



**NOTIFICATION OF INTENTION TO GRANT PERMISSION UNDER PARAGRAPH
3.10.4(a) OF THE PHONEPAYPLUS CODE OF PRACTICE ON A 12-MONTH PILOT
BASIS 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 2.3.12(d) OF THE
CODE**

28/05/2014

This Notification should be read by all app stores and Level 2 providers operating on app stores who are involved, or intend to be involved, in the provision of services through the app stores using a premium rate payment facility, and who wish to apply for an exemption from the following provisions of the 12th edition of the PhonepayPlus Code of Practice:

- **3.4.1 – the requirement to register with PhonepayPlus before providing any premium rate service**
- **2.3.12(d) – 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 (12th 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 Such permission can be withdrawn or varied by PhonepayPlus subject to the giving of reasonable notice.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 has now been introduced on a number of app stores in the UK. This payment mechanism 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. We welcome the introduction of operator billing on app stores, which we consider has the potential to create added value for consumers by giving them access to a convenient and easy to use payment mechanism when purchasing apps. At the same time, we recognise that consumers on app stores, as with other forms of PRS, can benefit from effective regulation to avoid harms such as bill shock.

The exemptions below apply only in relation to app stores, which we define 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 offering 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 pilot 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 2.3.12(d). In accordance with paragraph 3.10.5 of the Code, a record of all providers granted permission as part of this 12-month pilot will be placed on PhonepayPlus' website.

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 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 2.3.12(d)

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 2.3.12(d) 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.

Scope of the pilot scheme

This pilot is limited to app stores at this stage because PhonepayPlus considers there are fundamental differences between the app store model and the traditional PRS model, and because in the app store model we consider it possible to meet the outcomes of the Code without mandatory registration of all developers.

The app store does not operate purely as a payment and technology platform as traditional PRS Level 1s do, but is a market place with a direct relationship with the consumer.

This means a more controlled environment for both the consumer and the merchant. Consumers are required to pre-register with the app store before making purchases, and the app store takes increased responsibility for complaint handling and redress both as part of their own policies and as a requirement of the exemption. Developers have to join app stores' own registration schemes, make payment to do so and must comply with app stores' policies. The app stores will need to demonstrate they have in place built-in screening and monitoring processes to meet due diligence and risk management and control obligations. Once they have begun to operate, the developers have less control over the promotion, operation and content of their service than in traditional PRS. Additionally, both the app store policies and our conditions will ensure information on the app developers are provided to both the consumers at the point of purchase and PhonepayPlus where required. As such we are satisfied that in the case of app stores there is a more proportionate way of achieving the outcomes of the Code than through mandatory registration of all developers with PhonepayPlus.

The alternative to this scheme, requiring all app developers globally to register with PhonepayPlus, would in our view have significant practical difficulties and could attract significant additional costs. Registration could therefore be seen by app stores and developers as a barrier to entry into the market potentially holding back the development of operator billing in the UK, to the detriment of consumers as well as providers. As such, we believe that a pilot targeting a registration exemption for app developers with robust conditions is a proportionate way of achieving the outcomes of the Code, whilst maintaining the need for app developers to comply with all other protective provisions of the Code.

Our view is that the strict conditions that PhonepayPlus has imposed as part of this pilot will ensure the exemption can be granted safely. Additionally, we are satisfied that the

Registration Scheme is working effectively and proportionately for the traditional PRS model and indeed the scheme has ongoing strong support from the PRS industry.

We would emphasise that the registration exemption is being offered as a 12 month pilot. Should it be identified in the course of the pilot that the exemption is either not delivering the objectives of the Code as intended or is creating an unfair distortion in the market, then the PhonepayPlus Board will consider whether it would be appropriate to withdraw the exemption or to modify its scope or conditions.

Next Steps

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. Applicants may be asked for further evidence which demonstrates how they will comply with the conditions set out in respect of the exemptions above.

All applications will be considered on a case-by-case basis and permission will only be granted during the 12 month period from 28/05/2014 to 27/05/2015, and subject to the relevant 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 12 month period, review the operation of the app stores that were granted permission, taking into account all relevant feedback received.