

RADIOCENTRE CODE OF PRACTICE ON PREMIUM RATE INTERACTION

BACKGROUND

This Code is intended to provide a set of guidelines and advice to radio broadcasters that use, or are considering using, premium rate services. In particular, the provisions in this Code are designed to enable radio stations to plan and manage premium rate activity in accordance with the principles of honesty, fairness, transparency and accountability.

This Code should be read in conjunction with the RadioCentre Principles of Editorial Trust. Both Codes are voluntary, but adherence to both is a condition of RadioCentre membership and RadioCentre reserves the right to suspend or cancel the membership of any broadcaster that is found to be wilfully or repeatedly in breach of these Codes.

“Premium rate” is defined as a form of communication or interaction between a consumer and a radio station where the consumer pays a cost additional to their normal usage costs for that form of communication, in return for which the consumer expects the provision of a service by the radio station. The communication will usually be a voice telephone call (via landline or mobile) or a text message from a mobile phone, but may also include interaction via a personal computer or digital TV. The additional cost will usually be in the range between 10p and £1.50. For premium rate text services, the charge may be levied by the receipt of an automated ‘bounce-back’ response message from the station to the consumer (‘mobile terminated’) or by the sending of a message by the consumer (‘mobile originated’) but the Codes and rules apply equally in either case. The services provided by the radio station may include the opportunity to communicate with a presenter and have a message, request or dedication read out on air; the opportunity to enter a competition; a vote in a poll; or registration for a subscription service to receive further messages or mobile content.

The terms **“broadcaster”**, **“group”** and **“station”** are used throughout this Code to refer to the companies and/or licensees responsible for the management and broadcast output of licensed radio services. In general, “broadcaster” is intended to mean a group or station, whereas “group” and “station” are, respectively, to mean one and not the other. However, these terms should be interpreted in the context of the individual Code sections in which they appear as well as the context of the group or stations to which they are applied, and the nature of any particular on-air feature. Common sense should be applied in determining the most appropriate and effective person within a group or station who should carry out the actions proposed in this Code.

This Code does not seek to describe the full detail of the regulatory Codes and laws that already exist to govern premium rate interaction in broadcasting, adherence to which is a condition of broadcasting licences. Stations must adhere to all those Codes, and should seek legal advice if in doubt. In particular, stations should be familiar with, and have the resources and systems, to ensure compliance with:

The Ofcom Broadcasting Code. This Code applies to any broadcast output and, for premium rate activity, will apply particularly to errors or faults in the on-air execution or promotion of competitions and features. The Code is enforced by Ofcom which may investigate complaints received from third-parties or instigated on its own initiative. Ofcom has a broad range of powers to sanction broadcasters for breaches of its Code, including broadcast apologies, financial penalties and the shortening or revocation of broadcast licences.

The PhonepayPlus Code of Practice. This Code applies to all those in the premium rate value chain including network operators (for the delivery of premium rate messages and calls); service providers (for the processing and handling of premium rate messages and calls); and information providers, which includes broadcasters (for the promotion and execution of premium rate features). The Code is enforced by PhonepayPlus which may investigate complaints received from third-parties or instigated on its own initiative. PhonepayPlus is empowered to impose financial penalties on any company in the premium rate value chain for faults or errors in the execution, management or promotion of premium rate activity. It operates under delegated authority from Ofcom and may refer serious cases to Ofcom for further investigation and sanction.

The Broadcast Committee of Advertising Practice (BCAP) Radio Advertising Code and the **Committee of Advertising Practice (CAP) Code of Advertising, Sales Promotion and Direct Marketing.** These two Codes regulate the promotion and marketing of products and services, including premium rate services, via display advertising. The BCAP Code will apply to any spot advertising on a radio station of any premium rate service being promoted by any client (including 118 directory enquiries services), but not on-air promotions of the station's own activity, which will be covered by the Ofcom Broadcasting Code. The BCAP Code will also apply to any advertising on television of a radio station's premium rate services. The CAP Code will apply to any advertising in non-broadcast media (including newspaper, outdoor, direct mail and online other than the station's own website) of the radio station's premium rate activity. Promotion of the station's premium rate services on its own website would not fall under either Code, but would still be regulated under the PhonepayPlus Code of Practice. The Codes are enforced by the **Advertising Standards Authority (ASA)**, which considers complaints received from third parties and may investigate advertisements on its own initiative. The ASA can require an advertisement to be re-scripted, edited or re-made, or withdrawn from circulation altogether. It can refer persistent or repeated breaches of the BCAP Code to Ofcom for further investigation and sanction.

