

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

Final statement following consultation

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Section 1: Executive Summary

1. 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.
2. The term ‘consumer credit services’ describes a range of regulated activities associated with the provision of credit facilities to customers, usually on a short to mid-term basis. All such services fall within the wider scope of financial services. Also included in the term are credit broking services, which are those services that offer support to customers seeking credit to broker agreements with lenders.
3. PhonepayPlus has had in place a prior permission regime for consumer credit services for over a decade, but only credit broking services have been launched in that period within the PRS industry, with relevant firms obtaining prior permission as required.
4. In February 2013, PhonepayPlus published a review of this prior permission regime with the intention of ensuring its continued fitness for purpose. The current document responds to a reassessment of proposals put forward as a result of the earlier review. It seeks to engage productively with stakeholder feedback and to take a fresh approach, based not on prior permission but on proactive and collaborative enforcement of the PhonepayPlus Code of Practice (the ‘Code’).
5. Since the 2013 consultation there have been a number of factors affecting our policy strategy:
 - The 12th Code is outcomes-based and has been proven to deliver a more flexible and effective range of consumer protection measures resulting in greater coverage even where “niche” services are operated.
 - The Code Review project has considered alternative frameworks for the delivery of flexible measures to ensure effective consumer protection in a changing market. This has led to a review of the use of prior permissions under paragraph 3.10 of the Code and how or when it is to be used.
 - The Code Review has led to the proposed adoption of Special Conditions within the 13th Code, which will allow the imposition of conditions on higher risk services without the additional requirement to seek prior authorisation which a prior permission regime would entail. This process of review has opened up other possibilities for responding to risks such as those posed by consumer credit services.
 - The Financial Conduct Authority (FCA) has taken responsibility for the regulation of consumer credit services following the closure of the Office of Fair Trading (OFT) and the establishment of the Competitions and Markets Authority (CMA). There have been significant developments in the regulatory framework for firms offering consumer credit and this is having an impact on relevant services paid for via PRS.

6. In light of other proposals which PhonepayPlus has published for consultation as part of the Code Review, and the greater breadth and flexibility of the regulatory frameworks of both PhonepayPlus and the FCA in relation to consumer credit than previously, PhonepayPlus has reconsidered whether the original consumer credit proposals are in keeping with its strategic thinking going forward.
7. As a result we have decided to scale back the prior permission requirements for consumer credit services during the remaining period of time in which the 12th Code is in force¹. Where the current additional conditions imposed under prior permission overlap with FCA rules and guidance for consumer credit services, compliance standards must remain as they are. For example, calls should still last no more than 15 minutes.
8. There are some complexities surrounding this shift away from prior permission conditions and towards the use of Code enforcement, and so we are offering support to industry members as this transition takes place. As part of this process, PhonepayPlus is issuing guidance with the intention of assisting providers of PRS consumer credit services in operating and promoting services that are compliant with our Code of Practice.
9. This Guidance is appended to this final statement and is designed with the intention of helping providers when:
 - designing the business model for their service
 - developing and operating the service mechanics,
 - drafting the scripts used on premium rate calls in a compliant way,
 - training staff, including call operators,
 - planning and creating compliant websites, promotional material and campaigns
 - developing a customer care service in conjunction with the main service; and
 - coordinating refunds for consumers, including those required under legislation.
10. From **Thursday, 8 January 2015**, PhonepayPlus will maintain the requirement for prior permission under 3.10.1; however, the only additional condition that will be required is that consumer credit service providers notify PhonepayPlus of the following information when the service is launched:
 - Name of the firm as registered with the FCA
 - Confirmation that the provider has the appropriate credit permission (if needed) from the FCA
 - Confirmation of the PhonepayPlus registration details for both the organisation and the service, in the form of references provided by the Registration Database
 - Confirmation of the name and contact details of the primary contact at the firm with responsibility for compliance and regulatory affairs.

¹ PhonepayPlus intends to publish the 13th Code and have it in force no later than 26 June 2015 in line with Ofcom changes relating to non-geographic call services (NGCS).

11. The Guidance sets out practical steps to take in order to meet our requirements that providers notify PhonepayPlus when a consumer credit service is launched. It will be a process that is distinctive from other prior permission regimes. This is because of the nature of the requirement. In effect, prior permission will take effect at the point at which notification has been made to PhonepayPlus. This is explained further in section 4 of this statement.
12. While we are not consulting further on this new guidance, which takes effect as at publication of this statement, section 4 does give details as to how industry can offer feedback.

Section 2: Consultation and recent developments

Consumer credit regulation in the PRS market

13. PhonepayPlus recognises 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.
14. PhonepayPlus considers many consumers of these services may be already vulnerable, as financial hardship and an inability to obtain credit through the banking system may have left them dependent on other sources of short-term credit. We consider that the up-front way PRS credit services are charged adds a further layer of vulnerability, as consumers may be drawn into paying for a premium rate phone call in order to seek loans that they have little chance of being offered by mainstream financial providers and at rates that they cannot afford.
15. As a result of these heightened risks, PhonepayPlus has previously 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.
16. Where consumers are anxious to secure a loan – which is likely in these circumstances - they may be unlikely to scrutinise the terms of the PRS-based application process, which may make them more vulnerable to financial harm. As such, we have required additional controls to ensure there is complete transparency around how the service operates including total cost and length of call.
17. PhonepayPlus is not the only regulator with an interest in these services, nor is it the only organisation to hold these concerns. Up until 1 April 2014, the Office of Fair Trading (OFT) regulated consumer credit, and it established regulations and guidance that mirrored the prior permission regime set up by PhonepayPlus. Since the FCA took over regulation of consumer credit on that date, it has stated the following in relation to this industry sector:

“Consumer credit is an important part of UK financial services and the UK economy, helping people smooth their income and providing them with greater flexibility over their spending. However, we know that many millions of people across the UK get into problems paying back debt, overstressing themselves and suffering both financial and non-financial detriment.”²

² FCA’s Report “Consumer credit and consumers in vulnerable circumstances”, April 2014, Page 3

18. While it is clear PhonepayPlus is aligned with the FCA in terms of its approach to consumer credit services, we recognise that the decision relating to how each regulator seeks to protect consumers must be independent and tailored to the activities of each organisation. The FCA is the primary UK regulator for consumer credit, and PhonepayPlus is the primary regulator of controlled PRS, under the 2003 Act. Where those interests overlap, we seek only to implement those measures necessary to establish consistency of compliance and adequate consumer protection.
19. The review of PRS consumer credit services conducted last year, including the consultation with industry, has enabled PhonepayPlus to understand its role and impact on such services. We have discovered the breadth and effectiveness of the outcomes-based Code is far-reaching, and is supportive of the new regulatory landscape.

The 2013 consultation

20. PhonepayPlus undertook a wide review considering how credit broking services operated within the PRS industry, and comparing this to other models which are commission-based. The review also looked at the range of rules and regulations set by a number of enforcement bodies in the UK, including the OFT and the Financial Services Authority³ (FSA).
21. 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. One of the challenges, for both the variety of regulators and the businesses operating such services, is keeping pace with the shifting regulatory landscape. Indeed further evidence and data have been reported and considered by a number of regulatory bodies since our 2013 consultation.
22. Our review highlighted our belief that consumer credit services operating on PRS present risks to consumers that do not generally exist for other payment mechanics because they charge upfront for the premium rate call (and any subsequent calls at premium rate to check the status of an application) 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 therefore unlikely to scrutinise the terms of the PRS-based application process, are more vulnerable to financial harm.
23. In 2013, we considered there to be a requirement for additional controls to ensure there is complete transparency around how the service operates including total cost and length of call. When reviewing the old prior permission conditions it was considered more was necessary to establish higher levels of transparency. PhonepayPlus proposed some amendments to the prior permission regime, including the introduction of the following new conditions:
- 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;

³ These bodies were the regulators of consumer credit and financial services at the time of the review.

