

GENERAL GUIDANCE NOTE

Consumer refunds

EXECUTIVE SUMMARY

Quick summary on consumer refunds:

- The Code of Practice details two requirements in relation to consumer refunds.
- Refunds must be provided to consumers promptly and in an easily accessible manner.
- Providers may request evidence to validate a consumer's claim.

1. Introduction

1.1. The purpose of this General Guidance Note ('the Guidance') is to assist registered parties/providers ('providers') by clarifying PhonepayPlus' expectations in relation to consumer refunds.

1.2. The following parts of the Code relate to a requirement for providers to give refunds to consumers:

2.6.4 *"Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner"*

4.8.2(i) *"[The Tribunal can] require that refunds are paid within a specified time period to all consumers who claim a refund, for the full amount spent by them for the relevant service or for a specified lesser amount, save where there is a good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made."*

4.8.2(j) *"[The Tribunal can] require in circumstances where there has been a serious breach of the Code and/or serious consumer harm, that refunds for the full amount spent or a specified lesser amount are paid within a specified time period to all consumers who have used the service, regardless of whether they have claimed a refund."*

2. The role of General Guidance

2.1. General Guidance does **not** form part of the Code of Practice; neither is it binding on PhonepayPlus' Code Compliance Panel ('the Tribunal'). However, we intend it to help providers understand how compliance with the Code might be achieved.

2.2. Providers are not obliged to follow this Guidance but, in the event of an investigation, a Tribunal will adjudge whether the alternative actions that providers took delivered compliance with the Code. We recommend that those looking to radically depart from this Guidance contact our Compliance Advice Team in reasonable time ahead of launching the service.

3. The two requirements

3.1. There are essentially two requirements that the Code of Practice imposes, dependent on what the Tribunal has instructed. Providers must issue a refund to either:

- Consumers who have made a complaint and/or requested a refund; or

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- All consumers who have interacted with the service (this requirement only applies to services that have no intrinsic value and/or where there has been serious and widespread consumer harm).
- 3.2. As part of a Track 1 procedure, the first requirement can be used as a sanction, or requested as part of a Track 1 action plan by the Complaint Resolution Team (for more information on the Complaint Resolution Team and action plans, go to <http://www.phonepayplus.org.uk/output/complaint-resolution-faq.aspx>)
- 3.3. The second requirement will only ever be issued as a sanction from the Tribunal, and would only relate to cases where there has been extreme harm caused to consumers.

Where a Tribunal will issue a general order for refunds to complainants

- 3.4. Ordinarily, a Tribunal will consider each case on its merits, but may order a refund for any of the following reasons:
- An identifiable (and possibly excessive) financial detriment to consumers has occurred;
 - Consumers were either deceived or misled by reckless or wilful intent;
 - The product or service was not supplied or was of unsatisfactory quality;
 - The marketing or promotional material misled consumers into purchasing. This would include promotional material that stated a lower price than the amount the consumer is actually charged, or stated that a service was free, when it was not.

Where a Tribunal will issue a 'universal' refund to all consumers

- 3.5. A universal refund will require the provider to issue a refund to all consumers who received a premium rate charge from the service, even where they have not made a complaint. This sanction will only be used in circumstances where the service has no intrinsic value, and/or there has been serious consumer harm or a serious breach of the Code of Practice has occurred.

4. Consumers to receive refund promptly and in an appropriate manner

- 4.1. Where a refund is requested or ordered by a Tribunal, consumers who are entitled to a refund should receive it in 28 days or less from the date of the request or instruction. A Track 1 procedure may provide a different timeframe for a refund to be given, in which case that timeframe would take precedent. It is best practice to issue a refund as soon as is practicable.
- 4.2. Where refunds are ordered by a Tribunal, they are usually for the full cost of using the service, however they can be specifically the amount of the premium rate element of the service, or a share of the revenue received by the provider.
- 4.3. Providers, especially those based overseas, should be aware that they must have a mechanism in place to promptly provide refunds to consumers in UK currency.
- 4.4. Acceptable methods of refund are as follows (in ascending order):
- Automatic credit to the consumer's phone bill (PhonepayPlus accepts that this is not currently widely-available);

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- In the case of a mobile phone, a text to the consumer's handset with a code that can be used at a Post Office or bank for a cash refund;
- A cheque or postal order to the consumer's address;
- Vouchers or a free repeat use of the service, provided the consumer accepts this form of refund. (Please note that this method is not applicable where the provider has been ordered to give a universal refund to all consumers);
- Donations to charity of an equivalent total amount, where consumer contact details cannot be obtained due to withheld numbers/caller line identities ('CLIs').

4.5. Providers will be required to prove to PhonepayPlus, upon request, and in an independently verifiable form, that they have refunded consumers.

4.6. Where the money has been donated to a charity, evidence of this should be provided upon request.

5. Evidence of validation for a consumer claim

5.1. Where an instruction to refund applies only to complainants, providers are entitled to ask consumers for reasonable evidence that they are entitled to a refund, such as:

- The consumer's phone bill, and/or;
- The consumer's phone number.

5.2. Please note that requests for verification that go beyond this, for example requests to see a consumer's passport, driving licence, utility bill, etc., are not acceptable and will be seen as obstructive.