

## SERVICE-SPECIFIC GUIDANCE NOTE

### Competitions and other games with prizes

#### EXECUTIVE SUMMARY

##### Quick summary on the use of competition services:

- Consumers should be made aware of how the competition operates.
- Consumers should be fully aware of all information that is likely to affect their decision to participate.
- Promotional material should not mislead consumers.
- Further information should be made available to consumers upon request.
- Providers must ensure that the service is conducted in a fair manner.
- In the case of competitions, providers must ensure that there is an element of skill attached to the entry mechanism.

#### 1. Introduction

1.1. The purpose of this Service-Specific Guidance Note ('the Guidance') is to assist registered parties/providers ('providers') by clarifying PhonepayPlus' expectations around the use of competition services.

1.2. Some examples of competition services would be:

- Lotteries;
- Other games with prizes;
- An entry mechanism into a draw;
- Information about prizes and how to claim them;
- Reverse-billed auctions.

1.3. Before setting up a competition service, providers are strongly advised to understand any further regulatory implications (e.g. from the Gambling Commission) and/or legal restrictions.

1.4. In order for a service to be categorised as a competition, it must contain an element of skill and/or a free route of entry. There is further information on these requirements later in this Guidance.

#### 2. The role of Service-Specific Guidance

2.1. Service-Specific 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. Consumers must be fully informed

3.1. All promotional material should provide clear details as to how the competition operates.

## SERVICE-SPECIFIC GUIDANCE NOTE

### Competitions and other games with prizes

3.2. Consumers must be made aware, before entering into the service, of any information that is likely to affect their decision to participate. Clear terms and conditions should include, but are not limited to:

- Information on any restrictions on number of entries, or prizes that can be won;
- The incremental cost and the full cost of participation, where this is known;
- An adequate description, including the quality, of all prizes and other items being offered, and a clear list of the numbers of each prize on offer;
- Information on any restrictions placed on the availability of those prizes being offered;
- Where the prize consists of vouchers, either the value of a single voucher, or the total value, should be stated;
- The date and time of when the competition closes, except in instances where there are only instant prize winners. (Please note that if no time is provided, the service is presumed to close at midnight on the day of the promotion).

3.3. Providers should also note that, while a competition service does not require prior permission generally, if it employs a form of subscription service of over £4.50 in any seven-day period, then prior permission will be required. Please see the Service-Specific Guidance Note on 'Subscription services' and the instructions on prior permission available on the website at [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk) for more information on subscriptions and applications for prior permission.

#### 4. Promotional material should not mislead consumers

4.1. Any promotional material in relation to competitions services must not:

- Imply that items that can be claimed by all, or a substantial majority, of participants are prizes;
- Exaggerate the chances of winning;
- Suggest that winning is a certainty, or;
- Suggest or imply that consumers can only use a premium rate service in order to participate, where a free, or significantly cheaper, alternative entry route is available.

#### 5. Further information should be available on request

5.1. If the following information is not included in any promotional material, it should be available to consumers upon request:

- How and when winners will be informed;
- How winner information may be obtained;
- Any criteria for judging entries;
- Any alternative prize available;
- The details of any intended post-event publicity;
- Any supplementary rules.

## SERVICE-SPECIFIC GUIDANCE NOTE

### Competitions and other games with prizes

#### 6. Services should be conducted in a fair and equitable manner

- 6.1. Providers should ensure that all correct entries have the same chances of winning. Prizes should be awarded within 28 calendar days of the closing date, unless a longer period is clearly referred to in the promotional material.
- 6.2. Providers should not change the closing date, or withhold prizes, on the grounds of an insufficient number of entries, or where entries are deemed to be of inadequate quality.
- 6.3. If there is any subjective assessment in the selection of the winning entries (e.g. tie-breakers) and/or awarding of prizes in a competition open to the public, then judging is by a person or persons independent of the provider and any of the intermediaries involved, or by a judging panel including at least one independent member.
- 6.4. No competition service may offer specific prizes that are also offered by other competitions (also known as 'prize pools').
- 6.5. Consumers should not be subject to unreasonable costs in order to claim prizes. For example, those services which require consumers to pay over and above normal postal costs to claim prizes are unlikely to be acceptable.

#### 7. Element of skill and free route of entry

##### 7.1. Element of skill – The Gambling Act 2005

- From section 14(5), in the case of competitions, providers must show that the entry mechanism has an element of skill attached to it. To assess this, the provider must show that the skill, judgement and knowledge being added has the effect of either:
  - Deterring a significant proportion of those who wish to enter from doing so, or;
  - Preventing a significant proportion of those who do enter from winning a prize.
- PhonepayPlus accepts that this test has been difficult to interpret and would recommend that any provider wishing to set up such a service should seek legal advice and advice from the Gambling Commission (0121 230 6666/<http://www.gamblingcommission.gov.uk/>).

##### 7.2. Free route of entry

- The distinction between a free draw and a lottery is that no one makes a payment to enter into a free draw. The route of entry will be deemed free if the participant does not have to pay any premium charge (i.e. entering a free draw via post or by telephone, where the standard network rates apply, will be deemed a free route of entry).

- 7.3. If either the "element of skill" or "free route of entry" barriers exist, then the service will be deemed a competition, and not a lottery. Providers should note that a lottery requires a licence to operate. For more information on obtaining a licence, please seek advice from the Gambling Commission (0121 230 6666/<http://www.gamblingcommission.gov.uk/>).