- 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.

24. PhonepayPlus received responses from 10 stakeholders, including two confidential responses. The following summarises responses to the nine questions raised in the 2013 consultation:

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?

25. Some respondents questioned the approach taken to regulating a service type that posed significant risks, the concern being that a prior permission regime had the capacity to legitimise activities that may in some circumstances treat consumers unfairly. Ultimately some respondents expressed a concern that the measures proposed did not go far enough, however this was prior to the changes in the regulatory landscape that we have previously outlined.

26. A respondent trade body along with other industry stakeholders highlighted the distinction between guidance, which formed key aspects of the regulatory framework established by other UK regulators, and the proposals relating to a PhonepayPlus prior permission regime. These proposals were said to form a mandate for how services are operated and promoted thereby establishing higher restrictions than those flowing from guidance.

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.

27. There was wide support for the underlying principles associated with transparency, with a number of stakeholders noting this was an important part of the Code⁴. One respondent questioned whether it was right to stipulate such requirements under a prior permission regime given the harmonisation sought under the Consumer Credit Directive (CCD). This EU Directive set out what standard information lenders must give to consumers, and feedback suggested some proposals, such as a requirement to display the repayment cost per £100 borrowed in addition to the annual percentage rate (APR), may go beyond those harmonised provisions.

28. One stakeholder highlighted the value of some specific provisions associated with types of information consumers ought to consider when deciding to take out a loan. It

⁴ The *Transparency and Pricing* outcome is one of the six that form the basis of the consumer protection rules set out in Part 2 of the Code.

suggested some other areas which were not clearly set out to consumers prior to agreeing a loan, such as default charges. Transparent information is considered to be a proactive remedy to reduce the harmful impact felt from those who end up overstretched and in serious debt.

29. A respondent representing consumer interests supported the need for transparency while providing a word of caution about consumers becoming overwhelmed with information undermining any transparent process for obtaining a loan agreement.
30. PhonepayPlus has noted these comments, especially those about harmonisation with the Consumer Credit Directive and the note of caution about information overload. The review sought to translate guidance from BIS and other regulators, which of course takes account of the CCD, into the prior permission regime itself. The comments from stakeholders suggest that the inclusion of the proposed requirements into Guidance instead may support the existing Code provisions to have equivalent effect, without the risk of going beyond protection measures introduced elsewhere.

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.

31. A number of respondents highlighted that this specific requirement did appear to be unique to PhonepayPlus' regulations. Some stakeholders questioned whether this information was likely to materially affect the consumer's decision to use a particular credit broking service given the potential difficulty with obtaining a loan.
32. Some responses to this question pointed back to the importance of consumers being aware of the nature of the service and the cost of using the PRS payment option. This suggested a less prescriptive approach to the problems posed by marketing that is designed to emphasise the benefits of engaging with a service. Consumer credit applications are difficult to navigate, and success can largely be based on the individual applicant as opposed to the means of accessing loans. Some stakeholders, while supportive of the proposal, questioned the implementation of such a requirement.
33. One respondent suggested "*supporting guidance to the [current] regime may be the most appropriate way forward*".
34. As before, we have retained this requirement, but placed it into Guidance. This ensures that providers carefully consider the need to include such information, without it being uniformly prescriptive if providers can prove they have clearly informed the consumer by other, equally acceptable, means.

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

35. A respondent trade body, and another stakeholder, commented on the impact felt by the PRS industry in the context of a broader consumer credit market. It was suggested that the impact of these heightened restrictions may be disproportionate especially where there is competition from similar services charging via card payment options. However

other industry respondents suggested the impact would be minimal and accepted that consumers would benefit from this information.

36. A consumer group questioned whether the proposed additional requirements would provide such information that was suitably indicative of the repayment rates and therefore expressed doubt that the changes would have the desired effect on consumer choice. Prioritising such information in the wrong way on a PRS call may lengthen its duration and cost.

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.

37. Responses were broadly supportive of this proposal. One stakeholder commented on the inherent difficulties with presenting the total cost where mobile network charges were added. While this is relevant, it is noted that this issue is not relevant only to consumer credit services paid for via PRS. It is a wider issue, which is being addressed by Ofcom under its proposals for non-geographic call services (NGCS)⁵, and will also be addressed by PhonepayPlus as part of wider guidance on pricing transparency.

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.

38. Industry stakeholders raised significant concerns at the proposed prohibition, limiting the number of legitimate calls to a PRS line for credit broking services to one. Responses did not question the rationale relating to the risk posed to consumers, and some stakeholders welcomed the change. However, others questioned the evidence and suggested there was scope for PRS to be operated fairly even where more than one call was made by a consumer as part of the process.
39. A respondent trade body and other responses highlighted other regulatory requirements that deal with post-contractual customer services, and acknowledged the need for non-PRS numbers to be used where appropriate. However, it was suggested unreasonable to prohibit multiple calls regardless of the purpose of those follow-up contacts. Industry stakeholders suggested there were occasions where consumers would gain further benefit from additional advice and may be willing to pay for such value-added services.⁶
40. One respondent particularly welcomed the proposals but sought greater clarity around the service models being used. It suggested businesses could do more to update consumers without need for multiple calls or chasers for information instigated by the consumer themselves.

⁵ Ofcom's NGCS report: <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/>

⁶ This is in-keeping with findings set out in the CMA Report on 'Payday lending market investigation – Provisional decision on remedies' 9 October 2014 ('CMA Report'). The CMA Report considered restrictions on additional fees charged for obtaining consumer credit. The CMA was not minded to take forward such potential remedies, instead focussing on transparency for consumers to better enable their decision-making. (See section 4 of the CMA Report at pages 87-88)

41. As a result of the decision not to proceed with a prior permission regime for consumer credit services, PhonepayPlus will no longer introduce conditions around the total number of calls to a consumer credit service. However the attached guidance clearly links any further calls beyond a first call to the need to outline a demonstrable added value to a consumer, and that a failure to do so could result in a breach of PhonepayPlus' Fairness outcome.

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

42. Some respondents recognised the seriousness of the situation reflected by the low take up of refunds, especially where legislation encouraged and equipped consumers to seek a refund. However, it was noted that the Code already set out expectations for effective complaint handling and redress processes. Furthermore, a trade body emphasised in its response: "*there is no absolute right of refund for fee-based brokerages*".

43. There was widespread support for the guidance provided by the OFT in relation to statutory requirements. Respondents questioned whether PhonepayPlus needed to go further than other regulators on this matter.

44. One stakeholder suggested that it was right to consider a requirement on firms to notify customers with a result of their loan application within a particular time-frame and that a reminder of the opportunity to gain a refund would help consumers.⁷

45. PhonepayPlus notes that section 155 of the Consumer Credit Act (CCA) entitles the consumer to a full refund of any brokerage fees if they cancel a distance contract within 14 days of entering into it. As such the guidance sets out our view that providers should have mechanisms to proactively notify consumers of their statutory rights around a refund for the cost of any calls to a premium rate number which do not then result in a loan. It is important that such information is provided in a clear and timely manner to consumers.

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

46. A number of stakeholders responded to this question to highlight the protection afforded consumers by transparency from the outset, thereby reducing the need for redress or refunds. A respondent network indicated that any non-PRS call used to market consumer credit or broking services ought to discourage ineligible customers from dialling the PRS line. A trade body reiterated the need for transparency prior to a consumer choosing to make a PRS call.

