

Background

PhonepayPlus is the UK regulator for premium rate services¹, a market which in the UK is estimated to generate approximately £800m (\$1.24Bn) annually. Powers to enforce our Code of Practice are conferred upon us by the Communications Act 2003 which authorises Ofcom – the statutory regulator – to approve our Code of Practice and related enforcement powers.

The Code of Practice focuses on the six Outcomes that consumers require in order to purchase and consume a service with trust and confidence. These Outcomes are:

- **Legality** – That premium rate services comply with the law;
- **Transparency and pricing** – That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including cost, before any purchase is made;
- **Fairness** – That consumers of premium rate services are treated fairly and equitably;
- **Privacy** – That premium rate services do not cause the unreasonable invasion of privacy;
- **Avoidance of harm** – That premium rate services do not cause harm or unreasonable offence to consumers or to the general public;
- **Complaint handling** – That consumers are able to have complaints resolved quickly and easily by the Level 2² provider responsible for the service and that any redress is provided quickly and easily.

These Outcomes are supported by any detailed Rules necessary to ensure the Outcomes are achieved alongside Guidance that PhonepayPlus will publish from time to time and which is designed to help providers in achieving the Outcomes in the context of the particular service mechanic they may be operating or promoting.

The Code sets out the various parties in the value chain responsible for promoting and delivering the service. Different parties acquire different responsibilities. Network providers (such as mobile operators) and technical infrastructure providers (such as Aggregators) have a primary duty to ensure that the due diligence and on-going risk assessment and control of their clients is such as to minimise the risk of services operating in a way that breaches the Code - deliberately or otherwise. The providers of the service (content provider or merchant) are held accountable for the service promotion and content. By this means we ensure that the Code is correctly targeted on any harm or detriment that arises.

PhonepayPlus also operates a mandatory Registration Scheme which all parties in the value chain – including the operators – must register with *before* launching any PRS. This information is stored by PhonepayPlus and made accessible for due diligence purposes to any provider as part of their obligations to undertake thorough due diligence assessments before premium rate services are launched. Currently there are just over 3,000 live registrants on the Register which encompasses sole traders and companies from any part of the world who is operating a premium rate service in the UK.

¹ Premium rate services are content services charged at a premium to a telephone bill. The added charge is revenue-shared between the phone operator and the content provider.

² Level 2 provider is a defined term in the Code of Practice to denote the person who controls or is responsible for the operation, content and promotion of the service.

Complaint trends

Most complaints that PhonepayPlus receive come direct from the public albeit we will instigate our own investigation where intelligence suggests that a service may be operating in breach of the Code but seemingly without complaints being otherwise received. This is part of our wider proactive strategy to track market trends and seek to intervene and resolve emerging negative issues *before* significant consumer harm occurs.

In the financial year ending 31st March 2013 we received 12,961 complaints of which 90% related to mobile premium rate services utilising payment mechanics such as Premium SMS. This volume of complaint was significantly higher than the previous 12 months period. The main driver for this increase would appear to relate to a spate of mobile services promoted in misleading ways online and through social media using affiliate marketing programmes which were aggressive in their misleading marketing activities, especially through the provision of quizzes and competitions (to win iPads etc). The act of engagement typically involved the provision of a mobile phone number without Terms & Conditions making clear to the consumer they were entering a paid for competition where they would be charged for each question answered using Premium SMS. A number of investigations about this activity are under way and significant number of sanctions imposed (fines totalling over £3,000,000 - \$4.66m – have been imposed in the last year by PhonepayPlus in total).

Mobile cramming

The concept of mobile cramming through a Premium SMS subscription which is not presented in a transparent way so that the consumer can make an informed choice about the purchase and related costs is one that is familiar in the UK market. Problems about such payment mechanics reached their peak in 2008/9 when we received over 21,000 complaints about mobile services many of which were generated from consumers encountering bill shock through excessive subscription charges which they would not have consented to had they been aware before signing up. As a consequence of these problems PhonepayPlus undertook a comprehensive review of the mobile premium rate service market late in 2008 and in 2009 implemented a number of changes designed to address these concerns. Key to these regulatory changes was the need for all providers to obtain prior permission from PhonepayPlus before they operated any subscription billing service that charged over £4.50 in any 7 day period. A key to obtaining a prior permission licence was the need to meet a number of enhanced conditions relating to the operation of the service not least they need to secure the consumers express consent (a form of “double opt-in”) before the subscription could be initiated. Very few providers applied for a licence and a consequence of which is that the UK market now has many fewer subscription services operating and those that do tend to operate at £4.50 or below. As a result complaints about these services have fallen considerably albeit their propensity to cause harm, even at £4.50, can still exist when they are advertised in misleading ways.

Further information

For further information about PhonepayPlus and the regulations of the premium rate services in the UK market please visit www.phonepayplus.org.uk or alternatively contact:

Paul Whiteing
Chief Executive

PhonepayPlus is also a member of IARN, the International Audiotext Regulatory Network, comprising a range of premium rate services regulators from various countries (including and not limited to: Ireland, Australia, South Africa, Germany, Sweden, Malaysia, and Belgium).