



**Guidance on application-based payment in
support of the PhonepayPlus Code of
Practice**

A PhonepayPlus Consultation

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Executive Summary

There can be no doubt that application software, or 'apps' as they are better known by the millions of consumers and children who now own smartphones, is revolutionising the way digital content is consumed and being paid for in the UK. Whatever a consumer might want to entertain, inform or assist them during their daily lives, there is probably an app that can be obtained that will satisfy their needs.

That apps have the ability to enrich the lives of millions of consumers and children is not in question. However, just as with any technological development, they can have their downsides. As pieces of software downloaded to a mobile phone, they have the ability to perform functions that were not expected, nor wanted.

As a proactive regulator, we have been closely following developments in the apps market for some time. We have been working closely with many industry providers to understand the concerns and issues resulting from those developments. Our aim is to intervene early to ensure that those downside risks do not have a detrimental impact on consumers, children or, indeed, the many legitimate providers of innovative new digital services which we want to encourage within UK plc.

To that end, we have developed our first Guidance Note on app-based payments where they use premium rate services as the method to charge for content. We want to get that Guidance right. We need to strike a balance between encouraging innovation while ensuring that consumers and children can use apps with increasing confidence.

This is a consultation designed to get the widest stakeholder input from all interested parties in this relatively new and exciting area of technological development. Details about how to respond can be found on page 13.

Section One - The role of Guidance in supporting the PhonepayPlus Code of Practice

1.1 Paragraphs 1.5.1 to 1.5.4 of the 12th Edition of the [PhonepayPlus Code of Practice](#) set out the status of Guidance and advice in relation to the Code.

1.2 To assist those involved in providing premium rate services (PRS) to comply with their responsibilities, PhonepayPlus has provided Guidance that sets out likely our interpretation of Code rules – both generally and in relation to specific service types.

1.3 Guidance does not form part of the Code and is non-binding on the decisions of PhonepayPlus Tribunals in the event of an investigation which requires them to adjudicate. However, it is likely that providers who have not followed any Guidance relevant to the service under investigation will be invited to explain how they have complied with the Code by other means.

1.4 22 separate pieces of Guidance were launched along with the Code in March 2011, and paragraph 1.5.3 of the Code allows PhonepayPlus to change or add Guidance from time to time, subject to reasonable notice and appropriate consultation. Where PhonepayPlus intends to consult on changes to existing Guidance, or the introduction of additional Guidance, we will look to proactively engage with relevant stakeholders and gather intelligence prior to the actual consultation paper itself.

1.5 Through the early part of 2011, an increasing need has been identified to address issues around application-based payment services, and PhonepayPlus' likely expectations in terms of consumer confidence and compliance with the Code.

1.6 Respondents to this consultation are invited to comment on the Guidance at Annex A, which has been developed in conjunction with PhonepayPlus' Industry Liaison Panel 'Futures Group', a body made up of PhonepayPlus staff and a cross-section of members of the premium rate industry, which considers developments in the premium rate sector and their likely impact on consumers and the market.

Section Two - Consideration and proposals

Guidance on application-based payment – Background and definition

2.1 In the broadest sense the term, an ‘App’, short for ‘application’, is a general term that has been used for many years to refer to computer software designed to help users perform single or multiple tasks. However, within our frame of reference, an application can be loosely described as software designed so that users of ‘smart’ mobile devices (such as mobile smartphones and tablets) can access free or paid-for content or services, usually within a digital distribution platform, akin to a virtual shopping mall, offering a range of options.

2.2 The term ‘apps’ originated in the public consciousness following the launch of the Apple iPhone. At that time, applications as we understand them here were only available on iPhones, and any payment required was always made through iTunes once the consumer had registered using a credit or debit card. Apple’s App Store boasted over 6.5 billion downloads as of September 2010.

2.3 The ‘apps’ model has quickly developed, with an increasing number of digital distribution platforms which are either operating system-specific (e.g. Android or Windows Marketplace, RIM’s App World or Nokia’s Ovi Store), or third-party (e.g. Amazon Appstore, GetJar or MiKandi). With the rise in smartphone ownership (27% of the UK now own a smartphone¹), apps have become even more accessible and popular in the mobile market.

2.4 Applications which facilitate payment utilise several different methods of delivery, but essentially these methods currently filter down to three final direct methods of charging consumers: credit/debit card, the user’s mobile phone bill and/or pre-pay account, and cash where a pre-paid card is purchased. This is represented in a diagram at paragraph 2 of the draft Guidance, which sets out an illustrative set of payment options within the context of app delivery. Of the payment options set out in this diagram, PhonepayPlus’ remit only extends to certain mobile phone bill payments (i.e. those that relate to services that fall within the definition of “Controlled Premium Rate Services”).

2.5 In addressing the potential risks to consumers caused by application-based payment using PRS, we are minded to use a broad definition in order to capture the variety of different platforms which may facilitate such payment. As such, we propose the following definition of ‘application-based payment’ within the attached draft Guidance:

“a payment made in respect of a premium rate service, that is made through a software application which is accessed (either through download or by alternative means without permanent storage of data on the device) via a website using a PC, handset or other device (such as a tablet).”