47. One industry stakeholder offering credit broking services indicated that refund rates are of limited use in assessing a providers handling of legal rights under the Consumer Credit Act. It suggested that it was important to offer a wide range of options for consumers to access help and make a claim for a refund, but where these exist the low numbers of claims should not reflect poorly on the business.

⁷ This is discussed further in relation to regulatory developments coordinated by the FCA since 1 April 2014.

48. A respondent consumer body suggested PhonepayPlus could consider the barriers put in place to reduce take up of statutory rights by consumers. This may include the types of evidence required to support a claim, or the delay in processing such claims. Alternatively, it may be that follow-up marketing may indicate some form of success based on prior contact with the credit broker, reducing the appetite in making a claim. This may arise regardless of the customer ultimately failing to secure a loan agreement.
49. This respondent went on to link take up of refunds with transparency and the effective communication around the process, which suggests the Code provisions themselves may play a part without the need for new measures.
50. One respondent suggested PhonepayPlus consider a media campaign to raise consumer awareness levels on this matter.
51. Another stakeholder suggested that were the situation not to improve and refund rates remained low, automatic refunding would need to be considered. PhonepayPlus will continue to review the impact of Consumer Credit Guidance, and will keep these comments in mind as we consider refund rates.

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

52. While there was broad support for the impact assessment conducted by PhonepayPlus, some respondents raised concerns at the introduction of disproportionate restrictions on PRS providers operating in this market. A respondent trade body and industry stakeholders suggested some of the conditions not found in other regulatory frameworks would inevitably cripple those reliant on a PRS payment mechanism.
53. One respondent sought more data, suggesting that it was necessary to determine whether current rules and regulations were unsatisfactory. It stated that without more evidence for the need of the additional conditions proposed by PhonepayPlus, some of the proposed conditions ought to be dropped.⁸

Research into consumer perceptions⁹

54. PhonepayPlus commissioned Thinktank to conduct a programme of qualitative research to better understand the consumer credit services market, in particular consumer's decision-making processes and their knowledge and understanding of the premium rate service (PRS)-based model. In addition to the requirement for a general understanding of how consumers would engage with the PRS-based model, PhonepayPlus wanted to understand the consumers' understanding of specific elements of the service. This included the use of multiple calls to the PRS during the entirety of the consumer journey.
55. The research was modelled upon one provider's service provided within the framework established under the current prior permission regime. The key findings were as follows:

⁸ This respondent had repeated suggested guidance as an alternative means of achieving greater levels of transparency in order to protect consumers without the adoption of new measures that go beyond the Consumer Credit Directive and rules or regulations set out by other UK regulatory bodies.

⁹ <http://www.phonepayplus.org.uk/For-Business/~media/Files/PhonepayPlus/Research/2014%20%20PRsbased%20consumer%20credit%20service%20%20Research%20for%20PhonepayPlus.pdf>

- There was a lack of understanding about the provider's role and the nature of the service being provided;
- There was a concern about the length of the calls;
- There was a lack of understanding about the purpose of the second call (promoted by the provider as an opportunity to get an update regarding the progress of the application)
- There was a lack of clarity about the refund process

56. What became clear from the research was that the current prior permission regime was no longer as effective in offering adequate consumer protection. Over time this had led to high cost services developing in the market within that framework.

57. Stakeholder engagement was undertaken with relevant parties in the industry. This dialogue highlighted commercial pressures that appeared to explain the development of such services without due clarity in relation to key information.

58. Furthermore, the dialogue indicated that while there was scope for enforcement action in pursuit of higher compliance standards, the industry was facing significant change in terms of regulation and that there was a desire to understand regulatory obligations. It was suggested that further guidance on the use of PRS lines as a means of payment for credit broking services may lead to such higher standards.

59. The regulatory landscape has changed significantly in recent years, and the next sections explore the development of the PhonepayPlus Code and the creation of the FCA.

The 13th Code of Practice

60. PhonepayPlus launched the twelfth edition of the Code in September 2011. The twelfth edition of the Code introduced a new approach to the regulation of PRS that moved away from prescription to focus on consumer outcomes. Alongside the new Registration Scheme, the new Code marked a significant transition in the regulation of PRS.

61. We believe that the fundamentals of the twelfth edition of the Code are sound; the six outcomes, detailed in Part Two of the Code¹, remain fit for purpose and are now widely understood. Indeed, feedback suggests that the vast majority of stakeholders agree. Therefore, we propose that these are retained as the cornerstone of our regulatory framework.

62. However, more than two and a half years' experience of applying the twelfth edition of the Code, as well as emerging trends and other regulatory changes, have led us to believe that it can be revised and improved in some areas. Indeed, it is only right and proper that PhonepayPlus seeks to ensure that its regulatory framework continues to be effective in ensuring consumer protection and allowing industry to operate and innovate whilst being mindful of the importance of regulatory continuity and stability. PhonepayPlus, therefore, launched a review of the twelfth edition of the Code in 2013, which, in short, intends to improve rather than reinvent our regulatory regime.

63. In scoping the review of the Code, PhonepayPlus has identified a range of areas that could be improved. The rationale for these is varied; some proposed changes stem from our experience of implementing the twelfth edition of the Code, while others stem from a desire to reduce regulatory burden where appropriate and to accommodate regulatory changes being introduced by Ofcom. Others are put forward to strengthen consumer protection where we consider this to be necessary. Many of the changes proposed in this document intend to ensure inconsistent aspects of the Code are coherent with an outcomes-based approach to regulation. This will ensure that the Code is as future-proof as it can be, allowing for regulatory continuity and certainty in a fast-changing marketplace.

64. Changes are proposed in five areas:

- Amendments resulting from the implementation of Ofcom's Review of Non-Geographic Call Services (NGCS)
- Changes to ensure the Code is future-proofed for current and future market developments (Future Proofing)
- Technical amendments to Part Three, Four and Five of the Code to streamline and clarify processes (Technical and Enforcement Review)¹⁰
- A new approach to existing prior permissions regimes (Prior Permissions)
- Improvements to support the principle of 'polluter pays' (Polluter Pays)

65. Prior permissions, to date, have formed an important part of PhonepayPlus' regulatory framework. First introduced alongside the eighth edition of the Code, there are now 17 regimes in operation covering a range of higher risk services including consumer credit services.

66. However, the transition to an outcomes-based approach to regulation has resulted in a Code that is inherently flexible as well as technology and service neutral. By contrast, prior permissions are a legacy of a relatively prescriptive approach to regulation, where rules are binary, restrictive and can often become quickly obsolete. We increasingly believe that broad reliance on prior permission is inconsistent with our overall regulatory approach where necessary consumer protections are otherwise in place.

67. That is not to say that prior permissions are not an important tool in dealing with higher risk services that could, if left unchecked, lead to significant consumer harm. We therefore do not rule out introducing new regimes in the future. However, while we intend to retain the power to introduce new regimes, we intend to use prior permission far more sparingly, and only where there is appropriate cause to do so.

68. Despite there being less need for prior permissions in their current guise, it is essential that we ensure that consumers are not unduly affected by any changes to our approach to higher risk services. The consultation on the new Code therefore sets out a new

¹⁰ At the time of publication of this statement, it is understood that not all proposals made in relation to Part 4 of the Code will be taken forward. Further work is planned to assess the PhonepayPlus enforcement process prior to additional Code amendments that may be recommended at a later date.

framework for the imposition of *special conditions* as set out within an annex to the Code itself.

