

Code of Practice for the sales and marketing of subscriptions to mobile networks

Introduction

There are in excess of 66 million active mobile accounts in the UK. In search of ever improving tariffs and services, customers regularly change their packages, either staying with their current network on a different tariff or switching to another network. In order to serve this customer demand, there is intense competition within the mobile retail segment, through direct sales, service providers and resellers, to retain and/or acquire customers. In general, this is of great benefit to customers.

However, because of the intensity of the competition, it is also necessary to guard against the risk of customers being confused or misled during the sales process. A customer must be clear as to which network and tariff he or she is being signed up to and what his/her obligations will be under the terms of the contract with the mobile operator and, if applicable, the reseller.

As a consequence, the signatories named below have agreed this code of practice (the "Code"), defining the principles of best practice for promoting and selling mobile airtime subscriptions, including pre-pay airtime, ("mobile services") services and handling any complaints arising from the sales process.

Under the Code, mobile operators have flexibility as to how they apply these principles to their respective retail channels. For example, they may forbid a particular mode of selling altogether or set out terms and conditions in their contracts with third party dealers/distributors/resellers (collectively referred to here as resellers) following the principles of the Code. However, nothing in the Code limits the rights of any party to take any relevant action against any other party in accordance with their legal and/or contractual rights.

The following sections set out the guidelines as to what constitutes acceptable practices to be followed by those marketing and selling mobile services:

Training

The representatives of all organisations selling and promoting mobile services should be properly trained and have sufficient understanding of the products and services they are promoting and selling. Topics to be covered in any training process should, at a minimum, include

- the relevant operator's customer terms and conditions,
- the terms and conditions applied by the reseller (if applicable)
- the process for ordering the mobile handset and subscribing to the network service,
- the relevant principles of consumer protection law,
- details of the tariffs offered by the operators and charges that will be incurred by customers and methods of payment;
- customer cancellation processes and
- procedures for handling customer complaints.

Applicable laws

The sales and marketing process must be carried out in accordance with all applicable laws and regulations. An indicative (non-exhaustive) list of relevant legislation is provided in the Annex to this Code. This list does not constitute legal advice. All operators and their resellers are responsible for consulting their own advisers, as appropriate.

Customer contact

- a) All approaches to current or prospective customers should be made at an appropriate time of day. For example, if the approach is to be made by telephone, the call must be made at a reasonable time of day, say after 8.00am and before 9.00pm.
- b) Customers that have signed up to the Mailing Preference service, Telephone Preference Service, the Fax Preference Service and the E-mail Preference Service must have their wishes respected.
- c) All data used to contact prospective customers must be obtained in a manner that complies with UK data protection law.
- d) All automated calling equipment should be used in a way that is compliant with Ofcom's policy for preventing the persistent misuse of electronic communications networks (see Annex).
- e) At the start of any telephone call with a consumer, the caller must introduce himself/herself clearly and fully and state the purpose of the call, for example:

“Hello, my name is and I am calling from [organisation], an authorised dealer for [network].”

The expression ‘calling on behalf of [network]’ should not be used.

- f) Representatives should not abuse the trust of vulnerable customers; e.g. those who are elderly or whose first language is not English.

Sales and marketing campaign records including recordings of conversation should be maintained by the organisation making the sale or conducting the marketing campaign for six months. These should include the date and the time of the conversation with any contacted person and sufficient information to permit the identification of the representative involved, so as to assist in dealing with any subsequent complaint or inquiry, if required.

Entering into a contract

Before accepting an order, the reseller must take all reasonable steps to ensure that the contacted person understands that he/she is entering into a contract, the key features of that contract and the names of the contracting parties.

Once the contacted person has agreed to place an order, he or she must be furnished with the appropriate information, which, at a minimum, should include:

- a. A clear statement that a contract is being entered into, and the key features of that contract including;
 - i. any minimum period of contract,
 - ii. minimum contract charges, and
 - iii. any early termination charges.
- b. The name of the company or companies with which the customer is contracting and its contact details (generally the reseller for the handset, and the operator for the airtime. Sales incentives can come from both parties. The details of each must be made clear to the customer, if applicable).
- c. Details of the cancellation rights that apply to the product and /or services the customer is purchasing, including the period in which any cancellation rights can be exercised and confirmation that the customer has the right to change his or her mind without cost during the cancellation period.

Sales incentives

If any part of the offer to the consumer contains a sales incentive, the consumer must be provided with a clear written statement as to which legal entity (i.e. dealer or mobile operator) is making the offer and is undertaking to meet that obligation. The terms of the offer must be clearly and prominently stated in writing, be made in good faith and not be unduly restrictive.

For example, in relation to a cash back offer, the following terms should be regarded as unreasonable:

- a requirement that the customer submits their original statements – copies of statements should be acceptable proof;
- charge for processing a cash back claim;
- a requirement that cash back claims are submitted within an unreasonably short period (such as anything less than 60 days, for example);
- terms stating that a cash back payment will not be made if the customer has an outstanding balance on their account.