Q1. Do you agree with this definition? If not, why not?

Q2. Do you agree with the diagram which sets out different developer payment options at paragraph 2 of the proposed Guidance? If not, why not?

¹ Ofcom’s Communications Market Report 2011: <http://media.ofcom.org.uk/2011/08/04/a-nation-addicted-to-smartphones/>

Risks and proposals

2.6 As apps which use premium rate payment have developed, PhonepayPlus has identified a number of main areas of risk. These have been identified through discussions with industry stakeholders, including within the 'Futures Group' of PhonepayPlus' Industry Liaison Panel, but also through complaints to PhonepayPlus and our own targeted monitoring:

- Lack of transparency – Consumers should be presented with the price, and any other key information they need to make an informed decision, before they commit to purchase. This would be the case where payment was made immediately, or later on at the end of a free trial or where extra purchases are made.
- Security – A consumer's consent to purchase should be clearly auditable, and that any apps which they store do not contain malicious software ('malware') which commits to charges without consumer consent.
- Complaint handling – Consumers should be provided with clear contact details in the event they have a complaint or enquiry, and be able to have the matter resolved quickly and easily.
- Stop PRS billing – Consumers need a clear and straightforward way to stop the service, especially if this involves uninstalling the app from the phone.

Q3. Are there any other areas of risk that you feel this Guidance should identify and address? If so, then please suggest them, and provide any supporting evidence you have as to the risk they pose and how to resolve it.

2.7 A more detailed explanation of these risks, especially around transparency and PhonepayPlus' proposals, is set out below.

Transparency

2.8 The key rules in the PhonepayPlus Code of Practice which support the 'Transparency and Pricing Outcome' are as follows:

"2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made [...]"

"2.2.2. All written information which is material to the consumer's decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernable."

"2.2.5 In the course of any promotion of a premium rate service, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service."

2.9 While the Guidance goes on to set out specific risks around transparency which application-based payment services pose, paragraphs 9-14 re-iterate expectations

previously set out within the [General Guidance Note on 'Promotions and promotional material'](#). This is for ease of reference for those who only provide application-based payment services. Given these paragraphs have been previously consulted on as part of PhonepayPlus' Guidance consultation (October 2010-January 2011), no further questions will be raised in relation to them here.

Key information where a service can be accessed on more than one device

2.10 With the increasing trend towards convergent media, PhonepayPlus is aware that services using application-based payment may be accessible across a number of devices (e.g. mobile handset, tablet, PC, etc.). With this in mind, paragraphs 15 and 16 of the draft Guidance set out expectations that consumers should be made aware of which devices they will be able to access the service on once they have paid a charge (if this is not all devices). In addition, these paragraphs set out the expectation that consumers should be made fully aware of any devices which are not technically compatible with the service they intend to purchase, in order that they can make an informed decision.

Q4. Do you agree with our proposed expectations around key information where a service can be accessed on more than one device? If not, why not?

Transparency where services are 'freemium'

2.11 The draft Guidance sets out that an increasing number of services involve consumers accessing an application without making any initial payment to do so, a model sometimes known as 'freemium'. Paragraph 17 of the Guidance further sets out that the application is then monetised in one of the following ways:

- Consumers are offered the chance to purchase extra content (such as 'power-ups' or 'add-ons' for an on-screen avatar, or virtual gifts within dating services) while engaged in it;
- Consumers access a demo version of an application (for example, one level of a video game) and then are offered the chance to purchase the full version;
- Consumers access an application for a limited free period of time in the clear knowledge that they will be charged once this time period has elapsed.

2.12 We believe it is important that consumers are not misled into believing a service is free when there will, in fact, be a later charge. Not only would this breach our outcomes in the PhonepayPlus Code around 'Transparency and Pricing', and potentially 'Fairness', we also believe it would have a potentially detrimental effect on consumer trust and, therefore, the ability of the market to innovate and grow.

2.13 Paragraph 18 of the Guidance sets out PhonepayPlus' proposed expectations around the information that providers would be expected to make clear to a consumer if they wished to promote a service using the 'freemium' mechanic as being free. The expectations are as follows:

- The promotion should clearly state what is and isn't free – i.e. any use of the word 'free' (or variations) must be clearly qualified in a way that is immediately visible, understandable and proximate;

- The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences. If both of these have been clearly provided before the consumer consents to the free trial, then there is no need to remind the consumer before charging commences;
- In order to avoid consumer confusion, charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service is at an end. Charging should not commence beyond this point, as consumers may be likely to have forgotten their initial opt-in to the free element and such charging may thereby generate consumer distrust.

Q5. Do you agree with our proposed expectations around application-based payment services using a ‘freemium’ model? If not, why not?

Pricing and other key information for ‘in-app’ purchases

2.14 An increasing number of application-based services offer the consumer additional purchase options once they are already using the service. Examples would be a chat and dating forum that allows the purchase of ‘virtual gifts’ (such as chocolates or flowers) from one user to another, or a video game that offers the chance to purchase weapons upgrades.

