



Review of prior permission conditions for consumer credit services operating on premium rate

A PhonepayPlus consultation

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Executive summary

PhonepayPlus is the independent regulator of premium rate services (PRS) in the UK. Our aim is to provide effective and proportionate regulation that builds consumer trust and confidence in PRS.

This consultation document reviews the prior permission regime PhonepayPlus has in place for consumer credit services using PRS and makes proposals for changes to the conditions attached to it. Under the regime, consumer credit services must obtain a prior permission certificate from PhonepayPlus before they can commence operation. This requirement has been put in place because, in our view, additional controls are necessary to ensure consumers are not harmed as a result of needing to apply for a loan through premium rate.

PhonepayPlus, as a matter of course, keeps its regulatory framework, including prior permission regimes, under review to ensure that it remains proportionate and effective and that it keeps pace with market developments. As part of this, we propose to make the following changes to existing prior permission conditions for PRS-based consumer credit services to reflect new guidance from the Office of Fair Trading (OFT):

- Promotional material must state the total maximum cost of the call in addition to the price-per-minute and maximum duration of the call;
- Calls to the main credit brokerage service – i.e. the application for a loan – must not exceed one premium rate call; and
- Callers must be provided with a non-PRS number for customer care purposes, and clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call.

As providers of PRS-based consumer credit services are bound by consumer credit law, and so will already be subject to these conditions, we propose to update our regime to reflect the changes at the same time as any other changes which arise from this consultation. In addition, we set out in this document our consideration and proposals for further changes to existing conditions to take into account new best practice measures outlined by the Department for Business, Innovation and Skills (BIS) and to address identified risks to consumers of PRS-based credit brokers. These are set out below.

Conditions proposed to align with new industry best practice measures from BIS:

- A requirement to display the repayment cost per £100 borrowed in addition to the annual percentage rate (APR); and
- A requirement to provide signposting to free and independent debt advice prior to the consumer being charged.

Proposed conditions to address identified consumer risks:

- A requirement to include the average loan APR in promotional material;
- A requirement to include the average acceptance rate (i.e. the percentage of callers whose loan applications are accepted) in promotional material;

- A requirement that consumers are provided with a freephone number during their first call, with clear instruction that they should call this number to make any further enquiries about an existing loan application; and
- If current refund rates do not significantly improve, PhonepayPlus reserves the right at a later date to consult on a requirement that consumers be automatically refunded rather than them having to request a refund – however we are not including that as a condition at this stage.

In proposing these new conditions for PRS-based consumer credit services, PhonepayPlus intends to bring its prior permission regime in line with updated wider industry guidance and best practice as well as to protect consumers from identified risks which are specific to the PRS-based consumer credit market. It is not our intention to cut across the genuine delivery and value that these services have for consumers who may not be able to obtain credit through other means.

A full list of the proposed conditions can be found *italicised* and underlined within Annex A.

We are seeking views from industry, consumer groups and other parties with an interest in the proposals by the deadline of **2 April 2013**.

Section one - Background

How PRS-based consumer credit services work

- 1.1 Consumer credit services operating on a premium rate number do not charge a commission or fee when a loan is arranged, as non-PRS consumer credit services do. Instead the premium rate charge serves as a payment for the provider's role as a broker who processes the consumer's loan application and forwards it to a number of lenders. By making an application through a premium rate number, consumers pay upfront charges for the cost of the call whether or not they have been approved for a loan. This is in contrast to a commission-based service, where a fee is levied only when an application is successful.
- 1.2 In addition, a consumer would, in many cases, make an initial call to a freephone number operated by the PRS provider to make an initial enquiry about a loan application. Once the PRS-based credit broker is satisfied the consumer is eligible, they invite them to call a premium rate number to make a formal application.
- 1.3 Many consumers of these services may be already vulnerable, as financial hardship and an inability to obtain credit through the banking system may leave them dependent on other sources of short-term credit. PhonepayPlus considers that the up-front way PRS credit services are charged adds a further layer of vulnerability, as consumers may be drawn into paying a premium rate phone call in seeking loans that they have little chance of being offered at rates that they cannot afford.
- 1.4 As a result of these heightened risks, PhonepayPlus has put in place a prior permissions regime for PRS consumer credit services. This requires any provider of a PRS-based consumer credit services to obtain prior authorisation from PhonepayPlus before they can operate on PRS and accept specific, pre-determined conditions in addition to their duties under our Code of Practice (the Code) as part of that authorisation.
- 1.5 We believe prior permission for PRS-based consumer credit services is necessary to ensure consumers have from the outset a very clear understanding of the costs and other terms of the loans being offered so that they do not incur unexpected additional charges as a result of applying for a loan in this way. Among the conditions attached to a consumer credit prior permission is a requirement that a premium rate call to a consumer credit service does not exceed 15 minutes in duration. A copy of the prior permission regime certificate, including the full definition of consumer credit services, is attached at Annex A. Our proposed changes and additions to existing conditions are italicised and underlined for ease of reference.
- 1.6 PhonepayPlus is responsible for ensuring that PRS-based consumer credit services comply with its Code and the prior permission conditions for the standard, content, operation and promotion of the premium rate number. General regulation and enforcement of the consumer credit industry is the responsibility of the OFT, which is also the licensing authority that permits a lender or broker service to enter the market. This responsibility will transfer to the Financial Conduct Authority (FCA) in April 2014 once a new regulatory regime has been developed.