The Gambling Act 2005. This Act regulates gambling activity in Great Britain (separate legal arrangements exist in Northern Ireland). Its provisions cover, amongst other things, prize competitions that combine payment to enter (which includes premium rate entry) with either random selection of contestants or winners (a lottery) or prediction of the outcome of a future event (betting). Stations are strongly advised to seek legal advice before running a competition that includes either of these combinations of elements. The Act is enforced principally by the Gambling Commission, which has limited regulatory powers but will take legal action, including criminal prosecution, against companies it feels are in breach of the Act.

The Data Protection Act 1998. This Act regulates the gathering, storage and use of data and information about individuals and therefore has direct relevance to the personal data (e.g. name and contact information) collected in the process of a premium rate competition. Stations should seek legal advice if they are unsure of the Act's requirements. Compliance with the Act requires, amongst other things, that stations ensure that information about individuals is:

- used only for the purposes to which its owner has consented
- stored for no longer than its necessary for those purposes
- accessible to only those people who need access for those purposes
- kept secure against unauthorised access, theft or destruction
- made available to an individual who asks to see what information a radio station holds on them.

The Act is enforced by the Information Commissioner which can investigate complaints from the public and may take legal action against companies it feels are in breach of the Act.

Other Codes or laws may apply to premium rate activity. Stations should seek advice before undertaking new activity to ensure that they understand the rules that apply. They should also ensure that they refer to the latest editions of relevant regulatory Codes.

This Code has been approved by the Board of the RadioCentre. Any revisions or amendments will also be approved by the Board and communicated to all RadioCentre members.

This document has been prepared by RadioCentre to assist members when running premium rate services. It is not, and does not purport to be, legal or other advice; nor is it comprehensive but is a summary only. Members should take their own advice and review relevant legislation and documents made under, or pursuant to, relevant legislation in relation to matters covered by this code. RadioCentre accepts no liability in relation to this code or in relation to any act or omission arising from it.

STATEMENT OF PRINCIPLES

Commercial Radio exists to entertain and inform its audiences. Listener interaction has been at the heart of Commercial Radio throughout its history. Listeners enjoy interacting with commercial stations, whether it be through phone-ins, competitions, polls or a range of other programme features. The production of these features and the provision of prizes incur costs that stations are entitled to recoup from, amongst other sources, premium rate telephony services. Use of premium rate services (PRS) is not only a legitimate means of covering the costs of production but also of generating additional revenue.