2.15 In order to ensure these types of service are compliant with rule 2.2.1 of the PhonepayPlus Code, consumers must be fully and clearly informed of key information, including the cost, before a purchase is made.

2.16 While PhonepayPlus is clear that this means consumers must be informed of the price prior to consenting to an ‘in-app’ purchase, paragraph 20 of the Guidance recognises two further considerations:

- That there is no need to inform consumers at each stage of a promotion with multiple steps;
- That providers of ‘in-app’ purchases will wish to ensure that giving consumers key information, and having them consent to it in a clear and auditable way, does not significantly impact on the ‘real-time’ immersive experience of a service, such as a video game.

2.17 With this consideration in mind, paragraphs 21-23 of the proposed Guidance set out some (non-exhaustive) methods by which a service offering ‘in-app’ purchases can comply with the Code. These can be summarised as follows:

- Consumers should be informed of the price each time they are presented with an extra purchase option (e.g. when their avatar runs over a ‘power-up’ in a video game);

OR

- Consumers should be informed of the price of any/all extra purchase options before they begin to interact with the service, and each subsequent time they log into it afterwards.

2.18 Whichever of the two methods above a provider adopts (or another method not covered in Guidance but which still meets Code outcomes), the following expectations are also proposed:

- That consumer consent must be clearly auditable. Providers should note that informing consumers of the price of extra purchases at the start of a video game or virtual world, and then charging them without further consent as soon as their avatar makes contact with the extra items, is unlikely to be acceptable unless the consumer has clearly and auditably consented to charges being delivered in this way.
- That consumers are sent a clearly worded receipt for each purchase. Providers should note that receipts should not contain any cross-promotion for other PRS as this is likely to compromise consumer awareness of the pricing information.
- That receipts should either be sent by someone other than the developer, or that a record of the contents of the receipt (including a time-stamp for when it was sent) be retained by a party independent of the developer.

Q6. Do you agree with our proposed expectations around pricing and key information for ‘in-app’ purchases? If not, why not?

Virtual currency

2.19 As previously mentioned, the diagram at paragraph 2 of the proposed Guidance sets out the different methods of delivery and charging used by applications providers, and confirms that PhonepayPlus’ remit extends only to those services defined by Ofcom as “Controlled Premium Rate Services” (CPRS).

2.20 Virtual currency allows consumers to purchase virtual credits or tokens within an application. These can then be exchanged, as if they were currency, for a variety of services which may be offered within the same application, or different ones from the application in which the virtual currency was first purchased. Depending on the brand, virtual currencies can be purchased through a variety of different methods, of which PRS is only one, and can in some cases even be ‘earned’ through participation in online research or loyalty schemes.

2.21 Where virtual currency is purchased through a PRS payment mechanism, then it will invariably be a CPRS and fall under PhonepayPlus’ remit. PhonepayPlus has undertaken research into applications (see the [Analysys Mason report ‘The marketplace for and regulation of micropayment services in the UK’](#)), and has also tested issues and concerns raised by consumers about application-based payment services using PRS. Our conclusion is that the issues which are unique to virtual currency (as opposed to issues such as clarity, auditability and consent to purchase, which extend throughout apps which facilitate PRS payment and beyond) are around the information provided to consumers before they consent to purchase virtual currency and, subsequently, before they consent to purchase using the virtual currency they have purchased earlier (the second of these consents to purchase could occur some time after the first).

2.22 As such, paragraph 28(a)-(d) of the proposed Guidance sets out expectations in relation to the promotion of virtual currency that encompass the following areas:

- The 'exchange rate' of the currency – i.e. clarity about how much of the virtual currency can be purchased in relation to sterling, and an expectation that this rate will not be altered too frequently and/or without due warning to consumers;
- The 'expiry date' of the currency – i.e. clarity about any date before which currency should be spent if it is not to become invalid;
- Simplicity of switching payment methods – i.e. consumers should be able to switch their payment method for virtual currency from PRS to any other which is promoted without undue complication.

2.23 Paragraph 28(e) sets out good practice around the subsequent promotion of services that can be purchased using virtual currency; good practice being that consumers are presented clearly with the cost of any service (in virtual currency) before they purchase.

Q7. Do you agree with our proposals around virtual currency? If not, why not?

Security and password protection

2.24 As with any PRS payment, it is important that consumers' security is not compromised, especially when this results in unauthorised purchases by someone who does not have the bill-payer's permission. It is also important that consumers' consent to purchase is transparent and clearly auditable in the event of any consumer complaint which disputes charging.

2.25 To this end, our proposed Guidance sets out expectations in two different areas:

Clear consumer consent to charge

2.26 As previously referenced in our [General Guidance Note on 'Privacy and consent to charge'](#) (which was consulted on from October 2010 to January 2011), PhonepayPlus expects all PRS purchases to be clearly auditable. For the avoidance of doubt, this means that a consumer's consent must be provided in a way that is transparent to them, and obtained in a robust way (i.e. one that stands up to independent audit in the event of consumer complaint).

