contains any means of facilitating a bet, then it will be deemed as a 'remote gambling service' (for more information on remote gambling services, please see the instructions on prior permission available on the website at www.phonepayplus.org.uk).



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1. Requirements

- 1.1 Providers of betting tipster services should be able to provide evidence to substantiate any claims included in the promotion of the service upon request by PhonepayPlus.
- 1.2 Betting tipster services should not:
 - Insinuate any element of certainty, either about tips or likely profits, where this is not the case;
 - Express an opinion in a way that implies it is fact (for example, about odds for future selection);
 - Make any claim or recommendation that is fabricated or otherwise untrue (for example, about the previous record of a tipster).
- 1.3 If the service offers advice, rather than tips (i.e. information tailored to the caller's circumstances or questions), then it is recommended that providers read the Service-Specific Guidance Note on ['Advice services'](#).
- 1.4 Services with any element of gambling may be subject to legislation and regulation by the Gambling Commission. For more information, please visit the Gambling Commission's website: www.gamblingcommission.gov.uk

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PhonepayPlus
Guidance Note

Service-Specific
Children's

SERVICE-SPECIFIC GUIDANCE NOTE

Children's services

Who should read this?

Any providers that are planning to offer services that are aimed at, or are likely to appeal to, children. Under [PhonepayPlus' Code of Practice](#), children are defined as people under the age of 16.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of children's services, which PhonepayPlus defines as those premium rate services (PRS) which, either wholly, or in part, are aimed at children, or could be reasonably expected to be particularly attractive to children.

What are the key points?

The main issues for providers to consider are:

- Children are defined as people under the age of 16.
- Promotional material should state that the bill-payer's permission is required and should specify whether any age restrictions apply.
- Children's services should not advertise or promote direct appeals for children to part with money.
- Promotional material should not encourage children to use other premium rate services or the same service again.
- Children's services should not involve competitions that offer cash prizes or prizes readily converted to cash.



Menu



1. Requirements

- 1.1** All promotional material in relation to children's services should clearly indicate that the bill-payer's permission is required and should specify whether any age restrictions apply.
- 1.2** Children's services should not advertise or promote directly to children with appeals to buy or donate. Any service found to be doing so could be found to be in breach of paragraph 2.3.9 of the [PhonepayPlus Code of Practice](#). Similarly, promotional material should not encourage children to use other premium rate services or the same service again. Providers should be aware that children can often be considered as vulnerable consumers, and so should take steps to ensure that they are not taken advantage of. Appropriate promotional material should be used at all times. For more information on promotions, please see the General Guidance Note on '[Promotions and promotional material](#)'.
- 1.3** Providers should note paragraph 2.3.12(b) of the [PhonepayPlus Code of Practice](#) on spending caps. Services aimed at, or which could be reasonably expected to be particularly attractive to children, must terminate by forced release when a maximum of £2.56 + VAT, or in the case of a subscription service a maximum of £2.56 + VAT per month, has been spent.
- 1.4** Children's services should not involve competitions that offer cash prizes or prizes readily converted to cash.

2. Determining whether a service is targeted at children

- 2.1** In determining whether a PRS has been targeted at children, or is likely to be particularly attractive to them, PhonepayPlus will consider each incident on a case-by-case basis. In doing so, the following factors are likely to be considered:
- Data which indicates how many readers, viewers, or listeners of a publication, broadcast, or other media where the service is promoted, are children;
 - The style, content, and composition of the promotional material (i.e. does it contain factors likely to make it particularly attractive to children, or which would suggest children had been targeted?).

The role of Service-Specific Guidance

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PhonepayPlus
Guidance Note

Service-Specific
Directory Enquiry

SERVICE-SPECIFIC GUIDANCE NOTE

Directory enquiry services

Who should read this?

Any providers that are planning to offer directory enquiry (DQ) services.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of directory enquiry (DQ) services, which are defined by PhonepayPlus as those premium rate services which provide the consumer with telephone numbers of other individuals, companies or services by searching one or more sources of information, based on information given by the consumer to the provider.

What are the key points?

