

**NOTIFICATION OF INTENTION TO GRANT PERMISSION UNDER PARAGRAPH 3.10.4(a) OF THE PHONEPAYPLUS CODE OF PRACTICE TO LEVEL 2 PROVIDERS OPERATING SERVICES THROUGH AN APP STORE, ENABLING THEM TO PROVIDE THOSE SERVICES WITHOUT THE NEED TO REGISTER WITH PHONEPAYPLUS OR COMPLY WITH PARAGRAPH 8.2 OF THE NOTICE OF THRESHOLDS AND ACTIONS PUBLISHED UNDER 3.12.6 OF THE CODE**

**28/05/2015**

**This Notification should be read by all app stores and Level 2 providers operating within app stores who are involved, or intend to be involved, in the provision of services through app stores using a premium rate payment facility, and who wish to apply for an exemption from the following provisions:**

- **3.4.1 of the 13<sup>th</sup> edition of the PhonepayPlus Code of Practice – the requirement to register with PhonepayPlus before providing any premium rate service**
- **8.2 of the Notice of thresholds and actions published under 3.12.6 of the Code – the requirement to provide monthly reminders to consumers that have signed up for subscription services (exemption limited to subscriptions which are billed annually rather than monthly)**

Paragraph 3.10.4(a) of the PhonepayPlus Code of Practice (13<sup>th</sup> edition) (“the Code”) allows registered providers to apply for written permission from PhonepayPlus (which may be given subject to conditions) for their service to be provided by means other than strict adherence to the Code provisions. Such permission can be withdrawn or varied by PhonepayPlus subject to the giving of reasonable notice.

App stores

Operator billing is available for a number of app stores in the UK. This payment mechanism, which falls within the definition of a premium rate service under the Communications Act 2003, is a controlled premium rate service under the PRS Condition set by Ofcom and therefore falls within PhonepayPlus’ regulatory remit. Subsequent to this development, PhonepayPlus launched a twelve-month app store pilot on 28 May 2014 to test whether this new business model could flourish while ensuring consumers were protected and the Code outcomes were met.

The pilot has been broadly positive. Consumer engagement with the participating app store and operator billing has been strong and complaints have remained low. The exemptions enabled under the pilot will therefore be made permanently available.

Exemptions

The exemptions below apply only in relation to Level 2 providers who operate, or are in control of, or responsible for, services operating through a participating app store: App stores are defined as:

*An online marketplace where consumers (having registered and created an account with the provider of the online marketplace) can browse, purchase, and download applications on to their smartphone or other connected device.*

In continuing to offer these exemptions to app stores we have been mindful of the need to ensure that:

- Robust regulations are in place to protect consumers and achieve the outcomes set out in our Code of Practice;
- There is fair treatment between app stores and traditional PRS providers;
- At the same time, we demonstrate appropriate flexibility, recognising that there are differences between the app store model and traditional PRS models.

We are satisfied that the approach set out in this notice, which offers targeted exemptions from two provisions of the Code subject to app stores signing up to robust conditions, meets the above tests.

All app stores and contracted Network operators, Level 1 providers and/or Level 2 providers should note that **participation in the exemption is not automatic**. App stores will need to apply to PhonepayPlus on behalf of their Level 2 clients or in their own right if they are fulfilling the role of the Level 2 provider in respect of their clients' services and are only applying for permission in respect of paragraph 8.2 of the Notice of thresholds and actions. In accordance with paragraph 3.10.5 of the Code, a record of all providers granted permission for one or both exemptions will be placed on PhonepayPlus' website.

In accordance with para 3.10.4(b) PhonepayPlus may withdraw or vary permissions subject to the giving of reasonable notice.

#### General Conditions

##### *Registration Exemption – para 3.4.1*

App stores will be able to obtain permission for their Level 2 clients – i.e. app developers and merchants who offer products for sale only via that app store – to operate without the need to register where PhonepayPlus is satisfied that the app store meets the following conditions:

- The app store holds a valid registration with PhonepayPlus;
- The app store maintains a good compliance record with PhonepayPlus;
- The app store operates its own registration and screening process for app developers (as part of its due diligence obligations);
- The app store incorporates PhonepayPlus' list of banned individuals into its registration and fraud screening processes;
- The app store requires app developers to publish a website or email address within the store for consumer contact purposes;
- The app store has a direct relationship with the consumer, who are required to pre-register before initiating a purchase;
- The app store requires their app developers to provide the user with an email receipt for purchases including a contact email address for the app developer;
- The app store cooperates fully in responding to all requests from PhonepayPlus that are made in accordance with the PhonepayPlus Code of Practice, for example in providing information on app developers;
- The app store commits to providing an escalation path for PRS consumers with unresolved complaints either through the app store or by clear and explicit agreement with each contracted UK Mobile Network Operator.