2.27 Ordinarily, PhonepayPlus would consider purchases made using a mobile origination (MO) message or Payforit as being robust and independent enough to provide clear evidence of consumer consent. However, where neither of these methods is used, then the [General Guidance Note on 'Privacy and consent to charge'](#) sets out a number of factors which could contribute to robustness.

2.28 These factors are repeated within paragraph 29 of the proposed Guidance attached to this consultation. Given these factors have been previously consulted as part of PhonepayPlus' Guidance consultation (October 2010-January 2011), we again will not be raising any further questions in relation to them here.

2.29 Paragraph 30 sets out the potential for some applications to contain malware which, once accessed, carry the following risks around privacy and consent to charge:

- The sending of MO messages, containing a keyword which consents to charging to PRS shortcodes without the consumer's knowledge or permission;
- The dialling of PRS numbers without the consumer's knowledge or permission;

- The illicit access of a consumer’s contact list (which could include numbers on the consumer’s SIM card, email addresses or social networking contacts) and the subsequent relaying of those contacts to another party without the consumer’s permission, to build up unauthorised marketing lists.

2.30 The paragraph goes on to set out that, where such malware is discovered, a PhonepayPlus Tribunal may not consider any proof of consent to charging or marketing, including MO messages or call records, to be robust enough.

Password protection

2.31 Where an application or digital distribution platform is stored in a consumer’s device and accessed repeatedly, a secure audit of consumer consent to purchase can sometimes be provided by a password which the consumer has set, and linked to their device, when they first accessed the app or distribution platform concerned.

2.32 PhonepayPlus is aware that such a mechanic can verify that a purchase came from the device owned by a consumer, but a consumer’s device can sometimes be used to make unauthorised purchases once a password has been entered. An example was the use of an iPhone by a child to make a large number of purchases of credits for a virtual world once the phone’s owner had entered a password and then left the phone briefly unattended.

2.33 To this end, paragraph 33 of the proposed Guidance sets out a best practice recommendation that stored applications are protected by a requirement to re-enter a password each time the application is re-opened. It also sets out an expectation that providers offer refunds where unauthorised use is clear (e.g. if an adult’s phone or other device has been used to purchase a large amount of credit for a child’s game in a very short timeframe).

2.34 However, against this, PhonepayPlus makes it clear that we would also consider the degree of responsibility shown by a consumer in terms of securing their device. A consumer who has given their password out to their children, or left their phone unattended for long periods, may have a weaker case in terms of a breach of security as it relates to consent to charge.

Q8. Do you agree with our proposals around password protection? If not, why not?

Complaint handling and technical quality

2.35 Paragraphs 34-36 of the proposed Guidance re-iterate previous expectations around how consumer complaints are handled, and point readers toward the [General Guidance Note on the ‘Complaint-handling process’](#) for more details. However, paragraph 35 does reference the added complexity that may be involved in an application-based delivery-chain; it reminds providers that it is important that consumers are directed to the party that can deal with their specific complaint, albeit noting that the party deemed to be the Level 2 provider in any investigation retains responsibility for complaint handling.

2.36 Paragraph 37 sets out proposed expectations around technical quality as they relate to paragraph 3.1.7 of the Code of Practice. In the case of application-based payment

services, it is important that services are compatible with each device on which they are promoted for purchase.

Q9. Do you agree with our proposals around technical quality? If not, why not?

Method of exit from a service

2.37 Finally, Rule 2.3.11 of the Code states the following:

“2.3.11 Where the means of termination is not controlled by the consumer there must be a simple means of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.”

2.38 The [General Guidance Note on ‘Method of exit from a service’](#) sets out PhonepayPlus’ expectations as to ‘a simple means of permanent exit from the service’, and takes account of different mechanics and technology which may require a method of exit, other than the consumer texting ‘STOP’ to a shortcode in order to stop a subscription service. While it does not currently directly address exit from application-based services, it does state the following at paragraph 2.8:

“While this document recognises that there are certain forms of technology that make a ‘STOP’ command difficult or impossible to put into effect (e.g. MMS-based texting, voice shortcodes), PhonepayPlus recommends in the strongest possible terms that providers continue to use the ‘STOP’ command as a method of exit, where it is technically possible and practical (i.e. it does not add extra cost to the consumer) to do so.”

2.39 PhonepayPlus has recently become aware of the fact that some application-based services require the consumer to uninstall the application in order to stop charging. While this method of exit may not necessarily be a breach of the Code in itself, especially if the use of the ‘STOP’ command in relation to applications would be technically difficult or impossible, it may still breach the Code if one or more of the following is true:

- The consumer was unaware or unclear that they would have to uninstall the application prior to incurring a charge;
- The process to uninstall the application is unclear to the consumer, or unnecessarily complex.

2.40 With the above consideration in mind, we believe it is important to provide clarity around method of exit to developers and providers of application-based services. If it proves necessary to do so, we would add to existing Guidance. Based on our current consideration in this area, any addition to Guidance on this issue would be drawn from one, or both, of the following options:

- a) That it should always be technically possible to exit an application-based service using the ‘STOP’ command, and so PhonepayPlus would recommend in the strongest possible terms that the ‘STOP’ command is clearly available to consumers;

b) That where exit of a service can only be done by uninstalling the application, consumers must be clearly made aware of this, and the process of uninstalling must be clear and simple.