The main issues for providers to consider are:

- Information provided by DQ services should be from legitimate and up-to-date sources.
- Providers of DQ services should take reasonable steps to ensure that the consumer receives the information the service advertises that it is offering.
- The obligation placed on any DQ provider, in being able to match or make available a listing through its data sources, is dependent on sufficient information being given by the consumer in the first instance.
- DQ services should not connect consumers to other, inappropriate premium rate services.
- Refunds should be provided to consumers, where necessary.



Menu



1. Legitimate and up-to-date sources

- 1.1 All DQ services operating in the UK should use legitimate and current sources, in respect of the consumer information that is being provided.
- 1.2 In respect of information being provided in relation to individuals, companies or services outside of the UK, all information should be gathered from legitimate sources that are updated in accordance with the appropriate standards of the relevant country and/or jurisdiction concerned.
- 1.3 Where a DQ service does not provide information and/or connection for the generality of consumers in the UK, but rather a different, specific group, then promotional material should clearly state this, and clearly identify the specific group to which the service does apply.

2. Consumer to receive the information the DQ service advertises

- 2.1 Providers should ensure that, where sufficient information has been given to them by a consumer, such a consumer is given the requested telephone number, and at no additional charge. Ordinarily, consumers should be given the requested number immediately. The exception to this is where consumers may be offered the chance to listen to an advert prior to receiving the number. Where this option is offered, the offer must be clear and succinct, and consumers must be able to opt out of listening to advertisements and be given the requested number immediately.
- 2.2 In instances where the consumer has accessed the service by a voice-call, the requested number should be verbally delivered to them (either by a live operator or by being generated electronically). In all other instances, any other communication format (inclusive of email, text message, etc.) can be used.
- 2.3 Prior to any further connection being made by the provider, the consumer should be clearly informed of the cost, and have the opportunity to opt out of the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at no additional charge.

3. Connection to other, inappropriate premium rate services

- 3.1 DQ services should not connect consumers through to:
- Any premium rate service which is a chatline service;
 - Any premium rate services which is a sexual entertainment service; or
 - Any individual, business or organisation that the DQ service provider has an agreement or arrangement to share call revenue with.
- 3.2 DQ services can connect consumers through to a premium rate number, provided that number relates to business services.
- 3.3 Professional Indemnity Insurance should be in place to cover the service and the operators providing consumers with advice.

4. Refunds to consumers

- 4.1 Where a consumer has provided relevant information, but was not provided with the requested number, and where a complaint has been made to the provider and upheld, the provider should give a refund to the consumer for the full cost of the initial





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Directory Enquiry

call made, and for any subsequent calls (such calls are limited to those made to the provider in respect of the initial request for information) and those made during the complaint process.

- 4.2** For more information in relation to consumer refunds, please see the General Guidance Note on [‘Consumer refunds’](#).

The role of Service-Specific Guidance

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PhonepayPlus
Guidance Note

Service-Specific
Employment
services

SERVICE-SPECIFIC GUIDANCE NOTE

Employment, employment information and business opportunity services

Who should read this?

Any provider that is planning to offer employment, employment information or business opportunity services .

What is the purpose of the Guidance?

To help providers avoid their services being considered misleading under [PhonepayPlus' Code of Practice](#).

What are the key points?

The main issues for providers to consider are:

- Premium rate charges should not be applied to services which find, or seek to find, persons employment. Section 6(1) of the Employment Agencies Act 1973 prevents the receipt of a fee, whether directly or indirectly, from any person, for finding him employment or for seeking to find him employment.
- Providers charging premium rates in relation to these employment services are likely to fall foul of this rule and, therefore, likely to be in breach of paragraph 2.1 of the [Code of Practice \(Legality\)](#).
- All reasonable steps should be taken to avoid misleading, or taking advantage of, vulnerable consumers. This includes jobseekers.