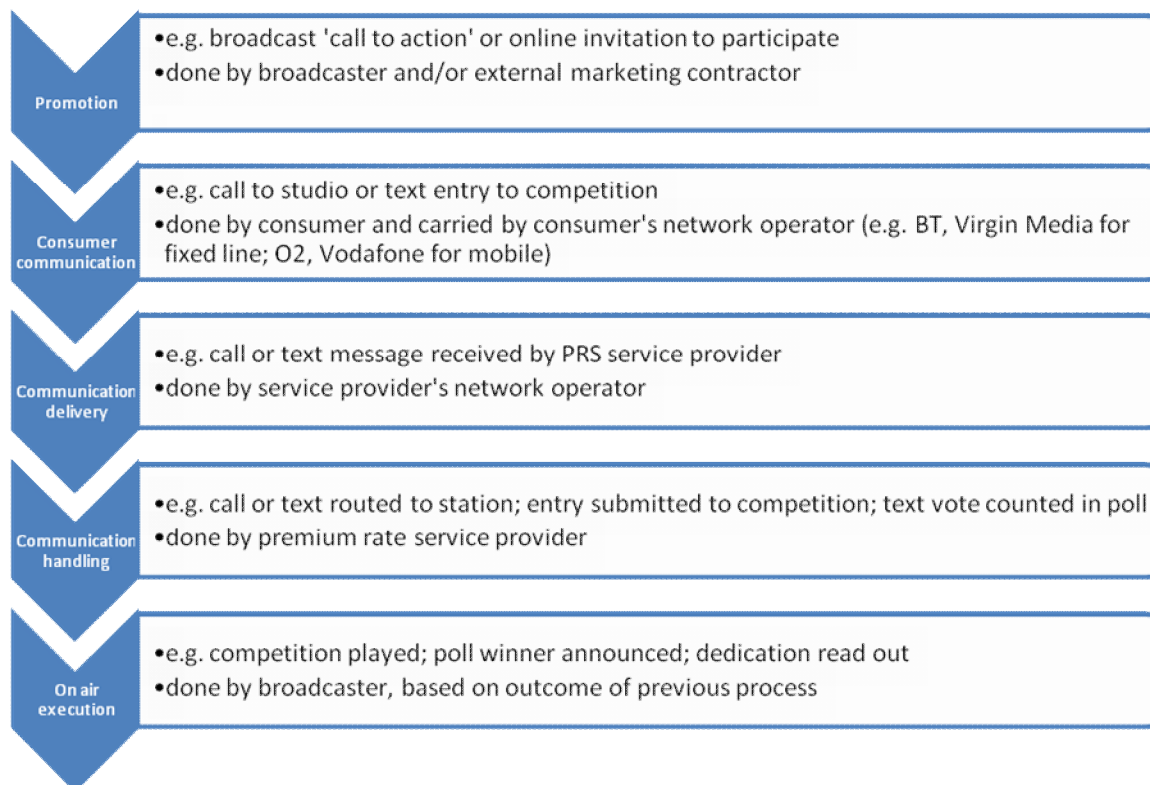
However, a listener who interacts with a radio station via PRS is no longer just part of a wider audience – they become individual consumers, with rights and expectations that derive from the cost to them of their interaction. This creates obligations for the station to ensure that listeners understand the costs they will incur, receive the service they believe they are paying for and are able to obtain redress in the event of a fault.

Radio stations using PRS should apply the principles of transparency, honesty and fairness. These principles apply in all station activity, from planning to production to broadcast and in all dealings with both the audience as a whole and listeners individually. In applying these principles, and ensuring regulatory compliance, stations should ensure they have given due attention to all of the following aspects:

- Technical standards and relationship with service provider
- Planning and production
- Presentation and output
- Complaints and fault resolution
- Advertising, sponsorship and promotion.

THE PREMIUM RATE VALUE CHAINS

Premium rate activity is often complicated, involving multiple parties in a 'value chain' – a chain of processes and intermediaries – between the consumer and the broadcaster. A typical value chain may look like this:



It is Ofcom's intention to make stations responsible and accountable for the entire value chain, subject to consultation later in 2009. This is likely to require stations to ensure they have adequate oversight of the arrangements they put in place to manage interaction with listeners. In particular stations should be aware of their responsibility for the entire value chain – including those aspects managed by third party contractors. This Code is intended, in part, to advise stations on how they can meet this obligation.

Within radio stations, there is a further value chain that deals with the internal processes involved in creating, planning and executing a premium rate feature. A value chain for a sponsored premium rate competition, for example, might look like this:



Stations are responsible for ensuring that there is effective communication between all parties along this chain, in both directions, and that all parties understand the regulatory obligations that apply to them.

CODE OF PRACTICE

1. Technical Standards and Relationship with Service Provider

Principle: Broadcasters should apply due care in the selection of premium rate service providers.

