



## SERVICE-SPECIFIC GUIDANCE NOTE

PhonepayPlus

### Consumer Credit

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#### 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*<sup>1</sup> and described further in the Financial Conduct Authority (FCA)'s *Perimeter Guidance Manual*<sup>2</sup>.

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.

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<sup>1</sup> See article 36A4 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544.

<sup>2</sup> 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.<sup>3</sup>

We recommend that providers familiarise themselves with the consumer credit rules, and any associated information, published by the FCA<sup>4</sup>.

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<sup>3</sup> 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.

<sup>4</sup> 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).<sup>5</sup>

### *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

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<sup>5</sup> 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.”<sup>6</sup>

- 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.<sup>7</sup>
- 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.<sup>8</sup>
- 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.<sup>9</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>
- 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

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<sup>10</sup> 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”.

<sup>11</sup> 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.

<sup>12</sup> 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.<sup>13</sup>

#### *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.<sup>14</sup>
- 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.<sup>15</sup>
- 2.9. If an APR is shown in promotional material, it must be accurate and representative of agreements expected to result from the promotion.<sup>16</sup>
- 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.<sup>17</sup>
- 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

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<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> See definition of 'representative APR' in the FCA's Glossary of terms.

<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>
- 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

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<sup>18</sup> Providers should note that this triggers the requirement to include a representative APR under CONC 3.5.7R.

<sup>19</sup> 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.<sup>20</sup> In any event, the provider should remind the consumer of their statutory rights.<sup>21</sup>

- 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.<sup>22</sup>
- 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.

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<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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 (13<sup>th</sup> 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 FCA<sup>23</sup>
  - 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](mailto:compliance@phonepayplus.org.uk).
- 4.5. Where the notification is sent by post, the provider must ensure delivery to the PhonepayPlus office (1<sup>st</sup> 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.

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<sup>23</sup> 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.