App stores and Level 2 clients should note that this permission applies to the requirement to register only. Level 2 providers who provide apps via an app store with permission to not register, will continue to be responsible for compliance with all other provisions set out in the Code (unless permission has been granted in respect of those other provisions).

*Subscription reminder messages – para 8.2 of the Notice of thresholds and actions*

Where Level 2 clients, or an app store acting as a Level 2 provider, provides a premium rate payment option for products or services that are paid for through an annual subscription, then an app store may apply for permission to operate without having to send a free subscription reminder either once a month, or every time the consumer has spent £20 (whichever is the sooner). The granting of permission will be subject to the condition that a reminder message which provides the same information as that required by paragraph 8.2 of the Notice of thresholds and actions is sent to subscribers on an annual basis, and in time to allow them to opt out if they so wish before the annual charge is made for the service.

Other provisions of the Code

*Children's Service Caps – section 9 of the Notice of thresholds and actions – grace period ending on 27/05/2016*

A number of app stores have noted that there are alternative ways to ensure children are protected from bill shock, some of which they have argued are more effective than spending caps.

In order to explore alternative means for app developers (Level 2s) to enter into compliance with section 9 of the Notice of thresholds and actions, PhonepayPlus will not enforce these requirements for participating app stores and their app developers for a period of 12 months.

All app stores and contracted Network operators, Level 1 providers and/or Level 2 providers should note that **benefitting from the grace period is not automatic**. All app stores who wish their Level 2 provider clients to benefit from the grace period should immediately confirm such intention in writing on behalf of their clients.

At the time of confirmation, such app stores must also:

- Provide evidence of the current controls in place;
- Commit to either compliance with section 9 of the Notice of thresholds and actions or developing sufficient alternative means of achieving the intended outcome by the end of the grace period.

At the end of the grace period, participating app stores will need to demonstrate to the satisfaction of PhonepayPlus:

- How they comply with section 9 of the Notice of thresholds and actions or how any alternative approach achieves the Code outcome;
- That their protections for children are broadly consistent across the mobile network operators.

In addition the app store is subject to the following conditions:

- The app store holds a valid registration with PhonepayPlus;
- The app store maintains a good compliance record with PhonepayPlus;
- The app store operates its own registration and screening process for app developers (as part of its due diligence obligations);
- The app store incorporates PhonepayPlus' list of banned individuals into its registration and fraud screening processes;
- The app store requires app developers to publish a website or email address within the store for consumer contact purposes;
- The app store has a direct relationship with the consumers, who are required to pre-register before initiating a purchase;
- The app store requires their app developers to provide the user with an email receipt for purchases including a contact email address for the app developer;
- The app store co-operates fully in responding to all requests from PhonepayPlus that are made in accordance with the PhonepayPlus Code of Practice, for example in providing information on app developers;
- The app store commits to providing an escalation path for PRS consumers with unresolved complaints either through the app store or by clear and explicit agreement with each contracted UK Mobile Network operator;
- The app store engages regularly and constructively with PhonepayPlus to an agreed timetable, and other relevant partners, throughout the grace period to monitor progress and to resolve any issues;
- Throughout the 12 month period demonstrates, through evidence, how and to what extent consumer harm is being limited through an agreed format and timetable;
- Ensures that any changes to procedure or process be communicated to PhonepayPlus ahead of implementation.

### Next Steps

The exemptions and grace period are limited to app stores because PhonepayPlus considers there are fundamental differences between the app store model and the traditional PRS model. App stores who are involved, or intend to be involved, in the provision of services through a premium rate payment option are able to apply for any or all of the permissions referred to above by setting out their request in writing to [priorpermissions@phonepayplus.org.uk](mailto:priorpermissions@phonepayplus.org.uk). Applicants may be asked for further evidence which demonstrates how they will comply with the conditions set out in respect of the exemptions above.

App stores wishing to benefit from the grace period must notify PhonepayPlus of their intention to do so as outlined above. The benefit of the grace period on section 9 of the Notice of thresholds and actions will only be available during the period from 01/07/2015 to 27/05/2016, and subject to the relevant requirements and conditions set out above. All policy considerations remain with the PhonepayPlus Board, who will during the first 6 months and at the end of the grace period, review the operation of the app stores that benefitted from the grace period, taking into account all relevant feedback received. PhonepayPlus reserves the right to end or vary the grace period if it considers it appropriate to do so, subject to the giving of reasonable notice.