2.41 We would welcome any consideration or evidence, especially from a technical perspective, that indicates whether there are any other methods of exiting or suspending PRS charging on an application-based service that we should be aware of before we make any changes to existing Guidance.

Q10. Is there any consideration or evidence, especially around other methods of exiting or suspending PRS charging on an application-based service, that we should be aware of before we make changes to existing guidance in respect of methods of exit from application-based services? Please supply any evidence you have.

Section Three - Responses and next steps

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than **Monday, 5 December 2011 (10 weeks from the date of issue of this document)**.

Where possible, comments should be submitted in writing and sent by email to: dmcewen@phonepayplus.org.uk.

Copies may also be sent by mail or fax to:

Duncan McEwen, Regulatory Affairs Executive – Policy, PhonepayPlus, Clove Building, 4 Maguire Street, London SE1 2NQ

Tel: 020 7940 7459

If you have any queries about this consultation, please telephone or email Duncan McEwen using the above contact details.

Engagement with Level 2 providers

The recommendations set out in the attached Guidance are largely aimed at assisting Level 2 providers (i.e. information providers who are the final link in the delivery-chain) to effectively comply with the new Code, with the potential consequence that some Level 2 providers will have to adapt their current business processes to ensure compliance.

For this reason, we are eager to receive feedback to these proposals from those providers who will likely be regarded as Level 2 providers in an investigation under the new Code.

We would ask that Network operators and Level 1 providers bring this document to the attention of any of their clients who may be regarded as Level 2 providers under the proposals set out here, in order that we can receive feedback from a part of the delivery-chain which has not traditionally responded to our consultations in large numbers.

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all, or part, of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

Annex A – Draft General Guidance Note on application-based payment

GENERAL GUIDANCE NOTE

Application-based payments

Who should read this?

Any company which offers digital goods and/or services that are purchased via premium rate (i.e. where a charge is made to the consumer's phone bill and/or pre-pay account).

What is the purpose of the Guidance?

To assist all companies operating in the digital space arena to better understand and comply with PhonepayPlus' expectations where premium rate is used as the relevant payment mechanism for application-based payments.

What are the key points?

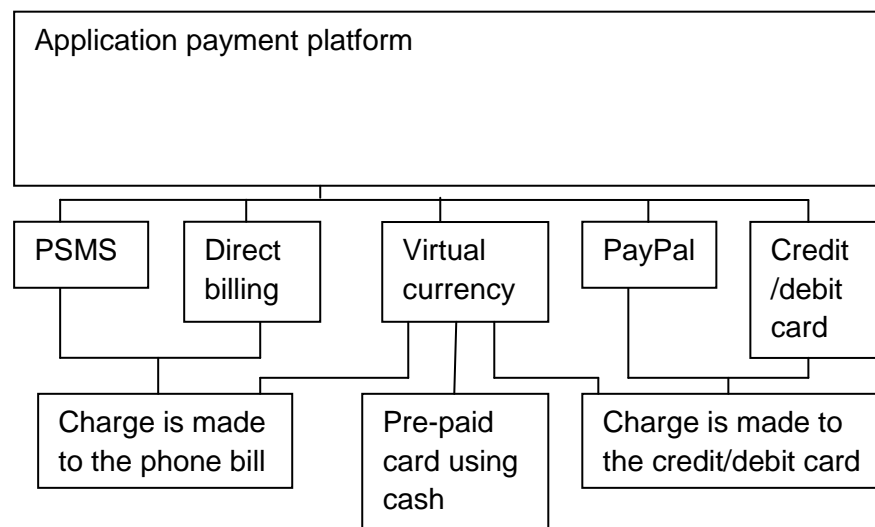
The rules, as contained in the [PhonepayPlus Code of Practice](#), are outcomes-based and designed to be flexible and adept enough to incorporate technological innovations as mobile payments continue to evolve.

The main issues for providers to be aware of, and to consider in practice, include:

- Recommendations as to what pricing and other key information should be included at the point of sale for both apps (including the use of 'freemium' based models) and in-app purchases (e.g. promotion of virtual currencies), including best practice as to how companies can robustly verify a consumer's consent to charge.
- Identification of potential risks as posed by malicious software ('malware') in compromising the integrity and validity of a consumer's consent to be charged or marketed to.
- Clarification that consumers should be provided with clear and identifiable contact details to make a complaint or enquiry, and in line with PhonepayPlus' generic expectation that such matters should be resolved quickly and efficiently by the provider concerned.
- Any company offering a mobile-based payment mechanic, such as premium rate, should ensure their services are compatible with each technical network platform and/or handset on which they are promoted.

What is application-based billing?