Menu



1. Types of employment services

1.1 These services fall into four categories, all of which carry different expectations:

- *Services offered by employment agencies and employment businesses*
Subject to the exception in point 4 below, no charge can be applied to a service which finds, or seeks to find, employment for persons. If providers are found to be charging premium rates to such services, they are likely to be found in breach of paragraph 2.1 of the [Code of Practice](#)
- *Services which give general advice about careers and employment, including self-employment*
These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice . Those providing advice should also see Service-Specific Guidance on [Advice services](#)
- *Services which give information about the providers own vacancies*
These services can apply premium rate charges, but will be subject to [PhonepayPlus Code of Practice](#)
- *Services which seek to find work for performers and certain other workers in the entertainment field (e.g. photographic and fashion models)*
These services are an exception to the regulations and can charge for their services, subject to certain limitations. Any premium rate charges applied would be subject to [PhonepayPlus Code of Practice](#). Providers are advised to refer to the Employment Agencies Act 1973 for further information, or seek legal advice accordingly.

2. How to avoid the service being considered misleading

2.1 Section 2.3 of the [PhonepayPlus Code of Practice](#) (Fairness) sets out a number of Rules to ensure consumers are treated fairly and not misled in any way. In particular, Rules 2.3.2 and 2.3.10 are relevant to employment and business opportunity services.

2.2 Providers should take all reasonable steps to:

- Ensure promotions correspond to genuine vacancies and/or opportunities, the existence of which should be fully substantiated on request;
- Not mislead a caller as to the conditions, necessary qualifications, availability or extent of any potential employment or business opportunity;
- Not make claims relating to earnings, unless the evidence that such earnings are currently and regularly attained by existing employees (or equivalent) is readily available;
- Clearly state any additional expenditure, including any investments, that may be required over and above the cost of the telephone call;
- State the type of work to be done and its geographical location;
- State the number of workers required;
- State the basis and level of remuneration and, where known, the level of earnings that may realistically be expected.

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PhonepayPlus
Guidance Note

Service-Specific
Fundraising and
other charitable
promotions

SERVICE-SPECIFIC GUIDANCE NOTE

Fundraising and other charitable promotions

Who should read this?

Any providers that are planning to offer fundraising or other charitable promotions.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of fundraising and other charitable promotions. Charitable promotions are defined by PhonepayPlus as promotions for premium rate services, where either all, or part, of the total sum paid by consumers is paid out to an intended beneficiary who is usually a registered charity with the relevant body for England, Northern Ireland, Scotland or Wales. Charities are free to run other types of services, and so this Guidance only refers to those services where the sole purpose is to facilitate the payment of a donation from a consumer to a registered charity. Charities who wish to set up other forms of premium rate service should refer to other relevant Guidance.

Charities and providers may also find it useful to refer to the Mobile Data Association's 'Framework for Charitable Donations using the UK Mobile Networks', which has been adopted by all five Mobile Network Operators in the UK.

What are the key points?

The main issue for providers to consider is:

- Promotional material must include clear information relating to the beneficiary and the amount to be paid to them.



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1. Requirements

1.1 Providers should ensure that all promotional material used for fundraising clearly states the following:

- The total sum per premium rate donation which will be paid to the beneficiary. Where the amount varies between Network operators, we recommend that the minimum likely amount is used.
- Where the donation is passed through to the charity intact without any deductions for VAT or revenue share (admin fees charged separately are ignored by this Guidance), then the promotion can carry the message that 100% of donations are passed through to the beneficiary.
- Promotions should also state:
 - The identity of the beneficiary; and
 - Any restrictions or conditions attached to the contribution to be made to the beneficiary.

1.2 PhonepayPlus recommends the use of charity mobile shortcodes for donations; although we do recognise that there may be circumstances where they cannot be sourced.

1.3 Where providers are looking to have a competition element as part of their service, it is recommended that they seek independent legal advice and refer to the Service-Specific Guidance Note on '[Competitions and other games with prizes](#)'. Please note that charity mobile shortcodes cannot be used for services that have a competition element.

The role of Service-Specific Guidance

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PhonepayPlus
Guidance Note

Service-specific
Public information

SERVICE-SPECIFIC GUIDANCE NOTE

Public information services

Who should read this?