The following sections cover the mobile operators' undertakings

Due Diligence

Mobile operators (or, their appointed distributors, as applicable) will carry out due diligence on all organisations with whom they contract and appoint to promote the operator's network services. In particular they will:

- Carry out a credit reference search and check that the company does not have a history of failing to meet its undertakings to creditors.
- Check the organisation against any information supplied to the operator by Ofcom and/or the local Trading Standards office to ensure that the organisation

concerned has not had contracts terminated with other mobile network operators for breaches of this Code.

- Check that the directors of the organisation concerned have not been directors of other resellers that have filed for bankruptcy or gone into administration owing money to the operator's customers
- Make spot checks, on a sample basis, to assess whether due diligence information remains up-to-date and relevant.
- Reserve the right to request copies of the retailers customers terms and verify that that are compliant with the operator's minimum business terms (which will include reference to applicable laws)

Handling of complaints

The mobile operators have in place processes for handling complaints about the sale and promotion of their mobile services. These processes include handling complaints from customers that have been subjected to 'slamming' or who are having difficulties in making claims on sales incentive schemes and advising them on how to obtain redress. Mobile operators do not, however, underwrite the obligations of other legal entities.

If a mobile operator receives a complaint in relation to the sales and marketing activities of another mobile operator's dealer in contravention of this code, the complaint will be passed to the mobile operator whose dealer is the subject of the complaint for investigation. Within a reasonable time frame agreed between the respective operators, that mobile operator will respond to the complainant mobile operator with the findings of its investigation.

Where a customer's complaint is found to be valid, if practical and appropriate, the complainant mobile operator will endeavour to re-instate the customer's original contract and telephone number.

Monitoring of compliance with Code requirements and escalation procedures

Mobile operators, through regular monitoring, will take reasonable steps to make sure that their resellers are complying with the Code.

On discovery of an instance of non-compliance with the Code, mobile operators will vigorously pursue the case and will request that the reseller promptly investigates the complaint and in no more than ten working days provides an explanation for any apparent breach of the Code.

If the reseller fails to provide an explanation or the explanation is not satisfactory, the mobile operator will escalate the complaint to senior management within the reseller's organisation. In the case of serious or repetitive breaches of the Code, mobile operators will send a written warning to the reseller. The written warning will include details of sanction(s) that will be imposed on the reseller should the reseller continue to be in breach of the Code.

Providing always that it acts proportionately, a mobile operator will invoke contractual penalties, including termination of the reseller's contract, if it fails to cease and desist its non-compliant behaviour after a written warning.

In the event that a mobile operator terminates a reseller's contract for breaches of the Code (as opposed to the normal course of business), the mobile operator will inform Ofcom and their Trading Standards home authority.

Monitoring of complaints

On a regular basis, under the auspices of the Mobile Broadband Group, the mobile operators will review complaints that have been received by them and Ofcom in relation to the Code and its subject matter. In particular, operators will detail the number of complaints that have had to be passed to other operators for investigation. They will also give examples of the types of activity and behaviour that have given rise to complaints. Where appropriate, the Code and associated processes will be reviewed to take account of new information.

On a twice-yearly basis, the mobile operators will meet with Ofcom to report on the level of compliance with the Code and any other relevant information.

Awareness of the Code

The mobile operators will make reference to the Code on their respective consumer facing web-sites and provide a full copy of the Code either through a link on a web site or a printed version by post, on request.

The signatories will place contractual obligations on their distributors and dealers to comply with the Code of Practice.

Mobile operators will use their reasonable endeavours to ensure that all resellers of their services similarly make the Code available to their customers.

A copy of the Code, together with information on how to make a complaint, will also be published on the web site of the Mobile Broadband Group.

Signatories

O2

Orange

T-Mobile

Vodafone

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31st July 2007

Annex: Indicative list of relevant legislation.

This is a non-exhaustive list and all retailers and resellers are responsible for seeking guidance from their own professional advisers. In addition to general Consumer Protection and Sale of Goods legislation, the following may have particular application in this context.

Persistent Misuse of Communications Networks

Ofcom's statement on the persistent misuse of electronic communications networks, pursuant to sections 128-130 of the Communications Act 2003:

www.ofcom.org.uk/consult/condocs/misuse/misuse_state.pdf

Distant Selling

Consumer Protection (Distance Selling) Regulations 2000 (known as the 'Distance Selling Regulations');

"A guide for businesses on distance selling" published by the Department for Trade and Industry and the Office of Fair Trading (September 2006). (See <http://www.offt.gov.uk/NR/rdonlyres/1E6F3C94-8BB0-4374-A65B-6281E030C3C9/0/oft698.pdf>)

Consumer protection and unfair contract terms

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, SI 1987 No.2117

The Unfair Terms in Consumer Contracts Regulations 1999, SI 1999 No.2083

Data Protection

Data Protection Act 1998 (the 'DPA');

Privacy and Electronic Communications (EC Directive) Regulations 2003 (the 'PECRs');

"Guidance to the Privacy and Electronic Communications (EC Directive) Regulations 2003" published by the Office of the Information Commissioner (www.ico.gov.uk);

"Legal Guidance: Data Protection Act 1998" published by the Office of the Information Commissioner (www.ico.gov.uk);

Telecommunications Lawful Business Practice (Interception of Communications) Regulations 2000 (the 'TLBPR').