1. In this context, application-based billing refers to a payment made in respect of a premium rate service, that is made through a software application which is accessed (either through download or by alternative means without permanent storage of data on the device) via a website using a PC, handset or other device (such as a tablet).
2. The following diagram gives some idea of the different payment options that developers currently use for application-based billing:



3. Applications that facilitate premium rate payment utilise several different methods of delivery, but essentially these methods currently filter down to three final direct methods of charging consumers: credit/debit card, the user's mobile phone bill and/or pre-pay account, and cash where a pre-paid card is purchased. PhonepayPlus' remit only extends to certain mobile phone bill payments (i.e. payments that relate to services that fall within the definition of "Controlled Premium Rate Services" (or CPRS)).
4. At present, there are three basic models which are used in order to offer products and complete transactions. These are as follows:
 - a. Payment before download of, or access to, an application;
 - b. Payment for additional content from within an application;
 - c. Usage initially free, but later chargeable after a time period or after a certain criteria has been met (a model often described as 'freemium').
5. This Guidance is designed to help providers achieve the following outcomes in relation to these three models of mobile-based payment:

- Transparency – outcome: *“That consumers of premium rate services are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made”*;
- Password protection and security – outcomes: *“That consumers of premium rate services are treated fairly and equitably”* and *“That premium rate services do not cause the unreasonable invasion of consumers’ privacy”*;
- Complaint handling – outcome: *“That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily”*;

6. Key rules supporting the Transparency outcome are as follows:

“2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made [...]”

“2.2.2. All written information which is material to the consumer’s decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernable.”

“2.2.5 In the course of any promotion of a premium rate service, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”

“2.2.6 Any messages that are necessary for a consumer to access, use or engage with a service but are provided separately from the service itself must be free of charge.”

7. Password protection and security could, if compromised, result in two outcomes (Fairness and Privacy) being breached. The key rules supporting these outcomes are as follows:

“2.3.3 Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.”

“2.4.2 Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent [...]”

8. The key rule supporting the Complaint-handling outcome is as follows:

“2.6.2 Level 2 providers must provide a proportionate complaints process which is easily accessible through a non-premium rate UK telephone number and must be effectively publicised.”

Pricing and other key information

9. Where consumers make payment before they access an application, either as a one-off payment or a subscription, then it is important that they are given all information, including the price, which is likely to influence their decision to purchase before they consent to purchase. The following information should be considered key:
- The total cost of the service, including any initial charges such as a joining fee; where consumers may be offered the opportunity to purchase ‘extras’ while using the service, we would recommend it as best practice that they are clearly informed of this before their initial purchase.
 - The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
 - Whether the service bills by subscription – i.e. carries a repeat charge which ends only upon termination by the consumer.
 - Whether the downloading of an individual application will likely ‘trigger’ the sending of separate push notifications to the end-user’s phone.

Pricing and other key information for payment before download of an application

10. Pricing information will need to be easy to locate within a promotion – i.e. close to the access code or link to purchase a service. Where a promotion is contained within a website or a mobile website, it should not be necessary to scroll down (or ‘zoom in’ on a smartphone touchscreen) beyond the initially presented screen in order to discover the price, unless the access code or link to purchase a service is also in the same area.
11. The price should also be easy to read once it is located, and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, examples of which would include the following:
- ‘premium rate charges apply’
 - ‘100p’
 - ‘1.50GBP’
12. In some cases, PhonepayPlus accepts that prominence may take precedent over proximity. An example would be a mobile web page containing a number of access codes or links to downloadable services, which prominently state a price and key terms for all the services on that page.
13. In addition, where a consumer clicks on a link (such as an icon on a web page or a pop-up) to purchase a service, and is clearly informed of the price and key terms before they are then given an opportunity to actively consent to the purchase, PhonepayPlus would also regard this as acceptable. However, any clickable links or icons should reflect the call to action – e.g. if the call to action states that a consumer

must click 'confirm' to make a purchase, then the link or icon to purchase should read 'confirm' (and not 'proceed' or 'next' which could be construed as misleading).

14. Pricing should be presented in a horizontal format, and should be easily legible in context with the media used. It should be presented in a font size that does not require close examination by a reader with average eyesight, and this should take into account whether the information is static or scrolling. Lastly, any colour combination used to present the price or other key information should not affect clarity.

Key information where a service can be accessed on more than one device

15. Some applications, such as those which allow electronic access to a newspaper or other journal, may be accessible on more than one device – e.g. PC, mobile phone, tablet, etc. Where this is the case, the consumer should be clearly informed about which devices their payment allows them to access content on (if it is not all devices).
16. In addition, it should be made clear if there are any devices which cannot support access to the service, in order to ensure that consumers do not purchase a service that is not then technically compatible with the device they intend to use to access it.

'Freemium' services

17. An increasing number of services involve consumers accessing an application without making any initial payment to do so. This is sometimes known as 'freemium', when there is no initial access charge to an application. The application is then monetised in one of the following ways:
 - Consumers are offered the chance to purchase extra content (such as 'power-ups' or 'add-ons' for an on-screen avatar, or virtual gifts within dating services) while engaged in it;
 - Consumers access a demo version of an application (for example, one level of a video game) and then are offered the chance to purchase the full version;
 - Consumers access an application for a limited free period of time in the clear knowledge that they will be charged once this time period has elapsed.
18. Where an application is free for an initial period, then PhonepayPlus would consider it acceptable to promote the free element of the service, provided the following was also true:
 - The promotion should clearly state what is and isn't free – i.e. any use of the word 'free' (or variations) must be clearly qualified in a way that is immediately visible, understandable and proximate;
 - The consumer must be in no doubt before they opt into a service as to when they will begin to be charged, and be given a clear method of exit before charging commences. If both of these have been clearly provided before the consumer

consents to the free trial, then there is no need to remind the consumer before charging commences;

- In order to avoid consumer confusion, charging should commence immediately, or as near as is reasonably practicable, after the defined free element or time period of the service comes to an end. Charging should not commence beyond this point, as consumers may be likely to have forgotten their initial opt-in to the free element and such charging may thereby generate consumer distrust.