Section two - Review of consumer credit regulation

2.1 PhonepayPlus has reviewed the current prior permission regime for PRS-based consumer credit services, and our conclusion is that changes to existing conditions are necessary to enhance consumer protection. In particular, we think the following considerations are important factors which we explore in further detail below:

- New OFT guidance for the consumer credit industry;
- BIS measures to improve industry best practice; and
- Emerging risks to consumers of PRS.

2.2 We recognise the value that consumer credit services can have for consumers, particularly those who might otherwise not be able to access credit offered by banks or building societies. As far as possible we are also mindful of not wanting to reduce or cut-off the source of credit to consumers, or introduce additional regulatory controls that disadvantage PRS-based credit brokers in comparison with non-PRS based counterparts.

2.3 However, PhonepayPlus believes that consumer credit services operating on PRS present risks to consumers that do not exist for other payment mechanics because they charge upfront for the premium rate call whether or not the consumer's application for a loan is eventually approved. This means that consumers, who are likely to be anxious to secure a loan and so may be unlikely to scrutinise the terms of the PRS-based application process, are more vulnerable to financial harm. As such, we already require additional controls to ensure there is complete transparency around how the service operates including total cost and length of call.

2.4 In proposing changes to those controls, our aim is to align the regime with new industry best practice as well as to protect consumers from emerging risks we have identified as part of our review. Our aim is also to ensure that consumers can continue to have full confidence in these services and that they can make informed choices based on clear and transparent information.

New OFT guidance for the consumer credit industry

2.5 In 2011, the OFT undertook a review of the consumer credit industry following a super-complaint submitted by Citizens' Advice (CA) relating to the marketing and charging practices used by credit brokerage and debt services.¹ As part of its complaint, CA included a specific recommendation for PhonepayPlus as follows:

- That the OFT should work with PhonepayPlus to ensure that credit firms only use premium rate numbers where this is fair and not harmful to consumers. Where firms have given consumers premium rate numbers, OFT guidance should ensure that consumers can recover the charges along with any broker fee.

¹ CA super-complaint – Cold calling for credit and upfront fees charged by loan finder firms, 3 March 2011: http://www.citizensadvice.org.uk/cashing_in.htm

2.6 Following an industry-wide consultation, the OFT published new guidance to enhance consumer protection and transparency in the consumer credit market. PhonepayPlus worked closely with the OFT to inform its considerations and to align some of our existing prior permission conditions into the new guidance to ensure consumer protection was consistent.

2.7 We have considered and set out below three new conditions relevant to PRS-based consumer credit services. These conditions read across from the updated OFT guidance, and go beyond our existing conditions:

- Promotional material must state the total maximum cost of the call in addition to the price-per-minute and maximum duration of the call;
- Calls to the main credit brokerage service – i.e. the application for a loan – must not exceed one premium rate call; and
- Callers must be provided with a non-PRS number for customer care purposes, and clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call.

2.8 PhonepayPlus considers that a straight incorporation of the relevant provisions in the new OFT guidance into our conditions is appropriate so there is no ambiguity about the regulatory requirements for providers in this area. Given that OFT has already consulted with industry and that PRS-based credit brokers are required to follow OFT's guidelines regardless of whether or not PhonepayPlus has introduced analogous controls, it is our view that introducing them will not place any higher regulatory burden on PRS-based consumer credit providers than that which has already been placed upon them.

2.9 **We propose that these three conditions are added to our current prior permission conditions to bring them in line with revised OFT guidance for consumer credit. As such these conditions (italicised and underlined for ease of reference at xxii, ii, and iv of “Category Specific Conditions” respectively) form part of the draft prior permission certificate at Annex A.**

BIS measures to improve consumer protection and transparency

2.10 In May 2012, subsequent to the publication of the OFT's guidance, BIS announced a series of new measures to encourage the consumer credit industry to raise standards and transparency in the market.² This included a commitment from industry to increase transparency about loan repayment so that consumers can make informed decisions and are not surprised by hidden payments. The announcement was in response to a parliamentary report into debt management by the BIS select committee, which highlighted particular concerns about the regulation of consumer debt and the vulnerability of consumers needing to apply for loans in this way.³

² BIS – Better help for consumers in financial difficulty from payday loans, 24 May 2012:
<http://news.bis.gov.uk/Press-Releases/Better-help-for-consumers-in-financial-difficulty-from-payday-loans-67a77.aspx>

³ BIS select committee report into debt management, March 2012:
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/news/debt-management-chairmans-comments/>

2.11 PhonepayPlus considered these measures in the course of our own review and felt there was some relevance to the delivery of PRS-based consumer credit services which invited further consideration. In particular, we looked at the following two conditions for which we make proposals in section four of this document.