69. The proposed Special Conditions have been drafted in such a way as to provide PhonepayPlus with a degree of flexibility to adapt the proposed implementation and application of these conditions to newly emerging service types, in order to adequately protect consumers and the market from harm without the need for a full prior permissions requirement unless exceptional circumstances require. On the other hand, it gives industry greater transparency as to the potential conditions PhonepayPlus may contemplate introducing should a service type be considered higher risk – currently, first sight of newly proposed conditions occurs at the point of consultation. Indeed, under this proposal, PhonepayPlus cannot introduce entirely new special conditions unless we carry out a formal Code Review.
70. The proposed Code provisions require PhonepayPlus to consult relevant stakeholders prior to implementing any of the 24 special conditions set out at Annex 2 of the Code – and how we propose to specifically interpret them for the relevant service type to which we intend to apply them.
71. In proposing to implement any of the 24 special conditions, PhonepayPlus will have to demonstrate a service is high risk, which could be determined by complaint data or market developments. Stakeholders will then have the opportunity to comment on PhonepayPlus' determination during a consultation period of up to 12 weeks and any changes will only be implemented after considering relevant stakeholders comments including Ofcom. Any subsequent decision will then be published on PhonepayPlus' website as a notice to industry.
72. Should PhonepayPlus be of the view that it is necessary to introduce any special conditions for consumer credit services to coincide with the introduction of the new Code in June 2015, we will fully consult beforehand.

Financial Conduct Authority and regulation of consumer credit services

73. Since 1 April 2014, the FCA has acted to promote innovation and healthy competition between financial services firms, including consumer credit service providers, and it seeks high standards through compliance with registration requirements and the rules. The FCA has an overarching strategic objective to ensure that the relevant markets function well.
74. The closure of the OFT and the creation of the FCA has resulted in a shift in the regulatory landscape with responsibility for regulation of consumer credit services moving to the FCA.
75. Change in the regulatory landscape, which has been particularly significant in the last 5 years, has increased the risk of confusion in the industry. For example, while payday lending has increased rapidly in the lead up to its peak in 2012, it has shown a decline in loan amounts since that time. The FCA reported in April 2014: "*Overall, applications for*

unsecured credit from those on lower incomes declined by around 5% in the two years from 2010.”¹¹

76. The FCA has carefully set out how its approach to regulating consumer credit services is distinctive from previous regulatory frameworks. While previous obligations have been carried across under the Consumer Credit Act and from OFT Guidelines into the Consumer Credit Sourcebook (known as CONC), those rules and guidance are now applied within a principles-based framework.¹²

77. Businesses must meet certain threshold conditions set out in the FCA Handbook in order that they can be fully registered by the FCA. Furthermore, the services firms offer to consumers must meet the general principles set out by the FCA. One such principle is emphasised by the FCA¹³ – principle six: ‘*A firm must pay due regard to the interests of its customers and treat them fairly*’. This principle sits behind many of our detailed rules and is core to what the FCA expects of firms.

78. FCA has set out six ‘consumer outcomes’ to help explain what it wants this principle to achieve:

- **Outcome 1:** *Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.*
- **Outcome 2:** *Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.*
- **Outcome 3:** *Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.*
- **Outcome 4:** *Where consumers receive advice, the advice is suitable and takes account of their circumstances.*
- **Outcome 5:** *Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.*
- **Outcome 6:** *Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.*

79. PhonepayPlus recognises the importance of this change in regulatory framework and welcomes the principles-based approach taken by the FCA, which places such emphasis on consumer interests. There is significant overlap between the FCA position and PhonepayPlus’ outcomes-based Code, which came into force in September 2011. PhonepayPlus’ outcomes-based approach will continue in the 13th Code, which takes effect in June 2015.

¹¹ FCA Report on *Consumer credit and consumers in vulnerable circumstances* April 2014 – including data from ‘*Credit, Debt and Financial Difficulty in Britain*’, 2011 – 2013

¹² These rules are subject to further change following the publication of the FCA Report outlining ‘*Detailed rules for the price cap on high-cost short-term credit*’, which was published on its website on 11 November 2014.

¹³ See the FCA *Guide for consumer credit firms*: <http://www.fca.org.uk/static/documents/consumer-credit-being-regulated-guide.pdf>

80. Having considered this overlap, PhonepayPlus recognises the key requirement on relevant firms to gain authorisation from the FCA. Firms must get interim permission pending a process for full registration of both firms and services. This process offers an opportunity for services to be tested by the FCA and amendments be made to ensure high standards of compliance are met.
81. While PhonepayPlus notes there will be risks posed to PRS consumers who engage with promotional material for credit broking services, this authorisation scheme offers significant mitigation which cannot be overlooked.
82. Furthermore, PhonepayPlus acknowledges the CMA investigation into the payday lending market as outlined in the CMA Report. When considering provisional remedies, including increased transparency regarding the role of lead generators¹⁴, the CMA states that other parties, including the Financial Ombudsman Service, provide evidence of complaints relating to the sharing of customer data. The CMA considers that the authorisation scheme offers an opportunity for “*a broader review of the operation and practices of this sector*”. This view is shared by PhonepayPlus.

Consumer Rights Directive

83. In order to implement the EU Consumer Rights Directive, the Department for Business, Innovation and Skills (BIS) published the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (‘the Regulations’) on 13 December 2013. The Regulations took effect on 13 June 2014.
84. Paragraph 41 of the Regulations prohibits customer helplines charging consumers at any more than basic rate. This precludes the use of numbers on the 09, 087 and 084 ranges to operate a telephone line for consumer contact about a product already purchased, whether charged via PRS or not, or to cancel a contract.
85. PhonepayPlus considers that this will have an impact on credit broking services that involve payment via PRS calls because some elements of the service may be deemed post-contractual in nature. Providers must go further to ensure any additional calls to the PRS line are not in breach of the law, and offer significant value to justify the higher charges. PhonepayPlus is in dialogue with the FCA in order that firms understand the implications of these regulations.

¹⁴ Lead generators are defined so as to include fee-charging brokers, as explained by the CMA report at page 9, paragraph 30.

Section 3: Interim arrangements in advance of Code 13

Changes to prior permission

86. Following an extensive review of the consultation feedback and the research findings, PhonepayPlus has undertaken additional steps to engage the FCA and industry members within the market sector. This stakeholder engagement has taken some time in order for us to properly the progress made by industry in response to the new regulatory framework in place since 1 April 2014. As a result of this process, PhonepayPlus has decided not to pursue its proposals of extending the prior permission regime as consulted on in mid-2013.
87. However, the review and the research clearly demonstrated risks associated with these services, and concerns held by consumers relating to PRS payment mechanics used for credit broking services. These cannot be ignored, and we intend to use all relevant provisions and powers within our Code to protect consumers in this area.
88. The review has also highlighted problems with the current prior permission regime, and it has been decided that all current additional conditions under that regime will be removed. PhonepayPlus intends to maintain a prior permission regime for consumer credit services under paragraph 3.10.1 of the Code, but in response to the consultation feedback this will be restricted to one new condition requiring relevant Level 2 providers to notify PhonepayPlus of certain information when the service is launched. This is explained in further detail below.
89. PhonepayPlus is introducing Service-Specific Guidance on '*Consumer credit services*', a copy of which is appended to this final statement. This Guidance considers the expectations of PhonepayPlus for the operation of such services moving forward and how PhonepayPlus will enforce its Code. Level 2 providers operating these services will need to consider the guidance carefully and make any necessary changes to their services by **8 January 2015**. After that point, services may be monitored and investigations launched into potential breaches of the Code.
90. These changes do not mean PhonepayPlus expectations are lowered. With compliance expected to be in line with the Code outcomes and the FCA rules and guidance, it is anticipated that even greater efforts will be necessary to offer transparency in terms of key information. Also credit broking services will need to regularly assess whether calls are demanding unnecessary information from callers in order to ensure the duration of calls are reasonable.
91. The Guidance makes very clear statements on call durations – if providers fail to comply with FCA guidance and develop services contrary to those provisions, strict caps may need to be imposed again under prior permission (Code 12) or special conditions (Code 13). From an immediate enforcement perspective, PhonepayPlus will assess the content and call duration and test whether the service treats consumers fairly and equitably. Even where there is no clear evidence of undue delay on the calls, the length of the call may still be considered inappropriate. This assessment will in

effect consider the FCA's sixth principle relating to treating customers fairly, and where there is a case to be answered a potential breach of rule 2.3.1 may be raised.