1.1 As far as possible, broadcasters should satisfy themselves that their service provider understands the regulatory obligations that apply to both broadcaster and service provider, and has the technical competence both to meet its obligations and assist the radio station in meeting theirs.

Principle: Broadcasters should ensure that they manage the relationship with their service provider.

- 1.2 Broadcasters should ensure they know who is in the entire process chain (including network operators, service providers, aggregators and other intermediaries) and ensure, as far as possible, that each is technically competent and capable of ensuring regulatory compliance. Stations should ensure, as far as is reasonably possible, that for each stage of the value chain that involves one party dealing with another, those dealings are governed by written contracts or agreements that provide for the clear identification of liability in the event of fault or failure.
- 1.3 The relationship between broadcaster and service provider should be a contractual one and should ideally include a service level agreement, or equivalent, with the following provisions:
- immediate notification by either party to the other of any fault identified, whether or not a consumer complaint or query is received
 - contact details, including out-of-hours contacts, in the event of an emergency or a major fault requiring urgent investigation
 - minimum performance standards detailing timescales within which reported faults must be addressed and resolved
 - process for correctly identifying party at fault wherever they may be in the value chain
 - procedures for ensuring that the party at fault is liable for the payment of any refunds or financial penalties.
- 1.4 Broadcasters should ensure that their service provider collects and maintains data of all calls or messages received on a premium rate to enable the provision of accurate usage data in the event of a fault or investigation, and identification of affected consumers if refunds need to be offered.

Principle: Broadcasters should ensure that their own technical systems and process are robust, regularly checked and that they facilitate fault-finding.

- 1.5 Broadcasters should ensure that technical systems are routinely and regularly checked. Premium rate voice lines should be called at appropriate intervals by a member of station staff to ensure that calls are answered and routed correctly, that any interactive voice response (IVR) systems are working correctly, and that calls are being charged as advertised. Text (SMS) lines should be tested to ensure that keywords are working correctly, that messages are being routed to the correct destination and that the correct charges are being applied.
- 1.6 Broadcasters are advised, when launching new premium rate features, new numbers or introducing new keywords, to ensure that robust testing of technical systems and on air mechanics takes place prior to launching the feature on air.
- 1.7 Broadcasters should ensure that they have procedures in place that allow them to identify when faults occur, wherever within the value chain the broadcaster can reasonably be expected to detect them, even if no consumer has made a complaint. Such faults should include unexpectedly low volumes of interaction, or unusual patterns in interaction, which might suggest a problem in communication delivery at some point in the value chain; unexpectedly high volumes of incorrect or unusable messages, which might suggest a problem with either the delivery mechanism or listeners' understanding of the mechanic; extremely high message volumes which might strain the capacity of systems in the value chain; an external threat to the station's own technical systems; a failure, not previously detected, to broadcast or publicise correctly all the information required for the relevant feature or competition; a major failure within any of the broadcasters' systems that are critical to the execution of the premium rate feature, such as power, telecommunications lines, switchboards or computer networks. They should also ensure that procedures exist

and are communicated to all relevant staff for responding to identified faults and ensuring, when faults occur, that staff and listeners are swiftly informed as appropriate.

- 1.8 If a fault is identified in a system not under the direct control of the broadcaster, procedures should be in place to ensure swift communication by station staff with whoever is responsible for the faulty system and rapid resolution of the fault.
- 1.9 Where premium rate services are used in competitions – whether run or promoted on air, online or via any method – broadcasters should ensure that their technical systems are capable of providing evidence that the selection of contestants and/or winners has been random or, where the competition is clearly advertised with some other non-random selection process, that that process has been applied fairly and consistently with the published rules. Such evidence should be capable of being audited and verified by a third-party auditor or appropriate regulatory body (see also rule 3.9).
- 1.10 Broadcasters should ensure that their technical systems are secure and, as far as possible, capable of resisting external attempts to manipulate or disable them (such as hacking or denial of service attacks) and of any virus or other malware designed to disrupt their use.
- 1.11 Broadcasters should ensure that any data collected and stored on individual consumers are stored securely, are used solely for the purpose to which the consumer has consented, and in all other respects are used in a manner consistent with the Data Protection Act 1998 and any other laws or regulations that apply to such data.

