



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

**A Final Statement following PhonepayPlus'
Consultation**

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1. About PhonepayPlus and Guidance in support of the Code

1.1 Ofcom has formal responsibility for regulating premium rate services (PRS) through the Communications Act 2003. Under the terms set out in section 121 of the Act, Ofcom has recognised PhonepayPlus as the organisation which delivers the day-to-day regulation of the premium rate services market by approving the PhonepayPlus Code of Practice.

1.2 PhonepayPlus (formerly ICSTIS until 2007) has regulated premium rate services since 1986. PhonepayPlus' goal is that everybody should be able to use premium rate services with absolute confidence. In pursuit of this goal, PhonepayPlus creates a Code of Practice which sets appropriate standards for promotion, content and operation of all premium rate services. In applying these standards, PhonepayPlus has particular regard to vulnerable people, especially children.

1.3 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.

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

1.5 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.

1.6 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 look to proactively engage with relevant stakeholders and gather intelligence prior to the actual consultation paper itself.

2. Background

2.1 In the broadest sense the term, 'app' is short for 'application', and was 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.

2.2 The term 'apps' originated in the public consciousness following the launch of the Apple iPhone. However, 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 population now owns a smartphone¹), apps have become even more accessible and popular in the mobile market.

2.3 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,
- Cash where a pre-paid card is purchased.

2.4 Potential risks to consumers caused by application-based payment using PRS were identified through consumer complaints, discussions with industry stakeholders and our own monitoring. Risks were grouped into a number of areas:

- Lack of pricing or other key information when consumers purchase within an app, or promotions which may mislead consumers into a purchase they would otherwise not have made;
- Issues around security, which could cause PRS charges without a consumer's knowledge or auditable consent;
- Difficulty in making complaints or enquiries, either through a lack of contact details or because responsibility for complaint handling is not clearly defined within the value-chain;
- Consumer confusion about how to exit an application and end charging;
- Various transparency issues around virtual currency, which can be purchased using PRS and used within apps, which may cause consumer confusion.

2.5 In response to these issues, draft Guidance was developed in conjunction with PhonepayPlus' Industry Liaison Panel (ILP) '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, and works to control them.

¹ Ofcom's Communications Market Report 2011

2.6 The 'Draft General Guidance Note on application-based payment' was publicly consulted from September to December 2011. The draft Guidance was set out under the following general headings:

- Definition of applications
- Pricing and other key information
- Misleading promotions
- Virtual currency
- Password protection and security
- Complaint handling
- Technical quality

2.7 In addition, the consultation document also recognised the need to address the 'method of exit' from an application, but asked respondents for more information first, rather than including proposed guidance around this issue.

2.8 Lastly, pre-consultation discussions with app developers and industry stakeholders generally indicated a preference for drawing information from existing PhonepayPlus Guidance, where relevant, and grouping it into the draft Guidance in order to provide a 'one-stop shop' for those using PRS to monetise apps. As a result, some paragraphs of the draft Guidance contained information which is already within other PhonepayPlus Guidance Notes.

3. Summary of responses and Conclusions

3.1 Five responses were received as a result of our public consultation, and they are listed in a later section of this document. This is a relatively low response, but we also received a number of other emails/letters endorsing the response of the Association for Interactive Media and Entertainment (AIME), so clearly other stakeholders had contributed to AIME's response rather than provide their own.

3.2 In addition, this draft Guidance had been developed in conjunction with the ILP Futures Group for the first time, and this may have reduced the need or inclination for those on that group, at least some of whom would ordinarily respond to our consultations, to respond on this occasion.

3.3 Respondents' comments, and PhonepayPlus' considerations and conclusions, are summarised below:

Definition of applications

3.4 The draft Guidance had contained the following proposed definition:

“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.”

3.5 In addition, PhonepayPlus had set out a diagram which illustrated the number of different methods by which apps can be monetised, of which PRS is one method, in order to set out the extent of our remit to app developers.

3.6 The consultation asked two questions:

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?