92. PhonepayPlus considers that this Guidance will lend support to at least one of the provisional remedies outlined by the CMA as part of its investigation into the payday lending market. In the CMA Report, the provisional remedy (f) seeks increased transparency regarding the role of lead generators. The CMA states the benefits of this include:

- *“a reduction in the number of instances where customers confuse lead generators with lenders, or use lead generators on the erroneous expectation that these intermediaries will match them with the best loan for their requirements”*¹⁵
- *“[an increased] likelihood that customers will make an informed decision to use a lead generator as an active choice, rather than as a result of a misunderstanding or by chance, and it will thereby play a part in improving the reputation of the market”*¹⁶

93. The Guidance we provide has the potential to increase the transparency of credit broking services offered within the PRS market and support the efforts of the FCA as it responds directly to the recommendations in the CMA Report.

Notification alongside service registration

94. PhonepayPlus has the power under paragraph 3.10.1 of the Code to “require that particular categories of service must not be provided without its prior written permission”. It can also impose additional conditions on providers who seek prior permission where appropriate. Previously PhonepayPlus has imposed a detailed prior permission regime, containing a range of requirements on consumer credit service providers.

95. Moving forward, as is made clear in the Guidance itself, a requirement for notification at launch of service (within 48 hours of the service being made accessible to the public) will be the only additional condition imposed on consumer credit service providers.

96. From **Wednesday, 10 December 2014**, PhonepayPlus will phase out previously established additional conditions from the prior permission regime put in place for consumer credit services. Going forward, in the period leading up to the introduction of the new Code of Practice (13th edition), PhonepayPlus is maintaining the requirement for prior permission under 3.10.1. In addition to all other Code requirements, consumer credit service providers must notify PhonepayPlus of the following information when the service is launched:

- Name of the firm as registered with the FCA
- Confirmation that the provider has the appropriate credit permission (if needed) from the FCA

¹⁵ Paragraph 3.227 of the CMA Report (9 October 2014)

¹⁶ Paragraph 3.228 of the CMA Report (9 October 2014)

- Confirmation of the PhonepayPlus registration details for both the organisation and the service, in the form of references provided by the Registration Database
 - Confirmation of the name and contact details of the primary contact at the firm with responsibility for compliance and regulatory affairs.
97. Such notification must be made in writing, and it must be received by PhonepayPlus within 48 hours of the service being made accessible to the public. This is in order to ensure that PhonepayPlus is aware of all PRS consumer credit services that are in operation and where firms are not compliant with the FCA registration requirements and can harm PRS consumers there is a quick and effective means for us to prevent such harm occurring.
98. Prior permission will take effect at the point at which notification is made. However, PhonepayPlus will shortly thereafter issue a formal statement confirming the granting of prior permission to each Level 2 provider. Where a Level 2 provider seeks some form of direct confirmation sent to Network operators and Level 1 providers in the value chain, PhonepayPlus asks that contact details are given alongside the requisite information set out above.
99. Where notification is disputed by PhonepayPlus, the Level 2 provider will need to provide evidence of all attempts to notify PhonepayPlus. If a Level 2 provider does not receive a statement within 7 calendar days of notification confirming prior permission has been arranged, it is strongly recommended to telephone PhonepayPlus to check that the notification has been received and is being dealt with.
100. Notification can be made via email to compliance@phonepayplus.org.uk.
101. Where the notification is sent by post, the provider must ensure delivery to the PhonepayPlus office (1st Floor, Clove Building, 4 Maguire Street, London, SE1 2NQ) within the same time period. It is recommended providers who choose to notify using the postal option seek confirmation of delivery to ensure the process is completed satisfactorily.
102. The registration requirements found in Part 3 of the Code must also be met by the provider. Details given when registering both the organisation and the service with PhonepayPlus must match the details provided to the FCA.

Section 4: Next steps

Invitation for comment

103. The new Service-Specific Guidance takes effect as at the date of publication of this final statement¹⁷. PhonepayPlus is not running a further consultation on this matter. The Guidance has been drawn up following the thorough consultation of the prior permission proposals, and meets the calls for further guidance made by a number of respondents. The Guidance has also been considered by the FCA and feedback from that regulator has contributed to its development.
104. However, the guidance does need to be comprehensive and helpful to industry when engaging with the regulatory landscape, including both the PhonepayPlus and FCA. Therefore, we are open to receiving comments from industry affected by this guidance.

Comments can be submitted by email to David Levitt dlevitt@phonepayplus.org.uk. Copies can also sent by mail to:

Mr David Levitt – Senior Policy Executive
PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7445

Notification of services

105. Notification must be made no later than 48 hours after the service has been made accessible to the public. It is recommended that notification is made at the earliest opportunity, as opposed to waiting until after launching the service.
106. Where notification is made in advance of the service being launched to the public, there is additional time and the opportunity to seek compliance advice prior to any problems arising with the promotion and operation of the service.
107. Notifications can be sent to compliance@phonepayplus.org.uk
108. Notifications must include:
- Name of the firm as registered with the FCA
 - Confirmation that the provider has the requisite interim permission or a full licence for the operation of the service from the FCA
 - Confirmation of the PhonepayPlus registration details for both the organisation and the service, in the form of references provided by the Registration Database
 - Confirmation of the name and contact details of the primary contact at the firm with responsibility for compliance and regulatory affairs

¹⁷ Please refer to the cover page for a precise date of publication.

Compliance advice

109. In light of the prior permission regime being scaled back some industry members may wish to have their services reviewed and compliance advice provided in relation to specific promotional campaigns or service structures.
110. PhonepayPlus recommends service plans and promotional material is submitted in a timely fashion to the FCA, as part of a formal application for a full licence by the regulator, or for feedback in advance of such an application.
111. PhonepayPlus can offer compliance advice on any aspect of the Code and guidance and how it may impact upon the businesses operating in this sector. The service offered is free of charge.
112. Requests can be sent to compliance@phonepayplus.org.uk. Compliance advice can be sought from PhonepayPlus at the same time as providers send formal notification to the Executive as required (see section 3 above).

Annex A: Service-Specific Guidance on Consumer Credit Services

SERVICE-SPECIFIC GUIDANCE NOTE

Consumer Credit

Who should read this?

As at October 2014, PhonepayPlus notes that the primary providers of consumer credit services in the premium rate services ('PRS') market are **credit brokers**, and so this guidance note is primarily addressed to them.

However, this may change over time and any firm providing (or considering providing) PRS consumer credit services, whether recorded or live, ought to consider this guidance carefully. For example, if a debt management firm wishes to use PRS in relation to its business.

Credit broking is defined in article 36A of the *Regulated Activities Order*¹⁸ and described further in the Financial Conduct Authority (FCA)'s *Perimeter Guidance Manual*¹⁹.

Providers should note that credit broking is not limited to the broking of regulated credit agreements. It also includes (with some exceptions) the broking of agreements which are exempt from regulation, unless the customer is a limited company or large partnership.

What is the purpose of the Guidance?

The purpose of the guidance is to assist providers of PRS consumer credit services in operating and promoting services that are compliant with our Code of Practice.