Any providers that are planning to offer public information services.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of public information services, which are defined by PhonepayPlus as those premium rate services that offer information or advice which is also, or mainly, available free of charge from a government department, other publicly-funded body or registered charity. Typically, this advice will be particularly relevant to consumers who may be on low incomes.

What are the key points?

The main issues for providers to consider are:

- Consumers should be fully informed of other freely-available sources of information.
- Services should not mislead consumers, or take advantage of vulnerable groups or those in vulnerable circumstances.
- Services should not be unreasonably prolonged or delayed.
- Qualifications of operators should be clearly stated to consumers, either before, or upon entering, the service.



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1. Services should not be misleading

- 1.1 Consumers should be provided with relevant information to make an informed decision before entering into a service. If the same information being offered by a premium rate service is available elsewhere, free of charge, by a government department, other publicly-funded body or registered charity, then the consumer should be made aware of this information in a clear and prominent way.
- 1.2 Promotional material should not imply any affiliation with the relevant government department, other publicly-funded body or registered charity, unless this is the case. Where there is no such affiliation, promotional material should state this.
- 1.3 If the free-of-charge information is available from one source, a direct link to this source should be available to consumers. If the totality of the free-of-charge information is only available from multiple sources, then all sources should be stated and direct links to all sources should be provided.
- 1.4 The PhonepayPlus Tribunal has previously found services to be misleading under paragraph 5.4.1(a) of the 11th edition of the [PhonepayPlus Code of Practice](#) (paragraph 2.3.2 of the new [PhonepayPlus Code of Practice](#)), where the service has not drawn the consumer's attention to the alternative sources available.
- 1.5 While other available sources should be prominent, this does not prevent providers from also highlighting any benefits or extras offered by a paid-for service, provided such added-value is not exaggerated.
- 1.6 Public information services should not be promoted on websites with the suffix '.org', unless the promoter is a not-for-profit company limited by guarantee, or a registered charity. Providers who do so are likely to be found in breach of misleading consumers under paragraph 2.3.2 of the [PhonepayPlus Code of Practice](#).
- 1.7 Providers should avoid making their promotions appear above other free sources of information on search engines, such as Google or Bing. In doing this, consumers can be more inclined to click on the first link that appears, rather than a public website which provides the same information. While this would not amount to a breach of the [PhonepayPlus Code of Practice](#), it has been upheld as an aggravating factor when set against the fact that the same, or similar, information is available elsewhere from a free, publicly-funded source.
- 1.8 While we have no specific provision in the [PhonepayPlus Code of Practice](#), we have taken steps to work with organisations, such as Google and Directgov, to raise awareness of non-compliant promotions for public information services.

2. Services should not take advantage of vulnerable groups or those in vulnerable circumstances

- 2.1 Some public information services are aimed specifically at consumers who could be vulnerable; for example, those services that offer advice on means-tested benefits may be giving advice to individuals experiencing financial hardship. Public information services should not be promoted to vulnerable persons, or those who may be in vulnerable circumstances. Those services that are so promoted are likely to be found in breach of paragraph 2.3.10 of the [PhonepayPlus Code of Practice](#).

3. Services should not be unreasonably prolonged or delayed

- 3.1 Where services are providing information to the consumer, this information should be given promptly. For example, where a service is offering to provide contact details for





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Service-specific
Public information

other free sources of information, these should be given to the consumer as soon as practicable.

- 3.2** For further information on what constitutes unreasonable delay, please see the General Guidance Note on [‘The avoidance of undue delay’](#).

4. Consumers to be made aware of operator qualifications

- 4.1** The consumer should be made aware of any relevant qualifications that operators within the service hold. If operators do not hold any relevant qualifications, this should be made clear to the consumer, either before, or upon entering into, the service. Where operators are unqualified, the consumer should be made aware of the source of the information and the advice being given.
- 4.2** It is likely that a failure to fully inform the consumer regarding levels of qualification would be upheld by the Tribunal as a breach of paragraph 2.3.2 of the [PhonepayPlus Code of Practice](#).
- 4.3** Those providing advice should also see the Service-Specific Guidance Note on [‘Advice services’](#).