2. Planning and Production

Principle: New premium rate activity should require authorisation by senior management.

- 2.1 The use of premium rate services for the first time is a significant business decision that can involve significant financial cost in both implementation and ensuring regulatory compliance. Such a decision should be made by a designated Director of the Board of the licence-holding company (or an appropriate equivalent). In making such a decision, the designated Director (or equivalent) should satisfy themselves that they fully understand the practical and financial implications of using premium rate.
- 2.2 The use of existing premium rate lines for a new feature should normally require the approval of a senior manager within the relevant station or groups of stations.

Principle: Broadcasters should consider regulatory and compliance issues at all stages of the planning and production of any feature that involves premium rate services.

- 2.3 Planned features using premium rate services should be detailed in writing before the feature is launched on air, in order to provide a clear paper trail in the event of an investigation. The written details should include:
 - the name of the station(s) on which the feature is to be aired
 - the times and dates of the feature, including both its overall duration and the times of on-air executions
 - the nature and purpose of the feature (e.g. prize competition, poll, commercial promotion, etc.)
 - the mechanic

- for competitions, the method(s) of entry
 - the method of charging and the cost per call or text
 - the method of selecting calls or messages or, for competitions, of selecting entrants and winners
 - the rules and terms & conditions that apply to participation, highlighting any significant elements such as restrictions on eligibility to participate
 - for competitions, full details of the prize
 - a presenter script.
- 2.4 These written details of the feature or competition should be circulated to all staff involved in the feature, including those in programming ad presentation, production, sales and S&P, marketing, online and technology, as appropriate. It is recommended that circulation is by email, or some other method that provides a record of who has received the information and when, in case of an investigation.

3 Presentation and Output

Principle: pricing information should be clear and prominent.

- 3.1 For premium rate features where the likely call or text cost exceeds 50p, or where children are likely to participate, the PhonepayPlus Code of Practice requires that information **MUST** be given with each on-air execution, and in all promotional references to the feature, whether on air, online or in any other form. It is strongly advised, where it is mandatory to give cost information, that the feature is scripted and that presenters are instructed not to deviate from the script, in order to ensure that accurate and clear information is given with every on air execution, as required.
- 3.2 For premium rate features where the likely call or text cost is 50p or less and children are not likely to participate, providing cost information is not mandatory, but it is recommended as good practice that cost information be provided from time to time.

Principle: stations shall treat their listeners in a spirit of honesty, integrity, accountability and openness, and adhere to the RadioCentre Principles of Editorial Trust.

- 3.3 Broadcasters should not, either through live presentation or pre-recorded production, do anything to encourage excessive or needlessly repeated entry in a premium rate feature or competition in a way that is designed to increase station revenues and which will also have the effect of significantly increasing the cost to a listener.
- 3.4 All premium rate communication should be received and processed in some way. Even if the message is simply a greeting to the presenter, and there is no particular expectation that the message will be broadcast, it should still be received and handled by someone in the radio station. It is not acceptable for any premium rate message to be received by a radio station but then left unread.
- 3.5 All paid-for messages should be give equal treatment to all others.
- 3.6 Broadcasters should be honest about what listeners can expect to get if they send in a premium rate message. For example, if listeners are invited to send, via premium rate, a message to be read out on air, or a request for a song to be played on air, then their message must have some chance of being considered to be read or to influence song selection.

Principle: As with all competitions, those conducted via premium rate should be fair and transparent.