So this Guidance may help providers when:

- designing the business model for their service
- developing and operating the service mechanics,
- drafting the scripts used on premium rate calls in a compliant way,
- training staff, including call operators,
- planning and creating compliant websites, promotional material and campaigns
- developing a customer care service in conjunction with the main service,
- coordinating refunds for consumers, including those required under legislation.

What is found in this guidance?

- How to develop a business model that is compliant with our Code.
- What to consider when promoting consumer credit services to increase consumer confidence in your service and avoid posing problems for vulnerable consumers.
- What our expectations are in terms of notifying consumers about their right to a refund where services are not provided or a credit agreement is not entered into.
- What practical steps to take in order to meet our requirements that providers notify PhonepayPlus when a consumer credit service is launched.

¹⁸ See article 36A4 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544.

¹⁹ The Perimeter Guidance Manual (PERG) in the FCA's Handbook describes the various regulated activities, and credit broking is covered by PERG 2.7.7E.

PhonepayPlus and Financial Conduct Authority regulation

PRS consumer credit services are regulated by PhonepayPlus in respect of the way premium rate services are promoted, operated and/or charged.

Credit brokers operating such services are also likely to be engaged in a regulated activity for which they need permission from the Financial Conduct Authority (FCA) and so will be subject to FCA regulation including its high-level Principles for Businesses and detailed conduct requirements set out in its Consumer Credit sourcebook (CONC).

In particular, Principle 6 requires firms to pay due regard to the interests of customers and treat them fairly, and Principle 7 requires information to be clear, fair and not misleading.

In drawing up this Guidance, we have liaised closely with the FCA to ensure that the guidance is aligned with their rules and principles, and we include cross-reference to relevant FCA rules and guidance.²⁰

We recommend that providers familiarise themselves with the consumer credit rules, and any associated information, published by the FCA²¹.

²⁰ There are also FCA rules in relation to use of premium rate telephone services by debt management firms and other debt advisers, at CONC 2.6 and 3.9.

²¹ See the FCA website relating to consumer credit - <http://fca.org.uk/firms/firm-types/consumer-credit>

1. Business models – service development

- 1.1. Providers must consider and ensure compliance with all six outcomes found in Part 2 of our Code. These outcomes have been established following consumer research and reflect what customers of any given service look for in the promotion and operation of those products or services. Providers should pay particular attention to the following four outcomes:
- *Legality* – The services are operated in a way that complies fully with all applicable UK legislation. Such services are also required to comply with FCA rules
 - *Transparency and Pricing* – Information which may influence the consumer’s decision to purchase or engage with a consumer credit service, especially a credit broker, is provided clearly and prominently
 - *Fairness* – Consumers, and in particular vulnerable individuals, are treated fairly and equitably
 - *Complaint Handling and Redress* – In light of the fact that not all credit applications are successful, it is important to ensure the consumer knows if they are entitled to claim a refund and any claim process is easily accessible.

Legality

- 1.2. Rule 2.1.1 of the Code states: “*Premium rate services must comply with the law*”. This repeats the wording of the Outcome itself and is a provision with far-reaching impact. To meet this obligation, providers need to develop business models that comply with the law, taking legal advice where necessary.
- 1.3. For example, credit brokers must comply with section 155 of the Consumer Credit Act 1974 (CCA) which entitles the consumer to a refund of brokerage fees less £5 if a credit agreement is not entered into within six months of an introduction to a source of credit. Consumers are also entitled to a refund if they cancel a contract entered into by distance means (eg. telephone or internet) within 14 days.
- 1.4. In addition to complying with the law, providers carrying on a credit-related regulated activity should ensure they comply with FCA rules including in its consumer credit sourcebook (CONC).²²

Fairness

- 1.5. The Code states at rule 2.3.1: “*Consumers of premium rate services must be treated fairly and equitably.*” This is a high level outcome that enables PhonepayPlus to assess in the round whether a service is treating consumers fairly.
- 1.6. PhonepayPlus will enforce its Code where providers fail to treat consumers equitably, which is also likely to be demonstrated where the provider appears not to have complied with relevant FCA rules and principles around treating customers

²² CONC contains rules and guidance that apply generally to consumer credit firms, but with specific sections on credit brokers in CONC 2.5 (conduct of business and unfair business practices), CONC 3.3-3.6 (financial promotions and communications), CONC 3.7 (disclosure of status), CONC 4.4 (fees disclosure), CONC 4.5 (commission disclosure) and CONC 5.4 (suitability and affordability).

fairly. For example, CONC 2.5.8R(7) states: “A firm must not unfairly request, suggest or direct a customer to make contact on a premium rate telephone number.”²³

- 1.7. With the above considerations in mind, PhonepayPlus takes the view that PRS calls can be used for the operation of credit broking services but only in limited circumstances where it meets a test of fairness.
- 1.8. A key factor in determining whether providers are treating consumers fairly is the question of how many premium rate calls, and the duration of those calls, consumers are required to make to access the service, or are encouraged to make, or are offered.
- 1.9. When considering compliance with the PhonepayPlus Code, especially rule 2.3.1, the test of fairness is unlikely to permit multiple calls to a PRS line to be necessary. We would expect the service to be capable of being provided to customers using one telephone call, with such a call not exceeding 15 minutes in order to apply for credit. We suggest that where 15 minutes is not considered sufficient time, then the provider should consider using a call service number that is charged at no more than ‘basic rate’ for the entire call.²⁴
- 1.10. If providers are unclear whether the call duration will always last under 15 minutes, it is strongly recommended that the call length is carefully monitored and where calls reach 15 minutes in length, or are likely to do so, the provider should offer to call the consumer back to continue the call or provide the consumer with a call service number that is charged at no more than ‘basic rate’ at that time for future engagement with the service.²⁵
- 1.11. Providers should take steps to manage the consumer’s expectations in relation to what the service can offer, and the process by which the consumer may be introduced to relevant potential lenders.²⁶ If this is done properly, consumers should not need to make repeat calls to the provider to check on the status of the application.
- 1.12. As such, we strongly recommend that providers give to consumers the details of timescales for potential lenders to make contact to further an application for credit, and they should avoid encouraging the consumer to call again unless there is a clear reason for the consumer to do so and it is in their interests to do so. If a

²³ CONC 2.5.9G(2) states that an example of unfairly requesting, suggesting or directing a customer to a premium rate number is likely to be to do so in relation to a customer wishing to complain about the firm’s service or to request a refund.

²⁴ BIS define ‘basic rate’ as a rate “*equivalent to standard geographic rates (e.g. 01/02/ 03 numbers) or mobile rates, or free to call*”.

This is consistent with CONC 2.5.8R(8) which states that a firm must not conduct a telephone call with a customer who has called on a premium rate number for an unreasonable period, and CONC 2.5.9G(3) states that it is unlikely to be reasonable for it to be necessary for a customer to make more than one telephone call exceeding 15 minutes to a firm to apply for credit. Where a longer call is required, the firm should ensure the call is not made on a premium rate telephone number.

²⁵ This is consistent with CONC 2.5.9G(4) which states that it is unlikely to be reasonable to request, suggest or direct a customer to call the firm repeatedly to check on the status of an application. A call to check on the status of an application should not last more than five minutes.

²⁶ This is consistent with CONC 3.7.3R which requires disclosure of status and, the nature of the service provided.

further call is required, this should last no longer than 5 minutes in duration and should be made to a call service number charged at no more than 'basic rate'.

