

HELP NOTE

Help Note on defining sexual entertainment services (SES) in relation to chat & dating and virtual chat services Version 1: July 2007

Introduction

This PhonepayPlus Help Note is to help service providers comply with our Code of Practice. It is a non-binding document and does not form part of the Code of Practice.

Service providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact the Executive **before** starting to operate the service.

In the interests of protecting the public, PhonepayPlus has specific requirements for SES that apply over and above the requirements applied to some other services. Section 7.11 of the Code sets out the definition and provisions relating to sexual entertainment services (SES). In addition sections 7.3 and 7.4 of the Code set out specific provisions relating to virtual chat services and contact & dating services, respectively, that will have a bearing on requirements for SES in certain circumstances.

This Help Note is to inform the industry and other interested parties of how PhonepayPlus will apply the definition of a SES in specific cases and in particular relation to services which have a chat & dating and/or virtual chat element to them. Our intention is to give the clearest possible advice and guidance on Code compliance. In many areas, however, it may not be possible to provide hard and fast advice beyond what is already in the Code. The precise nature of the service content, the context in which it is promoted and the expectations of consumers who would be using the service will all be important factors for PhonepayPlus in reaching a decision.

Definition of sexual entertainment services

The definition of SES and the contextual rule for such services under the Code are as follows:

'7.11.1 Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material indicates, or implies, that the service is of a sexual nature'

'7.11.4 Promotions for sexual entertainment services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of the service should not be contrary to the reasonable expectations of those responding to the promotion'

(Note added emphasis.)

Taken together these provisions mean that the definition of SES is thus determined by the nature of the promotion for the service and/or the actual content of the service itself. If either the promotion **OR** the content of the service is of a sexual nature then PhonepayPlus will deem the service as a whole to be a SES.

Under the definitions above, virtual chat services (regulated under section 7.3 of the Code) and contact and dating services (7.4) may be SES depending on the content or promotion of the service in question.

We are aware that for many years a number of SES, and others services which have a similar content element, such as chat, dating and virtual chat services, have operated on lower tariffs typically on the 0870 and 0871 number ranges. While such services have previously been outside PhonepayPlus' remit, this was extended by Ofcom to cover all "controlled" SES as of 5 April 2007. Furthermore, Ofcom has announced that from October 2007 all "controlled" SES are required to move to the designated 098 number range.

Some services (e.g. gay chatline services) are promoted specifically to people with a given sexual orientation. In determining whether such services are within the definition of SES, PhonepayPlus applies the same criteria as it does to services in general – viz based on the content of the service in question, the nature of the promotion and the likely consumer expectation.

The promotional material

Consumer expectation alone may determine that a service is a SES if the promotion leads to that conclusion. Consumers' initial expectations will be set by the marketing, advertising or promotional material for the service. The following principles should be borne in mind when considering the promotional material for services which are offering chat or dating type content:

- If a service is advertised in a way that suggests the content is "sexual", then we will consider that the user will have expectations that it is and may use the service as if it were a SES. We will therefore consider it as a SES.
- The words and pictures used in the advert are likely to be critical to determining whether we would consider the service as a whole to be a SES. Pictures depicting people in sexually provocative positions or wearing skimpy clothing would be likely to suggest the service is of a sexual nature.
- Some types of wording used in promotional material are more likely than others to indicate that the service is a SES. As a guide, words such as "horny", "hot", "sexy", "dirty", "hard", "wet", "steamy", "fantasies", "explicit" and "tease" may be considered indicative of a SES. This is not an exhaustive list of words, and the context of the use of such words in promotional material will also be taken into account when making judgments and decisions.
- If a non-sexual chat or dating service is advertised in a nondescript way alongside services which **are** SES, then the user might assume that this service is also a SES and respond to it accordingly. This may result in 'adult' contributions that make the actual content SES. We will not judge such promotions necessarily to be SES but consideration will need to be given to

users' expectations looking at the promotion, the context in which it has been placed and the impact that it has on their interaction with others in the service.

- If a given service is promoted in the same way in a top-shelf publication or on an adult website as well as in a mainstream newspaper, then the advertising environment and the different expectations of the different client groups may impact on how they interact with the service to the extent that, for some users, the service may be seen as a SES. However, we also note that some services may deliberately be promoted in this way so as to provide a "contrast". Therefore, it is likely that any promotional material falling into the category will be judged on an individual basis.

The content

Just as the promotional material can shape user expectations, so too can the operation of the service adopted by the service provider. The following principles should be borne in mind when considering the service operation:

- The content/entertainment in some services is provided directly by the service provider rather than by participants. Here, whether the service is classed as a SES or not may depend on the content provided.
- The Code makes clear at para 7.3.2a that virtual chat service providers must take all reasonable steps to discourage sexually explicit chat on services which are advertised in generally available media. PhonepayPlus will give consideration to the steps taken by service providers to discourage sexually explicit conversations. These may be through warnings on the service and by moderation or monitoring as well as by other means.
- Assuming that the publicly accessible aspects of the service are moderated to minimize sexually explicit content, then PhonepayPlus would take this into account in determining whether the service as a whole was classified as a SES, even where any private element contained sexually explicit content. One factor PhonepayPlus would consider, in this context, is whether the service provider had fulfilled its Code obligations to take reasonable care to ensure that only people over 18 use the service.
- We would expect some safeguards to be in place for service providers to demonstrate practically that they had taken reasonable steps to stop the service being used as a SES where it is not intended to be. Reasonable care may be demonstrated by a combination of: filter mechanisms, introductory messages stating what is and is not allowed on the service, service monitoring to ensure that the service is not being used as a SES and promotional material not being presented in a way that suggests the service may be a SES.

Compliance advice

Compliance advice is available, free of charge and in writing, from the Executive. Please note that Executive advice is not binding on the Board, although a record of advice is maintained and taken into account should a service later be found to be in breach of the Code.

Further information

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