- A requirement to display the repayment cost per £100 borrowed in addition to the annual percentage rate (APR); and
- A requirement to provide signposting to free and independent debt advice prior to the consumer being charged.

2.12 Whilst these BIS proposals do not have the force of statutory regulation, like the OFT regulations, they represent best practice that the main trade bodies in the consumer credit industry have already agreed with the Government to implement.

2.13 **In light of this, we propose that these two provisions are added to our prior permission conditions. As with the OFT conditions set out above at paragraph 2.7 to 2.9, these conditions (italicised and underlined for ease of reference at ix and xix of “Category Specific Conditions” respectively) form part of the draft prior permission certificate at Annex A.**

Emerging risks identified by PhonepayPlus

2.14 In addition to incorporating the relevant new OFT and BIS provisions, PhonepayPlus has also reviewed whether further conditions are required to address emerging consumer risks in PRS consumer credit – recognising that the PRS market has some additional features and risks.

2.15 Our review has concluded that there is a good case for going beyond the OFT and BIS provisions and adding some further conditions for PRS consumer credit. We have looked at the following areas of regulation:

- Transparency around rates of interest charged
- Transparency around acceptance rates
- Transparency around cost of calls
- Maximum length of calls
- Refunds

2.16 These proposals are subject to consultation and are explained and assessed in the next section.

Q1. Do you have any views on the PRS consumer credit model, the potential benefits and risks to consumers and the interaction between OFT, BIS and PhonepayPlus regulations?

Section three - Consideration and proposals

3.1 Below we have set out our consideration and proposals for changes to existing conditions to the prior permission regime in place for PRS-based consumer credit services. As set out in the previous section, we consider that these changes are necessary in order to align with best practice for the consumer credit industry as well as to address emerging consumer risks.

Transparency around rates of interest charged

3.2 Given that all consumers of PRS-based consumer credit services begin to pay for their loan application as soon as their call is connected, we believe it is more important that they are made aware upfront of the likely APR of any loan they are offered in a way that the consumer will understand. Where loans are offered via a non-PRS route, consumers pay a fee only at a later point when the loan is arranged. At that point they can refuse the loan, and so avoid the charge, if the APR which is communicated to them as part of any loan offer is not to their liking. However where a PRS-based credit broker is used, consumers are charged from the moment they are connected through to an operator to make their application.

3.3 Under our current prior permission conditions, providers are required to inform the caller of the typical APR on connection to the service. Paragraph 2.2.1 of our Code of Practice also stipulates that consumers should receive all key information about a PRS prior to incurring any charge, and in the case of credit brokerage it is our view that such key information includes the APR, or a representative APR, of any loan which may subsequently be offered.

3.4 The new conditions that we propose to add to our prior permissions conditions around the transparency of rates of interest charged are as follows:

- Consumers must be informed of the average repayment cost per £100 borrowed (in addition to the average APR). This comes from the BIS provisions and is intended to give consumers an additional means of understanding the borrowing costs in a way that may be more accessible than an APR figure.
- Consumers must be informed of the cost of borrowing in promotional material (in addition to when they are connected to the service). This reflects the fact that consumers start incurring phone charges upon connection to the premium rate number. Informing them beforehand will therefore enable them to make an informed decision about whether to apply for a loan before they start incurring charges. Promotional material would include any means through which the service is promoted, for example on a website or printed material. However, we recognise that interest rates for products can change fairly frequently. Information on websites can be updated quickly and easily to reflect this and we would expect it to be done so. Updating printed material can be more difficult and costly and we would take a pragmatic approach to this, expecting printed material to be updated as soon as it is practical and feasible to do so.
- Consumers who are interested in applying for a short-term unsecured loan must also be given an average APR and cost per £100 borrowed for those products specifically. This reflects the fact that repayment rates can vary significantly between different financial

products, reflecting the credit risks involved. Where a broker offers a wide range of loans, an average for all products may therefore not be indicative of the high repayment rates that can apply to short-term unsecured loans. For example, we are aware from a case we have looked at of APRs on unsecured short-term loans being up to 70 times higher than an advertised average APR for all loans offered. We think that consumers need to understand this. We would expect consumers to be advised of the average repayment rate for short-term unsecured loans during the call, as soon as it becomes apparent that this is the loan type they are looking for.

