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2. Change history

Version	Date	Section	Changes to Documentation
1.0.2	20/10/2011	6.1	Updated link to phonepayplus code of practice

3. Overview

This document is intended to provide Clickatell customers with an overview of UK standard rate and premium rate messaging in terms of regulatory compliance, frequently asked questions and links to associations, organizations and guidelines.

It also defines the procedure for the handling of complaints.

4. Getting started

Service providers using short codes are required to comply with PhonepayPlus' code of practice, the requirements of the Data Protection Act, the code of conduct for access to visual content by minors, European e-Money regulations and any other relevant legislation and industry codes. Failure to ensure compliance in the case of services behind short codes, may result in revenues being withheld, services being suspended and large fines being issued.

In order for your short code service to comply with the various regulations, acts and codes of conduct, it is necessary to review each of them. It is suggested you start in the following order:

Step 1:

Review the Mobile Marketing Associations' code of conduct, which will give you a good overview of all the bodies involved in the regulation of the premium rate industry. See section 8.2 (Mobile Marketing Association (MMA)).

Step 2:

Review the PhonepayPlus code of conduct, which will give you specific information related to your service. See section 6.1 (PhonepayPlus).

Step 3:

Review the UK Advertising Standards Authority CAP code of Conduct. See section 6.2 (UK Advertising Standards Authority).

Step 4:

Review the other regulations applicable to you.

4.1 Some very brief guidelines

4.1.1 Clarity of service

- Service providers are encouraged to provide consumers with a free instructional text message of what they have signed up for and the frequency with which they will receive premium rate text messages.
- Service providers are advised to ensure that all promotional material, whether through print media, the Internet, television or transmitted via a text message, contains adequate instructions on how the premium rate SMS works.

4.1.2 Unsubscribing from services

- The unsubscribe process should require no more than one text message to take effect. Any messages sent to the consumer confirming exit from the service should be free. See http://www.themda.org/documents/COP/MDA_Stop_command_July_2004.pdf or the Clickatell UK technical guidelines.

4.1.3 Pricing

- The cost of sending non premium rate text messages must be factored into the total cost by stating, for example, that "standard operator rates apply for SMS messages sent".

- You may only charge a defined maximum depending on the type of service you run.
- Information text messages relating to the cost or use of service must not incur a charge.
- If a service provider collects a mobile number, they must inform the mobile user that they are doing so and that Clickatell is the data controller.
- O2 allows a maximum of £30 per day to be billed to a subscriber.

4.1.4 Prior authorisation of services

- Text chat, contact and dating SMS services - these generally also require age verification even if non-adult (16yr minimum), with exceptions being made.
- “Pay for product” services likely to cost more than £20 require prior permission from PhonepayPlus before they can operate.
- Services delivered off the phone may only be paid for via MO premium rate.
- If your service requires pre-authorisation please refer to these URLs on the PhonePayPlus website:

http://www.phonepayplus.org.uk/pdfs_helpnotes_code11/prior_permission.pdf

http://www.phonepayplus.org.uk/service_providers/setting_up_services/prior_permission.asp

4.1.5 Outbound initiation of service

- Prior consent must be obtained before direct marketing text messages are sent as per the Privacy and Electronic Communications (EC Directive) Regulations 2003.

4.1.6 Documentation

- There must be documentation to substantiate any factual claims about service before it runs.

5. Frequently asked questions

Are there any regulations governing premium rate messaging?

Yes there are. Review section 6 on regulations and regulatory bodies.

Where can I get some help on whether my service is compliant with the regulations?

PhonepayPlus provide a free advice service. Visit <http://www.phonepayplus.org.uk>.

Can I run adult content services?

Yes, but this is subject to various conditions such as age verification, opt-in, use of certain shortcodes and notification of content to the operators, etc. Visit <http://www.phonepayplus.org.uk>.

How are complaints handled?

See the dedicated section 7 on complaint handling.

What short codes can I use?

See the UK premium rate pricing and revenue share document.

Can I use flash messages with my services?

Flash messages are messages that appear immediately on your phone and once viewed, are not saved. These types of messages may not be used with your premium rated service.

