

## **Updated Notification of intention to grant permission under paragraph 3.10.4(a) of the PSA Code of Practice to Level 2 providers operating services exclusively through qualifying Level 1 providers, enabling the Level 2 provider to provide those services without the need to register with the PSA**

21 June 2018

**This Notification should be read by all Level 1 providers and Level 2 providers that are involved, or intend to be involved, in the provision of phone-paid services exclusively through a Level 1 provider, and who wish to apply for an exemption from paragraph 3.4.1 of the Code of Practice.**

### **Background**

Paragraph 3.10.4(a) of the PSA Code of Practice (14th edition) (“the Code”) allows registered providers to apply for written permission from the PSA (which may be given subject to conditions) for their service to be provided by means other than strict adherence to the Code provisions. Such permission can be withdrawn or varied by the PSA subject to the giving of reasonable notice.

In 2014 the PSA launched an exemption pilot under the terms of paragraph 3.10.4a) for Level 2 providers who only offered phone-paid products or services via app stores from the requirement to register with the PSA. This was subject to the participating app stores having suitable controls so that the outcomes and expectations of the Code were met by other means. The pilot concluded that the controls which participants had in place were effective, and the exemption became permanent in 2015.

Since 2015 the PSA has received interest from some Level 1 providers in conducting a similar pilot for their Level 2 provider clients i.e. to exempt such Level 2 merchants from registration – provided they only offered phone-paid services via Level 1 payment aggregators with suitable controls. They presented a case that:

- Level 1 providers with a good compliance record would be able to achieve the same or similar alternative controls as app stores and deliver the same outcomes
- It would benefit aggregators looking to sign up established brands that are unfamiliar with phone payments and regulation and may not currently be required to register directly with a regulator in respect of other payment options they provide.

The PSA ran a pilot from September 2017 to March 2018. Initially take up has been limited in terms of the number of L1s offering this facility, but our assessment of the pilot was that it was successful, and the PSA Board decided in March 2018 to offer the exemption on a permanent basis. This notice sets out the details of the permission scheme and the criteria that Level 1 providers will have to meet to be allowed to operate the scheme.

## Details of the permission scheme

The PSA intends the scheme to be open for the benefit of Level 2 providers that only provide, or intend to provide, phone-paid services through one participating Level 1 provider's platform and where that Level 1 provider makes the request on their behalf. In opening this scheme to such Level 2 providers, the PSA is mindful of the need to ensure that:

- Robust regulations exist and remain in place to protect consumers and to achieve the outcomes set out in the Code
- Appropriate flexibility is demonstrated, recognising that some outcomes of the Code may be met using robust alternatives
- The scheme is available to any Level 1 and Level 2 providers that wish to participate and meets the criteria
- The scheme is not such as to create an unfair distortion in the market.

We are satisfied that the approach set out in this Notice, which offers an exemption solely from paragraph 3.4.1 of the Code and subject to Level 1 providers meeting conditions that ensure consumer and regulatory needs are adequately served, meets the above tests.

All Level 1 and Level 2 providers that wish to apply for this exemption should note that it only applies to the requirement for Level 2 providers to register with the PSA. Participating Level 1 providers will still be required to register with the PSA. Also, Level 2 providers that are granted permission not to register will continue to be responsible for compliance with all the other provisions set out in the Code (unless exemptions have been granted to them specifically in respect of any other provision).

Participating Level 1 providers that wish their Level 2 clients to benefit from this exemption should note that it is open only to those clients that connect solely through their payment platform in respect of the provision of phone-paid services, and do not use any other Level 1 provider for the same purpose.

### Conditions for Exemption from Registration - paragraph 3.4.1

Level 1 providers will be able to obtain permission for those Level 2 clients, who operate phone-paid services exclusively through that Level 1 provider, to operate without the need to register where the PSA is satisfied that the Level 1 provider meets the following conditions:

- The Level 1 provider holds a valid registration with the PSA
- The Level 1 provider maintains a good compliance record with the PSA
- The Level 1 provider operates its own registration and screening process for Level 2 providers (as part of its due diligence obligations)
- The Level 1 provider incorporates the PSA list of banned individuals into its registration and fraud screening processes
- The Level 1 provider cooperates fully in responding to all requests from the PSA that are made in accordance with the Code, for example in providing information on Level 2 providers or services.

- The Level 1 provider ensures that a purchase receipt is sent to consumers after each purchase from a service which falls under the terms of this exemption. This receipt should detail the name and cost of the service, the frequency of any repeat charges, and a direct link to, or details of, the Level 2 provider's consumer complaint facility.
- The Level 1 provider ensures that the Level 2 clearly and prominently publishes consumer contact details on any website which promotes a phone-paid service
- The Level 1 provider provides a clear escalation pathway for consumers whose complaints are unresolved by the Level 2, either through a facility operated by the Level 1 or by clear and explicit agreement with each contracted UK Mobile Network operator
- The Level 1 provider provides the PSA with an up to date list of those Level 2 provider clients who operate exclusively through their payment platform and benefit from the exemption. The list is to be provided within five working days of notification by the PSA of approval of Level 1 provider participation in the exemption and/or any subsequent changes to Level 2 provider clients benefitting from the exemption. The list should also include for each Level 2 provider client the names of the services they will operate, the payment mechanic each service will use, the price and charging frequency of each service, and which main category of service from the PSA's registration list the services fall into.<sup>1</sup>
- In the event of any PSA investigation, the Level 1 provider cooperates fully in the provision of all information about their client which would otherwise be provided by registration. This does not affect the requirements set out in the Code for Level 1 or Level 2 providers to cooperate generally with investigations.

### Participation in the scheme

**Participation in the scheme is not automatic. Level 1 providers that meet the conditions and wish their Level 2 provider clients to benefit from the exemption will need to apply to the PSA on behalf of their clients. Such Level 1 providers should make a formal application to participate in the scheme by email to the PSA at [compliance@psaauthority.org.uk](mailto:compliance@psaauthority.org.uk), setting out how they meet the conditions and exclusivity requirement.**

The email should also provide a list of those Level 2 providers who would benefit from the exemption, and evidence of:

- The Level 1 provider's valid registration with the PSA
- Its registration and screening process for Level 2 providers, and how this incorporates the PSA's list of banned individuals into these processes
- Its arrangements to provide an escalation pathway for consumers whose complaints are unresolved by the Level 2 provider.

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<sup>1</sup> A list of categories can be found in Appendix B of the PSA's 2018 consultation on registration: <https://psaauthority.org.uk/-/media/Files/PSA/For-Businesses/Our-role-in-the-industry/Public-consultations/2018/Registration-Consultation-9-January-2018.ashx?la=en&hash=4FA1F6612B10502050688435C7E04126BFE5656F>

Level 1 providers should note that where an application is successful the PSA will evaluate the effectiveness of their operation of the scheme approximately six months after its commencement. The Level 1 provider may be asked by the PSA to provide additional information to assist it in that evaluation.

The PSA will consider any applications received and will endeavour to provide a written decision within 6 weeks. For each successful applicant the scheme will commence once they have received notification that they can participate.

In accordance with paragraph 3.10.5 of the Code, details of any permission granted (e.g. details of the applicant, relevant Code provision and conditions but excluding any confidential information) will be published on the PSA website.