Q2. Do you have any views on the new conditions we are proposing for transparency around rates of interest charged and their impact on either consumers or providers? Please provide any evidence to support your views.

Transparency around acceptance rates

- 3.5 PhonepayPlus also considers it to be important that consumers of PRS-based consumer credit services are fully informed of the acceptance rate – i.e. the percentage of all those who apply for a loan via the broker who have their loan application accepted – prior to making a call and incurring a premium rate charge.
- 3.6 Consumers of PRS-based consumer credit services are highly likely to be among the most financially vulnerable in society. Therefore, in our view, the likelihood of their application being accepted is a key factor in their decision to call, and whether to incur a premium rate charge, or not.
- 3.7 Our current consumer credit prior permission conditions do not require the publication of an acceptance rate in promotional material. Furthermore there is no requirement under OFT rules to publish acceptance rates nor is it widespread industry practice.
- 3.8 However, in our view, acceptance rates are central to consumers being able to determine whether they are getting value for money or not. If financially vulnerable customers know that they will have to pay a charge for a call when they only have a very small chance of being accepted for a loan, then they might decide not to submit an application.
- 3.9 Evidence seen by PhonepayPlus shows that the average acceptance rate of PRS-based brokerage services from February and May 2012 was 17%, but that this varied from 1% to 42% dependent on the type of loan being applied for and the lender concerned. Applications for short-term unsecured loans had particularly low acceptance rates.
- 3.10 That shows that an average of 83% of consumers who made a loan application in this period were charged for the premium rate phone call but did not have their application accepted – with the non-acceptance rate being even higher for applicants for short-term unsecured loans.
- 3.11 The new conditions that we propose to add to our prior permissions conditions around the transparency of acceptance rates are as follows:

- Average acceptance rates must be included in promotional material for PRS consumer credit services and also given upon connection to the call (alongside average repayment costs and average APR).
- Consumers who are interested in applying for a short-term unsecured loan must also be given information about the average acceptance rates for those products specifically. This reflects the fact that acceptance rates for these loans can be much lower than for other types of loan. We would expect consumers to be advised of the average acceptance rate for short-term unsecured loans during the call, as soon as it becomes apparent that this is the loan type they are looking for.

3.12 PhonepayPlus recognises that publishing the average acceptance rates may impact on the number of consumers calling a PRS-based consumer credit service to apply for a loan. However, we believe it is important that consumers, especially financially vulnerable ones, are clearly informed of all key information before entering into a service.

3.13 Providers are already required to provide information about the loan within promotional material and during the call, including the maximum cost. Therefore, we consider that providing average acceptance rates as part of this can be achieved with minimal cost and little impact on the cost of promotion to providers.

3.14 Once again, we recognise the difficulty arising from publishing this information on printed material given that the rate is likely to change. As before, we propose that providers should update printed material as soon as it is practical and feasible to do so.

Q3. Do you agree with our assessment that publishing the average acceptance rates of lenders will help consumers to make an informed decision? Please provide any evidence to support your views.

Q4. Do you have any views on the impact this may have on PRS-based providers? Please provide any evidence to support your views.

Transparency around cost of calls

3.15 PhonepayPlus considers it important that consumers are aware of key information, in particular the cost of a service, when using a premium rate service and incurring a charge. A number of rules in our Code of Practice set out requirements around clearly informing consumers of cost at the promotional stage. In addition providers of PRS-based consumer credit services are required by current prior permission conditions to state the total maximum cost of a call to apply for a loan in their promotions, as well as the cost per minute. In addition, calls to PRS-based consumer credit services are limited to 15 minutes in duration by our current prior permission conditions. These conditions have also been incorporated into the OFT's revised guidance which applies across the consumer credit market, whether PRS or not.

3.16 However, current PhonepayPlus prior conditions only require information about the cost of the call to be included in promotional material, not also upon connection to the call. Given the importance of pricing transparency, especially for consumers who may be financially vulnerable, and the fact that providers are already required to give other key information

upon connection to the call, we think there are good grounds for including the cost of the call in this as well.

3.17 The new condition that we propose to add to our prior permissions conditions around the transparency of the cost of calls is as follows:

- Consumers must be informed of the maximum cost of the call, the numeric cost per minute and the maximum duration of the call upon connection (in addition to in promotional material).

Q5. Do you have any views on the new condition we are proposing for the price transparency of calls and its impact on consumers or providers? Please provide any supporting evidence.

Total number of calls

3.18 Under existing permission conditions, we require PRS-based credit brokers not to do anything to encourage repeat use of the service, and in particular that consumers must not be encouraged to call the premium rate number again to seek updates as to the status of their loan application before there is likely to be a definite answer for them. However it is clear from our review that, since many consumers who make loan applications via credit brokers will be anxious to know the result, they are likely to, and do, call the provider using the same premium rate number as they used to make their loan application in order to check on the status of that application, regardless of whether they receive direct encouragement to do so or not.