- 3.7 It should be clear to listeners which methods of entry are available to them. Where there are multiple routes of entry, none should be favoured over others in the selection of contestants or winners.
- 3.8 Listeners should clearly understand the mechanic of any competition, including any entry requirements and any tasks or challenges they will be required to perform in order to win.
- 3.9 Where winner or contestant selection is random, this should be stated clearly, and the selection process genuinely and demonstrably random. Where winner or contestant selection is intentionally not random this should also be clearly stated, and the criteria on which contestants or winners will be picked should be made clearly and prominently known. Broadcasters should not claim to be using a non-random selection method when, in fact, they are – for example claiming that ‘the one-hundredth caller will be chosen’ when, in fact, a random caller will be chosen. Stations should have systems in place that allow them to prove what winner selection method was used, and prove that it was used fairly and in accordance with the published rules (see rule 1.9).
- 3.10 Where random winner selection is used, nothing should be done that changes the odds of being selected depending on the time or date of entry – such as providing additional clues, or changing the frequency or number of entries taken – unless it is clear from the start of the competition that this is how the competition mechanic will work.
- 3.11 Competitions should not be unfairly manipulated solely in order to control the time at which a prize is won – either by extending the duration of the competition to increase its exposure, or curtailing it in order to resolve a competition within a pre-determined time-span. If it is stated that the competition could be won in any one of multiple executions over a prolonged time-span, then that must genuinely be the case – even if the prize is won in the first execution or, ultimately, not at all.
- 3.12 All competitions should have written terms and conditions, which should be available on the station’s website and on demand from the station. Important terms and conditions – such as significant restrictions on eligibility to enter, eligibility to win, or on the availability of the prize – should be made particularly prominent, and the most significant should be broadcast on air as part of the promotion for the competition. To reduce the risk of dispute, stations are advised to make listeners aware of competition terms and conditions on a regular basis.
- 3.13 Competitions should have a clearly stated closing date and time. Once advertised, this time should not change. Stations should ensure that they have the systems and personnel in place to close a competition precisely at the time stated so that all entries received afterwards will not be eligible to win. Presenters should ensure that listeners are made aware when the closing time is approaching, and when it has been reached, so that no one is encouraged to enter after the closing time has passed. Stations are advised to have a contingency plan in place for any competition in case insufficient entries are received to complete the competition and award the prize. Any such contingency plan should be consistent with the published rules of the competition and stations should ensure that those rules include the possibility of the contingency plan being put into effect, detailing the circumstances in which that would happen.
- 3.14 No winner should be selected prior to the closing time of a competition, unless it is clear from the broadcast promotion that there will be multiple winners selected over a long period of time during which entries can still be submitted.

- 3.15 Premium rate features should not normally appear in pre-recorded or automated output, unless as part of a long-running competition or feature where there is no expectation of an immediate outcome, and entries or messages received will be given the same treatment and have the same chance of winning as those received during live output. Where content is repeated on air, or made available online or by some other time-shifted mechanism, invitations to participate in premium rate features should be removed or edited in such a way as to make clear that such participation is no longer possible.
- 3.16 Premium rate competitions must comply with the provisions of the Gambling Act 2005, in particular those that relate to prize competitions, lotteries and betting. Stations are advised to seek legal advice on this issue.

4 Complaints and Fault Resolution

Principle: All complaints about premium rate services, whether received from a regulator or a member of the public, shall be investigated thoroughly and fairly.

- 4.1 Broadcasters must make available a non-premium rate form of communication available to consumers who wish to complain about a premium service.
- 4.2 Broadcasters should keep comprehensive, written records of any investigations carried out, and ensure that they communicate fully with relevant service providers to gather data, and identify and resolve any faults.
- 4.3 Broadcasters must comply fully with any requests for information from any relevant regulatory body including Ofcom, PhonepayPlus, the Advertising Standards Authority, the Gambling Commission or the Information Commissioner's Office. Where the focus and scope of a regulatory investigation is clear, broadcasters should seek to disclose any and all relevant information, whether or not it has been directly requested.
- 4.4 If a complainant is not satisfied with a station's response to a complaint about a premium rate feature or, in any case, if the station is responding a second time about the same complaint, the station should inform the complainant of their right to take their complaint to the appropriate regulator.