The role of Service-Specific Guidance

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PhonepayPlus
Guidance Note

Service-Specific
Quiz TV

SERVICE-SPECIFIC GUIDANCE NOTE

Quiz TV

Who should read this?

Any Network operators or providers that are involved in Quiz TV services using premium rate services (PRS).

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying PhonepayPlus' expectations around the operation of Quiz TV services. Quiz TV services are defined by PhonepayPlus as those services which broadcast on television where the primary function and content of the entire output is participation in competitions by viewers who are invited to call or text a premium rate number to give their answer to an on-screen question. Providers wishing to set up Quiz TV services should note Ofcom's Broadcasting Code in relation to the conduct of competitions; separate Guidance is available from Ofcom on this topic.

What are the key points?

The main issues for Network operators and providers to consider are:

- Pricing information should be clear, prominent and spoken by a presenter or voiceover in intervals of no more than ten minutes.
- Consumers should be aware of their chances of getting through to the on-screen presenter, or to any further stages of the service.
- Key information should be displayed on-screen as often as is reasonably possible.



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1. Pricing transparency

For more information on pricing information, please see the General Guidance Note on [‘Promotions and promotional material’](#)

- 1.1 As required by [PhonepayPlus’ Code of Practice](#), pricing information on-screen should be easily legible, prominent, horizontal and not require close examination by the consumer. If the information crawls or scrolls across the screen, it should not be off-screen for more than 60 seconds at a time.
- 1.2 Pricing information on-screen should make clear that the charge applies to all calls, regardless of whether the viewer is successful in getting through.
- 1.3 A presenter or voiceover should state the pricing information at intervals of no more than ten minutes. Such an announcement should make clear that the cost will apply, regardless of whether the entrant is successful in getting through to the next stage of the service.
- 1.4 Basic pricing information, including the fact that every call will be charged, should be announced at the beginning of any call a consumer makes to the service. An equivalent text message should be sent to viewers who participate via premium rate SMS.
- 1.5 Call cost warnings should be provided to all callers (other than where the number is withheld) at intervals of no less than £10 spent in each calendar day. The cost of the call will need to be linked to a standard price point, such as the BT rate, unless the provider is targeting callers exclusively from another network, in which case the standard rate from that network should be quoted. Alternatively, warnings may be provided at set call intervals (in any calendar day) that equate to accumulations of £10 of call spend (for example, call warnings at every tenth call where the cost of each call is £1). Such warning should make clear the number of calls, the cost of each chargeable call and that this may vary across different networks.

2. Chance of successful entry

- 2.1 The chances of acceptance or rejection of an attempt by a viewer to get beyond the first stage should be shown on-screen in near real time. This can be achieved, as a minimum, by a prominent, permanently-visible, standalone display (whether static, crawling or scrolling), showing the total number of entries (paid and free) to the service in the preceding 15-minute period. This should be updated at no more than ten-minute intervals. This minimum standard would mean showing at least six updates within the space of one hour.

3. Key on-screen information

- 3.1 The name and UK contact details of the provider, where not otherwise obvious, must be clearly stated as per paragraph 2.2.1 of the [PhonepayPlus Code of Practice](#). In addition, customer service arrangements should be in place via a non-premium rate customer service phone number.
- 3.2 Key terms and conditions should be provided on-screen periodically and are considered to include:
 - Cost per call/minute, regardless of getting through to the studio;
 - Any age limit;
 - The quiz question and any rules specific to the quiz, where applicable;
 - Details of any alternative free entry route (if one is provided);
 - Information as to the broad chances of acceptance or rejection, when making a call to attempt to get to air.





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Service-Specific
Quiz TV

- 3.3 Full terms and conditions should be provided via the contact means provided.
- 3.4 When offering cash prizes, a warning that entrants should be 16 years or over should be stated on-screen at regular intervals as a precautionary measure.
- 3.5 The use of clocks or countdown timers displayed on-screen should not mislead consumers into making more calls than they might otherwise have done, because they think the competition, or a certain stage of the competition, is about to close.

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PhonepayPlus
Guidance Note

Service-Specific
Subscription

SERVICE-SPECIFIC GUIDANCE NOTE

Subscription services

Who should read this?