3.7 Three respondents suggested a shorter definition which better reflected that an app is always resident on the device to which it is downloaded. After consideration, the Executive has changed the definition in the final version of the Guidance to read as follows:

“a payment made in respect of a premium rate service, that is initiated as a result of a software application resident on a PC, mobile phone or other device (such as a tablet).”

3.8 Respondents were in general agreement with the diagram, but one suggested that it also reflect that virtual currencies can be purchased through a variety of different channels rather than a single payment flow. A sentence has been added underneath the final version of the diagram to reflect this.

Other areas which Guidance on application-based payment should address

3.9 The consultation asked the following question:

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.

3.10 Respondents did not identify any other areas which they felt the draft did not cover, save that of 'method of exit' which is addressed later in this section.

Pricing and other key information

3.11 The draft Guidance in this area was grouped into various sub-headings:

- *Pricing and other key information* (as adapted for app developers);
- *Key information where an app-based service can be accessed on more than one device* (e.g. a newspaper-based app which is subscribed to using PRS, and can be accessed on both a smartphone and a tablet with the same subscription);
- *'Freemium' services* – where app-based content is accessed for free at first, but then monetised through add-on purchases (e.g. as part of a videogame or virtual world), or consumers paying for the full version of a service after they have accessed a free demo.

3.12 The consultation asked the following questions in relation to pricing and other key information:

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?

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

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

3.13 One respondent suggested that some areas around pricing and transparency merely replicated other PhonepayPlus Guidance (in this case, the General Guidance Note on 'Promotions and promotional material') and so there was no need to include it as it could be referenced elsewhere. The respondent further suggested that, by including these replicated paragraphs from other Guidance, and adding to them where appropriate for apps, PhonepayPlus was creating a higher regulatory standard for apps-based services than for other PRS.

3.14 This was not the majority view. Responses were generally positive about the approach of replicating relevant paragraphs from other PhonepayPlus Guidance and adding to them in order to clarify expectations around app-based services. We would also clarify that Guidance is not binding on PhonepayPlus' independent Tribunals and, as such, does not assume the same status as the Code.

3.15 Respondents did suggest areas where the existing proposals around pricing and other key information could be further clarified in order to make them clearer to app developers and other relevant stakeholders. As such, the final version of the Guidance contains a number of additions, with the key additions summarised below:

- Paragraph 3.1 (*para 9 in the consultation version*) – contains an extra bullet point reflecting that whether an application uses large amounts of data, which could lead to bill shock, would also be regarded as key information.
- Paragraph 3.3 (*para 12 in the consultation version*) – addition to reflect an expectation that the price should be expressed in UK sterling.
- Paragraph 3.5 – additional paragraph to reflect an expectation that the price must be of a similar size to the call to action in any promotion where the two are on the same web page; also, that where the call to action is a clickable icon or link, this should contain the price as part of it – e.g. “click accept to pay £4.50”.
- Paragraph 3.11 (*para 18 in the consultation version*) – change to second bullet point to reflect, even though it is not a requirement to remind consumers when they will begin to be charged after a free trial, it would be good practice to do so; change the third bullet point to reflect that charging after a free trial should not commence beyond what is reasonably practicable from the point at which the trial concluded.
- Paragraph 3.14 (*para 21 in the consultation version*) – additions to reflect that receipts when a consumer purchases can be delivered by SMS, email or through easily accessible records within the application architecture, and that where multiple purchases are made within a short space of time, it would be acceptable to send a number of receipts at the end of the gaming experience.

Misleading promotions

3.16 This section within the consultation version of the Guidance summarised information which already exists in more detail within PhonepayPlus’ General Guidance Note on ‘Promotions and promotional material’. These were inserted in order to ensure app developers and other readers would have visibility of our basic requirements around misleading promotions, and could be directed to the Guidance Note on ‘Promotions and promotional material’, if they required more detail.

3.17 Given these paragraphs were neither new, nor adapted specifically for app-based PRS, respondents offered no comment.