3.19 In our view, making repeat calls to PRS once the loan application has been made can represent a disproportionate financial burden for consumers who are already likely to be financially vulnerable. Whilst we accept providers may not necessarily encourage consumers to call back on a premium rate number for existing loan enquires, we have seen practices that fall short of encouragement, but nonetheless still prompt consumers to call the PRS line for a second time. For example, consumers can be informed that they can call the premium rate number again to find out the identity of loan providers they have been matched with. This second call (and any subsequent ones) rarely confirms whether the consumer's loan application has been accepted or refused, despite this being the answer the consumer is most interested in. Instead the calls provide the consumer with an update as to which lenders are considering the loan application, and confirmation that these lenders would decide within 5-14 days. In addition, the second call, and/or subsequent calls to check on the status of an application, did not speed up this period of consideration.

3.20 Even though this further information does not provide an answer to the consumer's key question of whether their application is successful or not, people who are urgently seeking loans are clearly keen to find out as much information as they can about whether and when their loan application will be approved and this increases the likelihood they will make further calls. We examined one PRS provider and found that 32% of applicants for a loan made a second call at an average of around eight minutes per call. Given that an initial call to a PRS-based consumer credit service is likely to last between 13-15 mins, at a cost of £1.50

per minute, a second call of an average of eight minutes at the same price is likely to increase the loan applicant's charge by an average of over 50%.

3.21 Existing prior permissions conditions and the new OFT conditions do not, in our view, fully address this problem because these follow up calls are not necessarily being "encouraged" by the provider, they are not calls made for an application for a loan, nor are they calls made for customer care purposes (e.g. refunds). Our conditions and the OFT's guidance set out a requirement that the initial call to apply for a loan be limited to 15 minutes and that follow-up calls should not be encouraged by providers. This does indicate a clear intent on the part of both ourselves and the OFT to limit the amount of time (and consequent charging) that a consumer spends engaged with a PRS. It is our view that in order to clarify and ensure that we achieve this intent it is necessary to alter existing prior permission conditions.

3.22 We recognise that many consumers, particularly if they are urgently seeking a loan, will want to make follow up calls to find out more information on their loan application. However, PhonepayPlus regards a figure of 32% of consumers making follow up calls as significant, and cause for concern given two factors:

- The financial vulnerability of the consumers concerned. An application for a loan via a credit broker implies, in our view, that consumers cannot obtain a loan at more preferential rates or that they have a short term cash-flow problem which they wish to rectify via a payday loan. In both of these scenarios the consumer can be classed as being financially vulnerable.
- The relatively low level of loan acceptance rates (an average of 17% between February and May 2012, as set out previously at paragraph 3.9)

3.23 This suggests to us that a significant number of consumers do not derive any ultimate value from a second call (or subsequent calls) – in that the object of their primary call, their request for a loan, is not progressed – and further suggests that a significant number of consumers would not make this call, or would be less likely to make it, if they clearly understood that the second call would neither provide an answer to their application nor in any way hasten the process.

3.24 Whilst we have considered the potential for consumers to be given clearer information – which emphasises that a second call will neither provide an answer with regard to their application nor speed up the process – it is our current view that this will not change the propensity of a significant percentage of consumers to make a second, or subsequent, calls to the PRS. Therefore, and in line with the intent that the time loan applicants spend calling a PRS be kept to a minimum, we propose the following new conditions around the total number of calls:

- Providers must provide a non-PRS number during the initial call to enable callers to follow up with any enquiries about existing loan applications.
- Where consumers call up the PRS number for a second time to make an enquiry about their loan application, they must be directed to a non-PRS number.

Q6. Do you have any views on the new conditions we are proposing around the total number of calls and their impact on consumers or providers? Please provide any supporting evidence.