Any providers that are planning to offer subscription services.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of subscription services, which are defined by PhonepayPlus as those premium rate services which involve a recurring premium rate charge (with the exclusion of [virtual chat services](#) – for more information on these, please see the Service-Specific Guidance on 'Virtual chat services').

What are the key points?

The main issues for providers to consider are:

- Consumers are to be made aware of any information that could affect their decision to enter into a subscription service (as defined above).
- Spend reminders should be sent once a consumer has incurred a charge of £20, and at each charge of £20 thereafter.
- Consumers must be free to exit the service at any time.
- Unless prior permission has been granted, no subscription service should charge the consumer more than £4.50 in any seven-day period.



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1. Consumer to be aware of all relevant information

1.1 All promotional material should clearly and prominently state any information that is likely to affect an individual's decision to accept a future recurring charge. Providers must take reasonable steps to ensure this information is prominently available, before the consumer begins use of the service. Relevant information will likely include, but not necessarily be limited to:

- Confirmation that the service is subscription-based (i.e. use of the word 'subscribe', 'subscription', etc.);
- The total cost of the service (including any joining fees), any incremental charges and when, or how often, those charges will occur;
- Clear opt-out information (this is normally the 'STOP' command – for further details please see the General Guidance Note on ['Method of exit from a service'](#)).

1.2 Where a subscription service is promoted by a text message or other communication to a consumer's handset, the promotion should confirm the consumer has not been charged.

1.3 For more information on the promotion of subscription services, and advice on particular issues such as the use of the word 'free', please see the General Guidance Note on ['Promotions and promotional material'](#).

2. Subscription initiation messages

2.1 Previous editions of the [PhonepayPlus Code of Practice](#) have stipulated that, upon signing up to a subscription service (i.e. providing an auditable form of consent to charge), consumers must be sent a free 'initiation' message, before incurring any charge for the service. This initiation message had to contain the same information as set out in paragraph 3.1 below.

2.2 While the current edition of the [PhonepayPlus Code of Practice](#) does not require that an initiation message is sent to consumers who sign up to a subscription service, we still strongly recommend that an initiation message is sent by providers offering subscription services, after consumers have consented to the service and before they are charged for it.

2.3 Level 1 providers who operate within the mobile sector of the PRS market may wish to consider a contractual requirement on a direct Level 2 client to send an initiation message as a useful way of ensuring that consumers have received the correct information about a subscription service, before incurring a charge. However, for the avoidance of doubt, sending a subscription initiation message does not replace a requirement for the consumer to be clear about the cost of a service, either in promotional material, or upon confirming payment in a payment mechanism, such as Payfort.

3. Spend reminders and termination of the service

3.1 Providers of subscriptions services must send any consumer participating in the service a spend reminder, at no cost, once the consumer has incurred charges of £20, or each month, whichever occurs first. Spend reminders must be sent at each charge of £20 thereafter, or each month thereafter, whichever occurs first. For the avoidance of doubt, spend reminders are a requirement of paragraph 2.3.12(d) of the [PhonepayPlus Code of Practice](#) and the specific information required is as follows:

- The name of the service;
- Confirmation that the service is subscription-based;





- What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
- The charges for the service and how they will or can arise;
- How to leave the service; and
- Level 2 provider contact details.

3.2 In certain, limited, cases, the PhonepayPlus Executive will not enforce the requirement on a provider of a subscription service to provide spend reminders as set out above in paragraph 3.1. However, these are currently limited to services that send alerts as to football or cricket matches (and/or results). This is on the grounds that information, such as goal or wicket updates, is likely to be unpredictable, and the information contained therein easily verified later, and so unlikely to be falsified by a provider in order to create extra charging. Providers who wish to seek an exemption for any other service type should contact PhonepayPlus before they begin to operate a service.

3.3 Consumers must be free to leave the subscription service at any time and no service should imply anything to the contrary.