- 1.13. Where it is claimed that any second or further call to a PRS line is part of an "additional" service, providers must consider carefully what value is being added and ensure it is in the interests of the consumer for an additional fee to be paid. Consumers must be provided with a clear benefit that they fully understand before making a further call or calls.
- 1.14. Such a practice is unlikely to be considered by a Tribunal as treating consumers fairly and equitably unless the provider is confident that they have met the following conditions:
 - The second call provides demonstrable added value to the consumer in progressing their loan application that is in line with the likely cost of the call (i.e. the added value of the service cannot only be marginal if the added cost of the call will be more than marginal);
 - The added value could not reasonably have been provided in the first call;
 - The consumer is clear about the benefit they will derive and the costs they will incur from any subsequent calls to a premium rate number once they have made their first call;
 - The consumer is not encouraged into making a second or subsequent call;
 - The call does not last more than 5 minutes;
 - In addition, the call is as short as possible to deliver any added value (in line with rule 2.3.4 around undue delay), and does not for example request any information which was previously provided to the service in previous calls, and which does not need to be repeated. An example would be personal details which should not have to be given again if the consumer has been given a reference number for an operator to check their file on a provider's database.
- 1.15. In the event of an investigation where complaints have been made about a service operating with multiple calls being made by consumers, we would expect providers to provide us with comprehensive call recordings and other evidence to support any assessment as to the reasons for such calls being made.
- 1.16. Where there would be any unfairness in requiring the customer to pay a premium rate charge for the content of the call, the provider must use a call service number that is charged at no more than 'basic rate'.
- 1.17. Where the above guidance has not been followed, providers are likely to be in breach of rule 2.3.1 of the PhonepayPlus Code by failing to treat consumers "*fairly and equitably*".

Vulnerable consumers

- 1.18. Where the promotion of the service results in it taking unfair advantage of vulnerable consumers, PhonepayPlus may also consider the evidence to see if there is a breach of rule 2.3.10 of the Code. This provision states: "*Premium rate services must not seek to take advantage of any vulnerable group or any vulnerability caused to consumers by their personal circumstances.*"

- 1.19. PhonepayPlus is mindful that many consumers of PRS consumer credit services are likely to be vulnerable.²⁷ For example, a consumer may be vulnerable because they have limited credit choices – this could be because they are unable to obtain a loan from mainstream lenders, or to do so on normal terms and conditions, or because they believe this to be the case.²⁸ Or they could be vulnerable because of mental capacity limitations or for other reasons.
- 1.20. It is important that providers do not take advantage of vulnerable consumers for example through promotions that are aggressive, misleading or targeted at those with low credit ratings, through a lack of clarity about their service offering or cost, through keeping them longer on the call than is strictly necessary or through making it difficult for them to obtain a refund where they are entitled to one.

2. Promoting consumer credit services

Transparency and pricing

- 2.1. With the PRS model, the consumer pays an upfront cost regardless of whether they are successful in obtaining a loan. Because of this, upfront transparency around the service offering and cost will be a central factor in determining whether the service is treating consumers fairly and equitably.
- 2.2. The Code states at rule 2.2.1 “*Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.*”
- 2.3. Rule 2.2.2 states: “*All written information which is material to the consumer’s decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernible.*”
- 2.4. This means that promotional material must be accurate, clear and easy to understand – and that this must be clear before the decision to purchase, which in this case means before the consumer calls the premium rate number.²⁹
- 2.5. The below paragraphs indicate some of the information that is material to the consumer’s decision to purchase, and as such where promotions lack these details the service may be found in breach of the Code.

Role of the service provider

- 2.6. A key first piece of information for the consumer is what the role of the provider is, i.e. what the service is that the consumer is being offered. The consumer may for example believe that they are dealing with a lender when in fact they are dealing with a broker, i.e. an intermediary who will put them in touch with a lender. If the

²⁷ The FCA’s report “*Consumer credit and consumers in vulnerable circumstances*” (April 2014) defines a ‘vulnerable consumer’ as “someone who, due to their personal circumstances, is especially susceptible to detriment”.

²⁸ CONC 3.5.7R requires a representative APR if a financial promotion indicates in any way that credit is available to persons who might otherwise consider their access to credit restricted.

²⁹ This is consistent with CONC 3.3.9G which states that a firm should in a financial promotion or communication which includes a premium rate telephone number indicate in a prominent way the likely total cost of a premium rate call including the price per minute, the likely duration of calls and the total cost a customer would incur if the customer calls for the full estimated duration.

provider is acting as a broker/intermediary, rather than as a lender, then we would expect this to be made clear in promotions, on the website landing page and in the first phone contact with the consumer, so that the consumer can make an informed decision as to whether they wish to pay a premium rate charge for an intermediary service.³⁰

Cost of the service

- 2.7. The cost of the premium rate phone call (price per minute) must be made clear to consumers in all relevant promotions and at the start of the call. This charge is likely to fall into the 'total charge for credit' and so must be included in the annual percentage rate ('APR'), and in the total amount payable, in advertising – where triggered – and in pre-contract credit information and the credit agreement.³¹
- 2.8. Consumers should also be informed of the likely cost of the credit that they are seeking. PhonepayPlus considers this to be key information that must be provided in compliance with rule 2.2.2 of the Code.³²
- 2.9. If an APR is shown in promotional material, it must be accurate and representative of agreements expected to result from the promotion.³³
- 2.10. PhonepayPlus also strongly recommends that consumers should be informed of the typical acceptance rate – i.e. the percentage of applicants over the last 3 months who have had their application accepted – for the type of loan they are seeking.
- 2.11. Providers should state their trading name in promotional material. Only one trading name should be used by the provider, to ensure consumers are not misled into thinking the broker has referred them on when in fact they have simply transferred the caller to another department in the same firm.
- 2.12. Also, the use of multiple trading names can lead to confusion for consumers who may be dealing with a number of different parties to obtain consumer credit, or financial and debt management advice all at the same time.
- 2.13. The trading name must not be misleading and reduce the transparency as to the true nature of the service offered by the provider. Trading names must not mislead consumers into thinking a broker is in fact a lender.³⁴
- 2.14. Providers should promote the total maximum cost of the call to consumers before they access the service in addition to the numeric cost per minute
- 2.15. Services should not be promoted using a statement that loans are guaranteed where this is not the case, or unduly emphasise the speed with which loans can

³⁰ Similarly CONC 3.3.10G makes clear that financial promotions and communications must not conceal or misrepresent the identity or name of the firm, and must not state or imply that a firm is a lender where this is not the case.

³¹ Again CONC 4.4.2R requires the broker to disclose to the lender the fee, if any, for its activity payable by the customer for the purpose of enabling the lender to calculate the APR.

³² It is relevant information for consumers deciding whether to engage with the PRS provider acting as a broker who charges fees through the calls that are made.

³³ See definition of 'representative APR' in the FCA's Glossary of terms.

³⁴ This is consistent with CONC 2.2.3R which requires firms not to carry on activities under a name which is likely to mislead customers about the status of the firm or the nature of its business, or in any other way.

be guaranteed.³⁵ Where promotions give information relating to the potential success offered by a credit broker, any assertions should be made with reference to accurate and up-to-date acceptance rates.

- 2.16. If the service is live, providers should promote to consumers their full postal address and the hours when the service is in operation before they access the service.

Misleading promotions

- 2.17. Rule 2.3.2 of the Code states: “*Premium rate services must not mislead or be likely to mislead in any way*”. Consumers can be misled in a number of ways, either by being informed about something related to a service which is not accurate or provides a false impression of the service, or by failing to inform a person of something which then renders other statements misleading or likely to be interpreted in a wrong way.³⁶
- 2.18. While promotion material cannot present all the terms and conditions associated with the service, those terms and conditions should be developed in such a way as to reduce complexity and remove onerous or unfair terms. The promotional campaigns and statements must then accurately reflect the product or service, and be in-keeping with the terms and conditions.
- 2.19. Consumers must be able to understand the true nature of a service before making a call or paying for the service via PRS. If the promotion is made over the phone at no cost to the consumer (i.e. via telemarketing), the description of the service must not be misleading and the calls ought to be recorded as evidence of what the consumer agrees and understands on that call.