Refunds

- 3.25 As previously stated, all consumers of PRS-based consumer credit services are charged upfront for making a loan application through a premium rate call whether or not they are approved for a loan.
- 3.26 Our current prior permissions condition stipulates, in line with the Consumer Credit Act 1974, that consumers who do not receive or take up the offer of a loan can claim a refund of all but £5 of the cost of their application via PRS. However this places the onus on the consumer to make the claim rather than the consumer credit broker to provide an automatic refund.
- 3.27 Updated OFT guidance requires providers to give callers clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call, and in light of this already being applicable to providers under the OFT guidance we propose to also change our prior permission conditions to reflect this.
- 3.28 We recognise that some providers go beyond what is required by both OFT guidelines and our conditions by offering a full refund to consumers who are not successful in their application and subsequently request a refund – and we welcome this. However, evidence seen by PhonepayPlus shows that the number of consumers exercising their right to a refund for the call cost if their loan application is not approved is extremely low.
- 3.29 For instance, of the percentage of consumers who applied for a loan during a four-month period in 2012 only 5.6% of eligible consumers were issued with full refunds. The low take-up rate suggests a lack of transparency or consumer confusion around eligibility for refunds, or lack of awareness that they can exercise this right.
- 3.30 PhonepayPlus is very concerned by this very low take up of refunds. The claiming of refunds, where entitled, is central to the fair operation of PRS consumer credit, where consumers are charged upfront without knowing if they will get a loan or not.
- 3.31 PhonepayPlus therefore considers that consumers must be better informed about their right to a refund if their loan application is not approved. We therefore fully support and propose to implement in our prior permissions the OFT requirement that consumers must be informed of their right to a refund of all but £5 of the call cost within the first minute of their call.
- 3.32 We think it is essential that refund rates improve considerably on the current very low rate if the market is to work fairly. If the implementation of the OFT's requirement does not achieve this, then we will consider further and will consult on other options to achieve this, including the possibility of automatic refunds for consumers who are eligible, in line with the Consumer Credit Act.

3.33 We recognise that requiring PRS-based providers to improve their refund rates for eligible consumers could have a significant impact on their business model, in which they earn a revenue-share from the premium rate number consumers call to make an application. However, we assume that such a business model also takes into account that consumers who are not successful in their loan application are eligible for refunds, and it is therefore our view that providers should not benefit from a lack of consumer knowledge about their rights, especially where such consumers are financially vulnerable.

Q7. Should PhonepayPlus consider introducing new measures to improve refund rates for eligible consumers?

Q8. Do you have any views on what steps could be taken to improve the current refund rates?

Regulatory impact assessment

- 4.1 In proposing changes to the current prior permission regime for PRS-based consumer credit services, PhonepayPlus must consider the impact this will have on providers and whether that impact is proportionate to the level of potential, or actual, harm to consumers.
- 4.2 We have previously stated that we propose to update our conditions to align with the new OFT guidance and given that PRS-based credit brokers are already required to comply with this, it is our view that updating them will not place any higher regulatory burden on providers than that which has already been placed upon them.
- 4.3 PhonepayPlus considers that the majority of proposed conditions would require changes to websites, promotional material and information provided on connection to the service. However we do not consider that they will place an unnecessary burden on providers in terms of the cost of changing their promotions to comply.
- 4.4 In terms of displaying the average loan APR, repayment cost per £100 borrowed and the average acceptance rates, providers will be required to amend their promotion material including information on their website and that given to consumers once connection to the service is made. We recognise the difficulty this may pose for printed material as these rates are likely to change often. Therefore, we are content that providers update printed material as soon as it is practical and feasible to do so.
- 4.5 In addition providers will be required to give the average loan APR, repayment cost per £100 borrowed and average acceptance rates for payday or unsecured loans (in the case of the latter as soon as it is practical when it becomes apparent the consumer is applying for these loans). Once again, we consider this information can be provided within the call and without any considerable cost implications to providers as this information will be available to them already. Whilst the provision of such information may slightly increase the overall length of the call, and therefore the cost to consumers, we do not consider this information will take more than an extra minute to provide, and should in practice take considerably less than a minute.
- 4.6 With regards to the requirement to signpost consumers to free and independent debt advice, again we consider that this could be achieved with little or no cost implications to providers as it would require a one-off change to promotional material. Changes to printed material could be made alongside the other new publication requirements when it is reasonable to do so, thereby minimising costs.
- 4.7 We recognise that some of the new conditions are likely to reduce consumer take up and revenue for some PRS consumer credit services. In particular:
- Greater transparency around repayment costs and acceptance rates may reduce consumer demand for those products, such as short-term unsecured loans, that have the highest repayment costs and the lowest acceptance rates. However, this will depend on consumers' need for credit and the availability and cost of alternative sources of credit.

- The requirement to provide a non-PRS number for consumers wishing to enquire about the progress of their loan application will take away the revenues that providers currently obtain from second calls to the PRS number for these purposes. If our assessment is correct that around one third of consumers call the PRS line for a second time at around half the call length of the first call, this means that around one-sixth of the PRS revenue for providers is derived from second calls. This condition may therefore have a material impact on revenues.
- The requirement to significantly increase refunds to eligible consumers will require providers to pay back to consumers a greater share of their revenues than they do currently. Again, this could have a significant impact on revenues for providers.

4.8 We recognise that, taken together, these conditions present quite a challenge to PRS consumer credit providers. We recognise also that because some of these new conditions are not reflected in OFT rules nor BIS provisions and therefore will only apply to PRS consumer credit providers, this does raise a question about whether the PRS industry is being disadvantaged compared to other types of consumer credit provider.