I have existing short codes. Can I move them to Clickatell?

Clickatell can facilitate this for you. We will require written evidence from your old service provider that they are happy to release the short code.

6. Regulations & regulatory bodies

The following sections list the most important regulations:

6.1 PhonepayPlus

PhonepayPlus is the industry-funded regulatory body for all premium rate charged telecommunications services.

PhonepayPlus regulate the content and promotion of services through the PhonepayPlus code of practice. It is recognised by Ofcom, and is backed by the Communications Act 2003 (Section 120).

They also investigate complaints and have the power to fine companies and bar access to services. In addition, they offer free copy advice and guidance to both existing and new service providers.

PhonepayPlus have created a set of guidelines based on this code of practice. For more information go to <http://www.phonepayplus.org.uk>, choose *Read the new Code of Practice* → *Download Code*.

Certain services require prior permission from PhonepayPlus, such as text chat services. This must be provided to us before commencement of such services. If you have further questions or require more advice, please either phone or e-mail them directly.

6.2 Advertising Standards Authority

The UK Advertising Standards Authority is the independent body set up by the advertising industry to police the rules laid down in the advertising codes. The strength of the self-regulatory system lies in both the independence of the ASA and the support and commitment of the advertising industry, through the Committee of Advertising Practice (CAP), to the standards of the codes, protecting consumers and creating a level playing field for advertisers.

The UK Advertising Standards Authority produces a number of advertising codes, to which you **MUST** comply when advertising your services.

<http://www.asa.org.uk>

6.3 Operators

The operators have released an extension to the existing code that must be adhered to.

www.clickatell.com/downloads/UKOperatorCodeExtension.pdf

6.3.1 Vodafone

Vodafone has a “*Premium rate service code of practice*” in line with the PhonepayPlus code to which you must comply. Most noteworthy are the following:

- In the UK you must not target your services to those under the age of 16.

- For adult content, we must inform Vodafone of the URLs your content is delivered from and also the short codes used for charging, subscription and delivery of content.

www.clickatell.com/downloads/vodafonePRCOM.pdf

Vodafone also has a set of rules for content in relation to adult services.

www.clickatell.com/downloads/vodafone_content_standards_for_3rd_parties_final.pdf

6.4 Other UK legislation

You should ensure you comply with the following legislation where applicable:

- The Cinematograph Films (Animals) Act 1937 - It is illegal to show any scene 'organised or directed' to involve actual cruelty to animals.
- The Protection of Children Act 1978 - It is illegal to show indecent photographs of a child (under the age of 16).
- The Obscene Publications Act 1959 - It is illegal to show a work, which is obscene. A work may be found obscene if, taken as a whole, it has a tendency to deprave and corrupt (i.e. make morally bad) a significant proportion of those likely to see it.
- Data protection Act 1998 & Telecommunications (Data Protection and Privacy) Regulations 1999 – You must ensure all personal data processed is in accordance with the requirements of these acts. See <http://www.dataprotection.gov.uk> and <http://www.informationcommissioner.gov.uk> for guidelines on compliance.
- The Electronic Commerce (EC Directive) Regulations 2002 (the "E-Commerce Regulations") – These regulations implement the Electronic Commerce Directive. This aims to harmonise the law across the various member states of the EU in relation to certain aspects of electronic commerce. See <http://www.hmsso.gov.uk/>.

7. Complaint handling

The UK premium rate market is a well regulated market. Numerous complaints from customers in the past have resulted in heavy fines to service providers and aggregators that have failed to comply with the rules and regulations.

PhonepayPlus and the operators hold Clickatell responsible for all our customer's services. It is strongly suggested that you check with PhonepayPlus to ensure compliance of your service before advertising it. Where an obvious breach is found, Clickatell will terminate the service/short code immediately to prevent action being taken against Clickatell that may affect other Clickatell customers.

Complaints can be received from a variety of sources. Where corrective action must be taken it must be done so immediately. Corrective action may entail removal of all media advertising, refunds to client, removal of the services or temporary suspension, etc. Failure to take corrective action will result in suspension of the short code and all associated services.