Personalisation of promotional material

- 2.20. When personalising promotional material, the impact of such a method of advertising must be properly considered to ensure consumers are not misled. By sending a letter to a named individual at a personal or specified address, the recipient may be given the impression that some assessment of their eligibility for a loan has already been undertaken.
- 2.21. Where this is not the case, the promotion must make it clear that this is marketing material and the consumer must be given clear details of the service and what is offered, as well as the cost.

Accuracy about the probability of obtaining a loan

- 2.22. Consumer expectations must be managed – credit broking services may or may not test eligibility of an individual for a particular loan and therefore it is important that the true nature of the application process is reflected in promotional material and maintained throughout the call.
- 2.23. This means there is a necessity to avoid exaggerating claims of success or over-emphasising aspects of the service offered. To avoid this, providers may need to

³⁵ Providers should note that this triggers the requirement to include a representative APR under CONC 3.5.7R.

³⁶ This is consistent with CONC 3.3.1R which requires firms to ensure that financial promotions and communications are clear fair and not misleading.

provide accurate acceptance rate figures even where it is not overtly positive information.

Avoidance of undue delay

- 2.24. Rule 2.3.4 of the Code states: “*Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged*”.
- 2.25. Where the broker is simply gathering contact details on behalf of potential lenders and the lenders themselves will undertake a test for eligibility, only that information necessary for the referral must be taken. To take more information prior to a transfer of data in such circumstances may increase the consumer’s expectations of success and will extend the length of the call unnecessarily.
- 2.26. Where questions are added to the script to simply give an impression of professionalism or thoroughness, but do not contribute to the application process itself, such additions are likely to be considered unjustifiable and unfair for consumers who call the PRS line to make the application.

3. Statutory refunds

- 3.1. As noted above, section 155 of the Consumer Credit Act (CCA) entitles the consumer to a refund of brokerage fees less £5 if a credit agreement is not entered into within six months of an introduction to a source of credit. In addition, where the brokerage contract is entered into at a distance, the consumer is entitled to a full refund of any brokerage fees if they cancel the brokerage contract within 14 days after entering into it.
- 3.2. In light of the legislation, it is not a matter of consumers being dissatisfied with the service or not, but the upholding of consumer rights under the law.
- 3.3. PhonepayPlus considers that in order to comply with the letter and the spirit of section 155, providers may need to:
- Limit the total cost of calls to £5, or
 - Structure the service so that sufficient information is obtained to determine whether or not the caller is likely to proceed to take out a loan before the cost of the call reaches £5 (and refund the full cost less £5 upon request if the caller does not subsequently take out a loan within six months); and
 - In any event, make clear to the caller – both at the beginning of the service and in all promotional material – that they are entitled to a refund less £5 if they do not take out a loan within six months of the call, irrespective of the reason for this.
- 3.4. Our understanding is that if the consumer enters into a credit agreement, but withdraws from it within the 14-day period provided under the CCA, the agreement is treated as having never been entered into. This reactivates the consumer’s rights under section 155.
- 3.5. PhonepayPlus therefore recommends that credit brokers proactively notify consumers of their statutory rights at the appropriate time. This should take place

regardless of any expressed satisfaction with the PRS call itself as the payment is for the brokerage service. In particular, if the provider is aware that the consumer has not entered into a relevant agreement within six months, or is unlikely to do so, the provider should consider proactively refunding the consumer.³⁷ In any event, the provider should remind the consumer of their statutory rights.³⁸

- 3.6. Providers need to ensure that they have mechanisms in place to identify situations where section 155 applies. This may involve proactively approaching the consumer to establish whether an agreement has been entered into and/or having appropriate arrangements with lenders.
- 3.7. The PhonepayPlus Code states at rule 2.6.4: “Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner.” Providers must consider the complexity surrounding the brokerage arrangements put in place and the potential delay in agreements being offered or completed, and ensure the refund process is effective and easily accessible to consumers. The claim process must be clearly explained to consumers at the earliest opportunity.³⁹
- 3.8. Providers must not put any obstacles in the way of a consumer seeking to exercise their statutory rights, and must not mislead in any way as to the nature or extent of the consumer’s rights under the law or the contract.
- 3.9. We understand that some providers may choose to go beyond their statutory obligations in offering refunds to consumers. They are of course free to do this and consumers may benefit from providers operating in this way. However, in offering their own refund policies, providers must also make it clear to consumers what their statutory rights are. Even if a statutory right is less generous than a company’s own refund policies, consumers are more likely to have confidence in a statutory right than in a company’s discretionary policy. Therefore they are more likely to pursue a refund when they know they have a statutory right to one and are not just relying on a company’s goodwill.

4. Notification to PhonepayPlus

- 4.1. PhonepayPlus has the power under paragraph 3.10.1 of the Code to “*require that particular categories of service must not be provided without its prior written permission*”. It can also impose additional conditions on providers who seek prior permission where appropriate. Previously PhonepayPlus has imposed a detailed prior permission regime, containing a range of requirements on consumer credit service providers.

³⁷ See CONC 6.8.5G which states that, in circumstances where individuals request refunds and the firm knows, or ought to know, that relevant agreements would not be entered into within six months, the firm should not make the individuals wait for the six-month period to elapse before making the refund.

³⁸ See CONC 6.8.4AR which states that if a customer has not entered into a relevant agreement within six months of the customer being introduced to a potential source of credit, the firm must – as soon as reasonably practicable after the expiry of the six-month period (and normally within five working days) – clearly bring to the customer’s attention the right to request a refund under section 155 and how to exercise this right.

³⁹ This is consistent with CONC 6.8.4R which requires credit brokers to respond promptly to a request for a refund.

- 4.2. From **Thursday, 8 January 2015**, PhonepayPlus has phased out previously established additional conditions from the prior permission regime put in place for consumer credit services. Going forward, in the period leading up to the introduction of the new Code of Practice (13th edition), PhonepayPlus is maintaining the requirement for prior permission under 3.10.1. However, the only additional condition that is required is that consumer credit service providers notify PhonepayPlus of the following information when the service is launched:
- Name of the firm as registered with the FCA
 - Confirmation that the provider has the appropriate credit permission (if needed) from the FCA⁴⁰
 - Confirmation of the PhonepayPlus registration details for both the organisation and the service, in the form of references provided by the Registration Database
 - Confirmation of the name and contact details of the primary contact at the firm with responsibility for compliance and regulatory affairs.
- 4.3. Such notification must be made in writing, and it must be received by PhonepayPlus within 48 hours of the service being made accessible to the public.
- 4.4. Notification can be made via email to compliance@phonepayplus.org.uk.
- 4.5. Where the notification is sent by post, the provider must ensure delivery to the PhonepayPlus office (1st Floor, Clove Building, 4 Maguire Street, London, SE1 2NQ) within the same time period. It is recommended providers who choose to notify using the postal option seek confirmation of delivery to ensure the process is completed satisfactorily.
- 4.6. The registration requirements found in Part 3 of the Code must also be met by the provider. Details given when registering both the organisation and the service with PhonepayPlus must match the details provided to the FCA.

⁴⁰ Any such authorisation or permission given by the FCA does not constitute authorisation of the PRS itself, and PhonepayPlus may conduct investigations under the Code, and seek adjudications and / or sanctions as against the provider.