4.9 We have considered these points, but are nonetheless satisfied that the proposals we are setting out are fair and proportionate. We would stress in particular the following points:

- The evidence we have seen (as set out in this document) suggests that current regulatory requirements have not been sufficient to ensure that the PRS consumer credit market is sufficiently transparent and working in the best interests of consumers. Very low refund rates, high rates of second calls to the PRS line and very high borrowing rates and very low acceptance rates for unsecured short term loans that consumers are not routinely made aware of when incurring PRS charges – these are all matters of concern, especially given the financial vulnerability of some consumers.
- The PRS model does create risks to consumers that do not apply in the same way to commission-based charging models. The key difference is that with the PRS model, consumers are charged upfront whether their loan application is successful or not. This justifies tighter conditions around these services compared to non-PRS services. It puts a greater premium on transparency of key information before calls are made, supplemented by in-call information, and also on refunding consumers who are eligible under the terms of the Consumer Credit Act.
- Whilst the new conditions will pose challenges for PRS providers, revenues can still be maintained where PRS providers are offering financial products that are competitive in the market and that well-informed consumers will still want to apply for and take up. The conditions we are proposing do not, in our view, in any way hinder providers from offering high-quality and competitive products; they merely curtail opportunities to gain revenue from poor consumer awareness.

Q9. Do you agree with our impact assessment? If not, why not?

Next steps

We are seeking views from industry, consumer groups and parties with an interest in the proposals by the deadline of **2 April 2013**. Given the number of active PRS-based credit brokers in the market is small, we consider a consultation period of eight weeks to be appropriate.

Once PhonepayPlus has received and considered all responses to the consultation we will issue a final statement setting out our conclusions and any changes to the regulatory framework. Changes to the current regime can be introduced with reasonable notice (usually 4-8 weeks), and we will update the prior permissions page on the website to reflect any such changes.

Where possible, comments should be submitted in writing and sent by email to:
skhan@phonepayplus.org.uk. Copies may also be sent by post to:

Sarwar Khan, Senior Public Affairs Executive, PhonepayPlus, Clove Building, 4 Maguire Street, London SE1 2NQ

Tel: 020 7940 7408

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

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, please ensure that you request for this, along with your reasons for making this request.

List of consultation questions

Q1. Do you have any views on the PRS consumer credit model, the potential benefits and risks to consumers and the interaction between OFT, BIS and PhonepayPlus regulations?

Q2. Do you have any views on the new conditions we are proposing for transparency around rates of interest charged and their impact on either consumers or providers? Please provide any evidence to support your views.

Q3. Do you agree with our assessment that publishing the average acceptance rates of lenders will help consumers to make an informed decision? Please provide any evidence to support your views.

Q4. Do you have any views on the impact this may have on PRS-based providers? Please provide any evidence to support your views.

Q5. Do you have any views on the new condition we are proposing for the price transparency of calls and its impact on consumers or providers? Please provide any supporting evidence.

Q6. Do you have any views on the new conditions we are proposing around the total number of calls and their impact on consumers or providers? Please provide any supporting evidence.

Q7. Should PhonepayPlus consider introducing new measures to improve refund rates for eligible consumers?

Q8. Do you have any views on what steps could be taken to improve the current refund rates?

Q9. Do you agree with our impact assessment? If not, why not?

Annex A – Draft prior permission certificate for consumer credit services

*Please note changes and proposed additions to prior permission conditions are italicised and underlined below for ease of reference.

Any registered provider that wishes to be involved in the provision of a premium rate service (PRS) that falls within the definition below, and fulfils any of the key conditions outlined below, must have prior permission from PhonepayPlus before the service can commence operation. Prior permission will only be granted subject to the application of certain conditions as set out below.

Permission granted under this category of service is specific to named services only.

Definition:

For PhonepayPlus' purposes, 'consumer credit services' are defined as services (both recorded and live) which appear to PhonepayPlus to offer one or more of the following facilities:

1. Credit brokerage
2. Consumer credit business
3. Consumer hire business
4. Debt adjusting and debt counselling
5. Credit repair services, giving advice on amending credit records including, for example, the removing of County Court Judgements.

Services 1 to 5 (above) correspond with business categories 'A' to 'D' on a Standard Consumer Credit Licence and are to be construed accordingly.

Services which offer debt collecting or credit reference agency facilities (business categories 'E' and 'F' on a Standard Consumer Credit Licence) are not included in this definition.

However, they will still require prior permission if they feature live conversation or operate at a higher tariff. Providers should also note that the definition of a consumer credit service extends to services for sole traders and partnerships, but not to services exclusively for limited companies.

General conditions:

- i. All provisions of the PhonepayPlus Code of Practice (the Code) (as far as they are applicable) apply to the service.
- ii. PhonepayPlus may impose such further conditions as it may deem necessary upon reasonable notice.
- iii. This permission certificate may be immediately revoked by PhonepayPlus at any time if any condition is breached.
- iv. PhonepayPlus may revoke this permission certificate after giving reasonable notice.