Virtual currency

3.18 Given that purchases using virtual currency, which in turn can be bought using PRS payment, are now a recognised part of application-based services, PhonepayPlus consulted on some detailed requirements around information transparency for consumers before they consent to purchase virtual currency. The expectations proposed in the draft Guidance as to the information consumers should be given can be summarised as follows:

- The exchange rate of the virtual currency to UK sterling. In addition, providers should inform consumers when that rate alters, and refrain from altering it too frequently;
- Consumers should be able to switch their payment method from PRS to other methods (where available) without undue complication;
- It would be considered good practice if the price of any services which can be bought using the virtual currency were also clearly displayed next to the call to action.

3.19 The question asked in the consultation was as follows:

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

3.20 With reference to the last of the bullet points at paragraph 3.18 above, some respondents cautioned against trying to regulate virtual currency as a whole (as opposed to just the use of PRS to purchase it). However, PhonepayPlus remains quite clear that any requirements after virtual currency is purchased using PRS (and then used subsequently to purchase services) are best practice, rather than expectations under the Code.

3.21 As a result, we have not removed any of the expectations proposed in the draft Guidance. However, we have made a number of small drafting changes to provide clarity, and set two additional expectations, as suggested by some respondents:

- Consumers should be clearly informed if unused currency cannot be redeemed
- Consumers should be clearly informed as to whether the virtual currency is specific to one application, and cannot be used outside of that application

Password protection and security

3.22 This section of the draft Guidance was grouped into two different areas:

- Consumer consent to charging – part of this text is also contained within the General Guidance Note on ‘Privacy and consent to charge’. However, a section was also added on ‘malware’ (software contained within an app which illicitly sends texts from the consumer’s phone which consent to charge or marketing, or which accesses a consumer’s contacts list without consent).
- Password protection (including a best practice recommendation that apps which are regularly accessed to make PRS purchases are password protected)

3.23 The question asked in the consultation was as follows:

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

3.24 Only one respondent commented on the text around consent to charging, citing that we should not limit secure record keeping of consumer opt-in via a web-based mechanic to a third party (i.e. who derives no shared revenue from the service itself), as the principle concern should be security of the data centre, rather than the identity of those providing it.

3.25 PhonepayPlus agrees with this, but would add that, where a provider wishes to establish its own systems for securely recording web-based consumer consent to purchase, then the burden of proof and level of scrutiny in an investigation will inevitably be higher, as the records are being held by a party who potentially derives greater shared revenue from false purchase records. Paragraph 7.1 of the final version of the Guidance (*paragraph 29 in the consultation version*) reflects these changes.

3.26 Around password protection, some respondents expressed a concern about paragraph 33 of the draft Guidance, which suggested it may be best practice for providers to offer refunds where unauthorised purchases have been made (i.e. by someone other than a consumer) from an app which is either not password protected or which has already been accessed using a password.

3.27 They contested this could encourage consumer abuse (i.e. requesting refunds for purchases which were, in fact, made in full knowledge) and did not place enough emphasis on consumer responsibility to protect their device from misuse by others. Some respondents

also suggested that refunds should be left to the discretion of providers, many of whom already provide refunds where legitimate complaints are made in such circumstances.

3.28 PhonepayPlus acknowledges that a small percentage of consumers may, either mistakenly or deliberately, request refunds for purchases which they originally made in good faith, citing unauthorised use by others as the reason. However, the draft Guidance also sets out that, where unauthorised use is cited to PhonepayPlus, we will consider each case on its individual merits in order to assess how likely it was that the consumer authorised a purchase. As such, we do not expect providers to offer refunds to consumers where there are no legitimate grounds to do so.

3.29 We also acknowledge that a growing number of providers offer refunds voluntarily where there are legitimate grounds for doing so, both for app-based services using premium rate payment and other forms of PRS. This is a practice we welcome but, given it is not universal, it is likely that the minority of providers most keen to profit from unauthorised use, or other forms of consumer harm, will be the least likely to adopt it.