For complaints about the on-air execution of a premium rate feature, or any other broadcast aspect of the feature, complaints should be made to:

Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA
Tel: 0300 123 3333
Textphone: 0300 123 2024
Tel (Welsh): 020 7981 3042
Web: <http://www.ofcom.org.uk/complain/progs/>

For complaints about other consumer aspects of premium rate activity, including billing, station website promotion and service delivery and quality, complaints should be made to:

PhonepayPlus
Freepost
WC5468

London
SE1 2BR
Tel: 0800 500 212
Text: 020 7407 3430
Web: http://www.phonepayplus.org.uk/numberchecker/ComplaintForm_Numbercheck.asp

For complaints about display advertising of a radio station's premium rate features, or about spot advertising running on the station for a client's premium rate activity, complaints should be made to:

The Advertising Standards Authority
Mid City Place
71 High Holborn
London
WC1V 6QT
Tel: 020 7492 2222
Textphone: 020 7242 8159
Web: http://www.asa.org.uk/asa/how_to_complain/

For complaints about possible misuse of personal data, including the use of data for marketing purposes without consent; concerns about data security or privacy; or failure to disclose to an individual the data held on them, complaints should go to:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 08456 30 60 60
Web: <http://www.ico.gov.uk/complaints.aspx>

For complaints that a premium rate feature might constitute illegal or unlicensed gambling activity, such as a lottery or betting, complaints should go to:

The Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP
Tel: 0121 230 6666
Web: <http://www.gamblingcommission.gov.uk/Client/detail.asp?ContentId=296>

- 4.5 Stations are reminded to keep safe audio recordings and any other documentary evidence relating to any complaint received from a listener or consumer. It is an Ofcom requirement that recordings of output that has been complained about are kept for a minimum period of 42 days **from the date of the last communication with the complainant**, irrespective of the date of broadcast.

Principle: Broadcasters should be able to identify, locate and rectify faults anywhere in the value chain, regardless of whether or not a complaint is received.

- 4.6 If a broadcaster identifies a fault in a feature using premium rate, whether or not a complaint has been received, the broadcaster must immediately determine if the feature or competition can be completed fairly and without any detriment to any

existing or future paying participant. If completion of the competition is not possible, the broadcaster should abort the feature, make any appropriate announcements on air, and offer full refunds to those who have already paid to participate.

- 4.7 Where a feature is aborted and refunds offered, announcements should be made on air and on station websites. Stations should monitor the uptake of refunds, and make further announcements if it appears that previous messages have not been received by consumers.
- 4.8 Serious faults or potential breaches of either the Ofcom Code or the PhonepayPlus Code – including any incident that involves offering refunds to significant numbers of consumers, any repeated errors, or any incident that may be the result of deliberate misconduct by any person or persons anywhere in the value chain – should be notified immediately to the most senior level of management in the company, as well as to both Ofcom and PhonepayPlus.

5 Advertising, Sponsorship and Promotion

Principle: All advertising or promotion for premium rate services – whether run by the station or by another party – should adhere to the principles of honesty, integrity and transparency.

- 5.1 Broadcasters should observe the provisions in the Ofcom Code requiring separation and transparency for advertising premium rate features. Premium rate services that have no on-air component, and cannot therefore be considered programming or programme-related material, must not be promoted in editorial or programming time.
- 5.2 Broadcasters should seek to assure themselves that advertisers promoting premium rate services are offering services that are legitimate, legal and fair and that they have taken the necessary steps to ensure regulatory compliance. Advertisements for premium rate services should comply with the Broadcast Committee of Advertising Practice (BCAP) Radio Advertising Code and include all necessary cost information as well as enabling listeners to contact the advertiser via a non-premium rate, UK-based form of communication.
- 5.3 It is a requirement of the BCAP Code that advertising for premium rate services must be centrally cleared by the Radio Advertising Clearance Centre prior to broadcast. Broadcasters should ensure that any such clearance is current and that any applicable conditions have been satisfied in the final version of the advertisement.
- 5.4 In the promotion of their own premium rate features, broadcasters should ensure that all messages, whatever their form or delivery platform, are transparent, compliant and consistent with each other.