- v. All platforms and connections to a Network operator that provide access to the service(s), and any other relevant services provided must be of adequate technical quality.
- vi. The Level 2 provider must register the applicable premium rate numbers (PRNs) with PhonepayPlus before the service commences. Once registered, any change to the PRNs must be registered within two working days.
- vii. If, for any reason, the service fails to commence within six months from the date of this permission certificate; or, having commenced, does not operate for any continuous period of six months – then this permission certificate (in either case) will immediately cease to be in force.

Category-Specific conditions:

Credit brokerage services

- i. All brokers must hold a consumer credit licence and be able to provide evidence of this upon request by PhonepayPlus.
- ii. *Calls to the main credit brokerage service – i.e. the application for a loan – must not exceed one call.*
- iii. Calls must not exceed 15 minutes in duration.
- iv. *Providers must provide a non-PRS number during the initial call to enable callers to follow up with any enquiries about existing loan applications.*
- v. *Where consumers call up the PRS number for a second time to make an enquiry about their loan application, they must be directed to a non-PRS number.*
- vi. *Callers must be provided clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call.*
- vii. Callers who do not proceed to take out loans within six months of the call, or who exercise their statutory right to cancel a loan agreement, must not be charged more than £5. The provider can achieve this by:
 - a. Limiting the costs of calls to £5,
 - b. Implementing a system of refunding callers who do not proceed to take out loans within six months of the call, or who exercise their statutory right to cancel a loan agreement. The refund should not be less than the amount by which the cost of the call to the caller has exceeded £5. Furthermore, PhonepayPlus would expect the availability of such refunds to be promoted both at the beginning of the service and in all promotional material, and it should not be necessary for callers to have to provide a copy of their telephone bill in order to obtain a refund, or

- c. Structuring the service so that sufficient information is obtained to determine whether or not a caller will proceed to take out a loan before the cost of the call reaches £5. However, a similar system to that described above would need to be implemented for refunding callers who exercise their statutory right to cancel a loan agreement.
- viii. *Consumers must be informed of the cost of borrowing in promotional material (in addition to when they are connected to the service).*
- ix. *Consumers must be informed of the average repayment cost per £100 borrowed in addition to the average APR.*
- x. *Consumers who are interested in applying for a short-term unsecured loan must also be given an average APR and cost per £100 borrowed for those products specifically.*
- xi. *Average acceptance rates must be included in promotional material for PRS consumer credit services and also given upon connection to the call.*
- xii. *Consumers who are interested in applying for a short-term unsecured loan must also be given information about the average acceptance rates for those products specifically.*
- xiii. Callers must be informed upon connection that their details may be passed to PhonepayPlus for regulatory purposes and, having been given this information, they should be asked to confirm whether or not they wish to continue.
- xiv. If any other lender is to be signed up, the details of that lender must be provided to the Executive before loan applications are passed to that lender. The Executive will then confirm in writing whether the provider can use the lender.
- xv. The following statistics must be provided on a monthly basis:
 - a. A breakdown of the length of each call made to the service,
 - b. The number of callers who have been accepted for a loan and how many have been declined – evidence substantiating these figures must be provided (i.e. from your lender),
 - c. Call revenue and call volume statistics (this must be obtained from your Network operator),
 - d. Evidence that refunds have been given to callers whose loan application has been unsuccessful (details of the caller's name, address and telephone number must also be provided).
- xvi. Only one trading name can be used in relation to premium rate services.

- xvii. The trading name must not be misleading.
- xviii. Promotions should not be targeted at non-status borrowers – as defined in the Office of Fair Trading's (OFT's) Non-Status Lending Guidelines – or otherwise at people who have low or impaired credit ratings or who have already been refused loans.
- xix. Promotions should provide signposting to free and independent debt advice prior to the consumer being charged.
- xx. Promotions should not suggest, either expressly or by implication that loans are available regardless of a person's income or other financial circumstances, or their credit rating, or regardless of whether they have been refused a loan.
- xi. Callers should not be directed to the service from other brokers or lenders, where the person has been refused a loan or has a low or impaired credit rating.
- xxii. Promotional material must comply with anything required by law, and where appropriate, the OFTs Guidelines on Non-Status Lending, and must:
 - a. If an APR is shown, be accurate and representative of the business being advertised,
 - b. State the trading name of the broker (as it appears on the Consumer Credit Licence),
 - c. State the total maximum cost of the call in addition to the numeric cost per minute and maximum duration of the call,
 - d. Not contain a statement that loans are guaranteed,
 - e. Not contain a statement emphasising the speed with which loans can be guaranteed,
 - f. If the service is live, state the full address of the provider and hours of operation.

Please note that, in addition to the conditions set out above, additional conditions may be imposed at the time that the permission is granted.