3.30 As such, we have not altered paragraph 33 of the draft Guidance, which has been renumbered to paragraph 7.5 in the final version of the Guidance, but would remind stakeholders that its recommendation is intended as best practice (and stated as such) rather than an expectation.

Complaint handling

3.31 Paragraphs 34-36 of the proposed Guidance replicated the General Guidance Note on the 'Complaint-handling process', and referred readers to this Guidance for more details. However, paragraph 35 also referenced the added complexity that may be involved in an application-based delivery-chain, and reminded providers that it is important that consumers are directed to the party that can deal with their specific complaint (albeit that the party deemed to be the Level 2 provider in any investigation retains responsibility for complaint handling).

3.32 The consultation did not ask a specific question around complaint handling, but two respondents suggested that an aggregator should always take responsibility for consumer complaints about application-based services. This would differ from our Code, which states that Level 2 providers are responsible for complaint handling unless they sub-contract that function to a Level 1 and, as a result, we saw no reason to make this a requirement.

3.33 However, we would consider it best practice that aggregators handle calls, in order that they can become aware of complaints at the first available opportunity and ensure a solution is reached, or at least ensure they are aware of complaints at the first available opportunity. Paragraph 8.4 has been added to that effect to the final version of the Guidance.

Technical quality

3.34 The question asked in the consultation was as follows:

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

3.35 It was suggested that we add a sentence stating that, where an application is not compatible with a device, then owners of that device should be prevented from purchasing that app altogether. PhonepayPlus has been assured this is generally possible to achieve technically, and so has added this sentence at paragraph 9.1 of the final version of the Guidance.

Method of exit

3.36 Prior to consulting on draft Guidance on application-based payment services, PhonepayPlus' expectations as to *a simple means of permanent exit* from a PRS were already set out in the General Guidance Note on 'Method of exit from a service'. This Guidance 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 but still strongly recommends that services respond to a texted 'STOP' command from a consumer wherever that is technically possible.

3.37 At time of consultation, PhonepayPlus was aware that some application-based services require the consumer to uninstall the application in order to exit and stop any further charging. We accepted such methods of exit would not recognise a texted 'STOP' command, but highlighted that they might still breach our Code of Practice if one or more of the following is true:

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

3.38 The question asked was as follows:

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.

3.39 While we had originally proposed to make any necessary changes to the General Guidance Note on 'Method of exit from a service' as a result of responses, the majority of responses signalled a preference for specific paragraphs around 'method of exit' to be added to the General Guidance Note on 'Application-based payments', as this would be in keeping with providing a 'one-stop shop' for those monetising apps using PRS. PhonepayPlus agrees with this and, accordingly, a section on 'method of exit' has been inserted into the final version of the Guidance (at section 4).

3.40 A number of specific, and helpful, suggestions about suitable methods of exit were received and incorporated into the final version of the Guidance. These can be summarised as follows:

- That method of exit should be linked to the method of engagement – e.g. if the consumer has installed an app to begin charging, then it would be logical for them to uninstall it to end charging, provided they were clearly informed of this.

- Consumers should be informed clearly wherever it is necessary to uninstall an app in order to cease premium rate charging.
- That where an app, once installed, will continue to charge on a regular basis without the need for further consumer consent, then it will be regarded as a subscription service, and will need to respond to the 'STOP' command and send spend reminders in accordance with paragraph 2.3.12(d) of the PhonepayPlus Code of Practice.

4. Next Steps

4.1 The final version of the [General Guidance Note on 'Application-based payments'](#) is available on the [PhonepayPlus Code/Guidance microsite](#) from 27 February 2012. This Guidance is effective immediately from the date of its publication.

4.2 We will continue to monitor application-based payments using premium rate payment, as we do with all other PRS. This will include random monitoring to ensure compliance with the PhonepayPlus Code of Practice.

Annex A - List of Respondents

Network operators

BT

Three

Aggregators

MACH

mBlox

Trade Associations

Association for Interactive Media and Entertainment (AIME)