Customer complaint to Clickatell user (content/service provider)

If a user complains directly to you, we expect the required investigation and the appropriate action to take place. Failure to do so within 48 hrs, will result in immediate suspension of your short code.

Customer complaint to Clickatell

If your customer has contacted Clickatell, we will refer them to your customer complaint number provided in your preferences section. If no contact information exists, we will provide them with the administrator contact information of your account. We may also take immediate action depending on the severity of the complaint. Corrective action where required must be implemented within 48 hours, or your shortcode may be terminated.

Customer complaint to the operator

If your customer has contacted the operator directly, they will notify us of a complaint and we will pass this on to you for a response, or alternatively, request that you take immediate corrective action.

Customer complaint to Phoneyplus

Clickatell is seen by Phoneyplus as the service provider and we will abide by all findings by Phoneyplus. If your customer contacts Phoneyplus then the process on the following page will take place:

http://www.phoneyplus.org.uk/service_providers/complaints/default.asp. Clickatell will abide by any decision and take the required corrective action with immediate effect.

8. Associations

8.1 Direct Marketing Association

The Direct Marketing Association UK (DMA) is Europe's largest trade association in the marketing and communications sector. The DMA was formed in 1992, following the merger of various like-minded trade bodies, forming a single voice to protect the direct marketing industry from legislative threats and promote its development.

They promote best practice and raise industry standards through the DM code of practice, best practice guidelines and the DMA awards and provide up-to-the minute information, research and legal advice.

Visit <http://www.dma.org.uk>.

8.2 Mobile Marketing Association

The Mobile Marketing Association (MMA) is the premier global industry trade association for companies involved in mobile marketing and associated technologies. The MMA represents the interests of agencies, marketers, media owners, hand held device manufacturers, carriers and operators, software providers and service providers, and any other companies or individuals focused on the development of marketing via mobile devices.

The Mobile Marketing Association produces comprehensive code of conduct and best practice guidelines for the industry, based on members' practical experience and the requirements of current legislation. It also provides a central reference source to the laws and regulations affecting mobile marketing. A step-by-step guide to planning and implementing mobile marketing activity is also included.

<http://www.mmaglobal.co.uk/>

9. Other information

9.1 Pan European Games Information

The Pan European Games Information (PEGI) age rating system is a new, pan-European age rating system for interactive games. Designed to ensure that minors are not exposed to games that are unsuitable for their particular age group, the system is supported by the major console manufacturers, including PlayStation, Xbox and Nintendo, as well as by publishers and developers of interactive games throughout Europe. The age rating system has been developed by the Interactive Software Federation of Europe (ISFE) and has the enthusiastic support of the European Commission, who considers the new system to be a model of European harmonisation in the field of protection of children.

<http://www.pegi.info/pegi.jsp?language=en&content=pegi>

9.2 British Board of Film Classification

The British Board of Film Classification (BBFC) is an independent, non-governmental body funded through the fees it charges to those who submit films, videos, DVDs and digital games for classification. The BBFC classifies videos, DVDs and some digital works under the Video Recordings Act 1984.

<http://www.bbfc.co.uk/>

9.3 Independent Mobile Classification Body (IMCB)

IMCB's main responsibility is to set a classification framework for commercial mobile picture-based content, which is now available on many mobile devices. It is the responsibility of content providers to use the classification framework to self-classify their own content as 18, where appropriate. Where the content is classified as "18" under the classification framework, its access will be restricted by the mobile operators until customers have verified their age as 18 or over with their operator. Mobile picture based content may include still pictures, video and audiovisual material and mobile games, which are NOT accessed over the internet or via WAP. IMCB is a subsidiary of PhonepayPlus.

IMCB provides a non-binding classification advice service for content providers who require advice on whether any particular content should be rated as 18 under the classification framework. Where there is doubt, however, IMCB would generally suggest caution. IMCB may charge for its advice in order to recover the costs associated with providing it.

<http://www.imcb.org.uk>

9.4 Ofcom

Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

<http://www.ofcom.org.uk>