3.4 Where a consumer is subscribed to more than one service from the same provider and texts the 'STOP' command, providers should give the consumer adequate opportunity to clarify their intentions. The provider should determine whether the consumer wishes to terminate one, more than one or all of the services they are subscribed to. Providers found to be causing confusion to consumers wishing to leave subscription services may be found to have misled those consumers under paragraph 2.3.2 of the PhonepayPlus Code of Practice.

3.5 For more information on opting out of services, please see the General Guidance Note on ['Method of exit from a service'](#).

4. Prior permission

4.1 Unless prior permission has been granted, a subscription service cannot charge a consumer more than £4.50 in any seven-day period. For more information on prior permission, please see the instructions on prior permission available on the PhonepayPlus website at www.phonepayplus.org.uk.

The role of Service-Specific guidance

Service Specific Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can 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.





SERVICE-SPECIFIC GUIDANCE NOTE

Virtual chat services

Who should read this?

Any providers that are planning to offer virtual chat services.

What is the purpose of the Guidance?

To assist providers by clarifying PhonepayPlus' expectations around the use of virtual chat services, which are defined by PhonepayPlus as those premium rate services which, while not being live conversation services, enable two or more people to exchange separate messages by recorded voice, text or pictures.

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 the number of messages they are likely to receive and the total cost for each message. Spend reminders should be sent to consumers once they have incurred a charge of £10, and at every charge of £10 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 Age verification

- 1.1 Providers should take all **reasonable steps** 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.
- 1.2 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.
- 1.3 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.
- 1.4 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
- 1.5 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 2.3.8 of [PhonepayPlus' Code of Practice](#). 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

- 1.6 What we mean by 'reasonable steps' is an expectation that all providers that are engaged in a virtual chat service should take a proactive stance in the way their staff are trained and moderated to ensure compliance with the [PhonepayPlus' Code of Practice](#).
- 1.7 In practical terms, the extent and level of moderation will depend on the size and available resource an individual provider has at its disposal. However, as a starting point, we would expect to see evidence (**see below**) of how individual operators are being trained in practice.
- 1.8 Some of the mitigating steps that may help providers to achieve consistent 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](#).
 - 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.

1.9 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.

1.10 Virtual chat services that are sexual entertainment services and require the user to be over 18 to participate should only operate on mobile shortcodes beginning with 69, 79 or 89, which are the prefixes designated by UK Mobile Network Operators for adult services; for fixed-line services, they should only operate on 0909, 0908 or 098 prefixed numbers. For more information on the appropriate number ranges, please see the General Guidance Note on ['The appropriate use of number ranges'](#).

2. Message information and spend reminders

2.1 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.

2.2 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).

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

2.3 Where one mobile originating (MO) message could result in mobile terminating (MT) messages of up to £10, the £10 should be stated as the likely cost.

2.4 All virtual chat services should, as soon as is reasonably possible after a consumer has spent £10, and after each £10 spend thereafter:

- Inform the consumer separately from the service, or any promotion, that they have spent £10; and
- Inform the consumer of the cost per minute, or per message, of continuing to use the service.

2.5 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 be terminated (i.e. the consumer should not be charged further). Providers who wish to continue to send messages to a consumer who does not continue to interact should see section 5 of this Guidance below.

2.6 Spend reminders should be auditable, and evidence of a spend reminder being successfully sent should be available on request.

2.7 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'](#).



3. Services should not mislead consumers

- 3.1** 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.
- 3.2** 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.

4. Services that use instant messaging

- 4.1** Services that use an instant messaging mechanic (i.e. where the consumer is participating in chat via an instant messaging service, such as MSN, but being charged via their mobile device) should make sure consumers are fully aware of how the service works.
- 4.2** 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.
- 4.3** 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.
- 4.4** 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.

5. Services which promote after a lull in interaction

- 5.1** Where a consumer does not continue to interact with a service after being informed that he or she has spent £10, then the service should be terminated (i.e. the consumer should not be charged further), as set out at paragraph 2.5 of this Guidance above, and paragraph 2.3.12(c) of the [PhonepayPlus Code of Practice](#).
- 5.2** 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 2 of this Service-Specific Guidance Note).





PhonepayPlus
Guidance Note

Service-Specific
Virtual chat

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