Pricing and other key information for purchases within an application

19. When consumers make additional purchases while using an application-based service, whether they have made an initial payment to access the service or not, it is important they are aware of the pricing and other key terms, as set out in paragraphs 10-14 above. However, paragraph 2.2.1 of the Code states:

“2.2.1 Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made [...]”

20. PhonepayPlus interprets this as a need to clearly inform the consumer of the price of a purchase before they consent to it, and not necessarily at each stage of a promotion with multiple steps. However, when purchases take place within the middle of a service, especially one with a relatively immersive real-time experience (such as a video game), PhonepayPlus recognises that providers will wish to ensure that presenting consumers with purchase information, and having them consent to it, does not impact on the consumers’ experience of the service any more than is necessary.

21. With this consideration in mind, PhonepayPlus sets out the following (non-exhaustive) methods around the provision of pricing and other key information when consumers purchase via an application which would be likely to be considered acceptable:

- a) Consumers are informed of the price of purchase each time they are presented with an extra purchase option/item. Once a purchase option/item has been selected, they must confirm payment in an auditable way and be sent a clearly worded receipt for the purchase. While we would not expect consumers to be informed of customer contact details on each occasion, they must have previously been clearly informed;

or

- b) Consumers are clearly informed of the price of any extra purchase options/items before they begin to interact with the service, and then each time they log on after that – in practice, this will work only where there is a uniform price for each extra purchase, or a small number of variant prices. If this has happened, then consumers need not be informed of the price each time they browse or otherwise select an extra purchase option/item, but rather just be reminded that there is a

charge. As before, once a consumer has selected, they must confirm payment in an auditable way and be sent a clearly worded receipt for the purchase, containing contact details in the event of consumer complaint or enquiry.

22. Providers should note that informing consumers of the price of extra items at the start of a video game or virtual world, and then charging them without further consent as soon as their avatar makes contact with extra items within the service, is likely not to be considered acceptable by a PhonepayPlus Tribunal, unless consent for extra charging (with the consumer fully aware of the full details of the likely charges) has been obtained in advance in an auditable way.
23. Providers should also note two specific requirements about receipts for purchases:
 - They should not contain cross-promotion for any other service, as this is likely to compromise consumer awareness as to price confirmation information
 - The receipt should either be sent by someone other than the developer, or a record of the contents of the receipt, including a time-stamp for when it was sent, should be retained by a party independent of the developer.

Misleading promotions

24. PhonepayPlus expects that all promotions are prepared with a due sense of responsibility to consumers and promotions should not make any factual claims that cannot be supported by evidence, if later requested by PhonepayPlus to do so. Some examples of promotions that would be likely to be considered misleading by a PhonepayPlus Tribunal are as follows:
 - Omission of information about a service being subscription-billed (or omission of any of the key subscription information, such as frequency of billing and how to opt out);
 - Implication that a service is free of charge, if this is not the case;
 - Promotions which mislead as to the type of service on offer (for example, a 'glamour' service should not be promoted as an adult service, or an unlicensed video game should not be promoted as an officially licensed product).
25. For more information as to types of promotions which are likely to be considered misleading, please refer to the [General Guidance Note on 'Promotions and promotional material'](#).

Virtual currency

26. Another method of mobile-based payment is the opportunity for consumers to purchase virtual credits or tokens within an application. These can then be exchanged, as if they were currency, for a variety of services which may or may not be offered within the same application in which the credits or tokens were first purchased.

27. Virtual currency can often be purchased via a variety of different payment methods, of which a premium rate billing is only one.
28. Our market research and testing, combined with some consumer evidence of issues and concerns, has identified a range of potential risks around purchase of virtual currency through premium rate services (PRS), all of which relate to whether transparent key information is provided to consumers in order that they can make an informed decision before consenting to purchase. For these reasons, PhonepayPlus offers the following guidance to ensure Code compliance:
- a) The exchange rate of the currency (e.g. 100 credits = £1) should be clear and prominent to the method of purchase;
 - b) Consumers should be clearly informed if the virtual currency has an expiry date and, if so, what that date is;
 - c) Providers of virtual currency should not alter the 'exchange rate' without due warning to consumers that the rate is subject to alteration. Frequent alteration of the exchange rate may result in providers being found to be in breach of paragraph 2.3.2 of the Code (Misleading);
 - d) Consumers of virtual currency bought using PRS should be able to switch their method of payment, where other methods are available, easily and without undue complication;
 - e) It would be considered good practice if, once virtual currency has been purchased, the price of any services which can subsequently be bought were clearly displayed next to the method of consent to purchase. A failure to do so could be considered misleading by a consumer, where consumers have purchased the virtual currency using PRS as a billing mechanic. As an alternative, and where the range of items that can be bought using a virtual currency is not extensive, we would suggest the cost of items which can be bought using virtual currency is made clear to the consumer prior to purchase.

Password protection and security

Consumer consent to charging

29. PhonepayPlus expects all PRS purchases to be clearly auditable. For avoidance of doubt, this means that a consumer's consent must be provided in a way which is robust. Ordinarily, PRS purchases initiated using an MO message (mobile origination – i.e. sent by the consumer to a shortcode), or made using Payforit, would be considered to be robust in terms of evidence which proves consumer consent. However, where PRS purchases are made without either of these two elements being present, then factors which can contribute to robustness are:
- An opt-in is PIN-protected (e.g. the consumer must enter their phone number to receive a unique PIN to their phone, which is then re-entered into a website);
 - A record is taken of the opt-in and the data is time-stamped in an appropriately secure web format (e.g. https or VPN);

- Records are taken and maintained by a third-party company which does not derive income from any PRS. We may consider representations that allow a third-party company which receives no direct share of PRS revenue from the transaction, but does make revenue from other PRS, to take and maintain records. It will have to be proven to PhonepayPlus' satisfaction that these records cannot be created without consumer involvement, or tampered with in any way, once created;
- PhonepayPlus is provided with raw opt-in data (i.e. access to records, not an Excel sheet of records which have been transcribed), and real-time access to this opt-in data upon request. This may take the form of giving PhonepayPlus password-protected access to a system of opt-in records;
- Any other evidence which demonstrates that the opt-in cannot be interfered with.

For more details around this area, please see the [General Guidance Note on 'Privacy and consent to charge'](#).

30. Lastly, PhonepayPlus is aware of the potential for some smart devices to download applications containing malicious software ('malware'), which may put consumers of PRS at risk. These risks can be currently identified as follows:
- The sending of MO messages containing a keyword which consents to charging to PRS shortcodes without the consumer's knowledge or permission. This can be compounded by the use of coding to prevent the end-user from seeing a mobile terminating (MT) message to raise suspicion that they are, in actual fact, being billed for the service in question.
 - The dialling of PRS numbers without the consumer's knowledge or permission.
 - The illicit access of a consumer's contact list (which could include numbers on the consumer's SIM card, email addresses or social networking contacts) and the subsequent relaying of those contacts to another party without the consumer's permission, in order to, for example, build up unauthorised marketing lists.
 - The illicit access of a consumer's handset's International Mobile Subscriber Identity (IMSI) number.

Providers are asked to note that, where such malicious software ('malware') is found, then a Tribunal may not be likely to consider any proof of consent (including MO messages or records of calls) to be robust enough.

Password protection

31. Where an application has been accessed, a secure audit of consumer consent is often provided by means of the consumer having entered a password each time they re-engage the service and before they commit to purchases. Password protection can be built into a digital distribution platform (e.g. Apple's iTunes Store, the Android Marketplace, etc.), or an application itself.
32. Such a mechanic, while potentially verifying that consent to purchase came from the consumer's handset if properly encrypted, does not always provide complete

protection from unauthorised charges. Where consumers have accessed an application from which it is relatively easy and quick to make repeat purchases, there have been instances of accidental unauthorised purchases being made through mobile devices accessed by children, or others, which the owner of the handset themselves did not consent.

33. PhonepayPlus would additionally recommend (by way of best practice) that regularly accessed applications be protected by a requirement to enter a password each time the application is re-opened. However, where there is an allegation that someone other than the consumer has purchased from an already opened application, PhonepayPlus will consider the case on its own merits and make an assessment as to how likely it was that the purchase was authorised by the consumer. We would expect providers to offer refunds where unauthorised use was clear, but would also consider the degree of culpability of an affected consumer in not protecting their password or controlling access to their phone account.

Complaint handling

34. Responsibility for handling complaints about a service rests with the Level 2 provider, as set out in further detail in the [General Guidance Note on the 'Complaint-handling process'](#), in which Level 1 providers are expected to step in and take over the process in situations where a Level 2 provider has neglected its duties in any way.
35. Mobile-based payment, especially where virtual currency is involved, may have several component parts to a service delivery-chain. In addition, the service may be delivered by a means (e.g. through an ISP connection) other than the method of purchase through a Public Services Telephone Network (PSTN); and, in the case of virtual currency, it may be delivered with a significant time delay from when the currency was first purchased (where the consumer does not immediately use the currency they have purchased).
36. As with all PRS, we would expect consumers to be clearly provided with a non-PRS number for the purposes of making enquiries or complaints about a service before they consent to purchase. It is important that all companies within a service delivery-chain are able to quickly direct the consumer to the right party to deal with their complaint, albeit that the Level 2 provider retains responsibility for the complaint.

Technical quality

37. All providers of services offered via a mobile-based payment mechanic should ensure their services are compatible with each technical network platform and/or handset on which they are promoted.