

## Prior Permissions FAQ

### What is a prior permission?

#### Standard prior permission

Prior permission is essentially a form of licence for categories of premium rate services (PRS), deemed to carry a higher than normal risk to consumers. Providers of such services must have a prior permission certificate before the service(s) can commence operation.

#### Permission to dis-apply specific Code provisions

The Code allows providers to request permission to operate a service without strict compliance with specific Code provisions. For Code provisions to be 'dis-applied' in this way the provider must be able to demonstrate to the satisfaction of PhonepayPlus (in relation to a particular service) that, the objective of the Code provision can be adequately satisfied by means other than strict adherence to the Code provision. In these instances, PhonepayPlus may give prior written permission (which may be given subject to conditions) for the service to be provided by such alternative means. Such permission may be withdrawn or varied by PhonepayPlus subject to the giving of reasonable notice.

### What types of service require prior permission?

PhonepayPlus requires that particular categories of service must not be provided without its prior written permission. PhonepayPlus will give reasonable notice of such requirement and the category of service to which it applies.

The category of service (that requires prior permission) determines the type of prior permission. For example:

- Blanket – Applies in its entirety to the category of service. For example, multi-party chat.

- Service specific – Specific to the service(s) identified within the prior permission application.
- Mechanic specific – Specific to the delivery or billing mechanic(s) identified within the prior permission application
- Subject to a fixed bond - For example, live entertainment and multi-party chat services require a bond to be lodged in order to support an application (and will fall into one of the three categories above).

PhonepayPlus publishes a full list of service categories requiring prior permission on its website.

The following types of phone-paid services currently require prior permission to operate:

- Anonymous SMS (service specific)
- Broadcast PRS (blanket)
- Call quiz TV (blanket)
- Consumer Credit (service specific)
- Counselling (service specific)
- Diallers (service specific)
- International calling (mechanic specific)
- Live services: for example, live chat and tarot (blanket and subject to a fixed bond)
- Multi-party chat (blanket and subject to a fixed bond)
- Pay per page or image viewed (blanket)
- Professional advice (service specific)
- Remote gambling (service specific)
- Services costing more than £1.28 plus VAT per minute (service specific)
- Services costing over 85 pence plus VAT per minute where the total cost

exceeds £25.54 plus VAT (service specific)

- Subscription over £4.50 in any given 7 day period (blanket)
- Voice-based text charge (service specific)

### **Who requires prior permission?**

Under the 12<sup>th</sup> Code, prior permission is required by any provider who:

- Is involved in the provision of a service(s) that requires prior permission, and;
- Is responsible for fulfilling any of the conditions set out in the relevant prior permission certificate.

Please note that the provider who is contracted to, or has arrangements with the Network operator in respect of the provision of the services(s) requiring prior permission, is responsible for applying for prior permission on behalf of their organisation and, where applicable, their clients (i.e. where clients are responsible for fulfilling conditions set out in the prior permission certificate).

### **How do I apply for prior permission?**

You should email your request to our Industry Services Executives at [compliance@phonepayplus.org.uk](mailto:compliance@phonepayplus.org.uk) who will inform you of the process and the information that we require to process your application. [Click here](#) and then on the relevant prior permission category to find out what information PhonepayPlus requires within your application.

The majority of standard applications will be processed by our Industry Service Executives where:

- All required information is provided and complete (to include acceptance by each provider of responsibility for key conditions relevant to that provider);
- The provider(s) identified within the application has/have no current and/or relevant breach history with PhonepayPlus which is of a significant or higher severity rating ;



- The applicant was able to confirm that they had the systems and procedures in place to act compliantly with the PhonepayPlus Code of Practice;
- The nature of the service does not raise any concerns and/or issues.

Once your application has been granted you will receive a permission certificate which you should store securely. Each provider listed in the application will receive a copy of the prior permissions certificate, which will clearly set out the conditions for which each provider is responsible for compliance with.

### How much does it cost to submit an application?

For efficiency and ease of understanding, prior permissions operate under a simple three-tier fee structure:

Application Type	Fee (2011/2012)
Standard application (including applications referred to the Board)	£300 plus VAT per application (for one or many providers)
Dis-application request	£300 plus VAT per application
Review application	<p>Cost of the Tribunal panel's time for reviews that find against the applicant (N.B. Providers will not be charged if the review finds in favour of their application). This is likely to be in the region of £400 plus VAT per review application.</p> <p>For the avoidance of doubt, the fee does not apply to applications for oral hearings or IAB Appeals.</p>

Fee levels are subject to review pending analysis of time and effort taken. Revised rates will be published as part of the annual review of administrative charges in line with the financial year.

We will not impose an administrative fee for processing legacy prior permissions issued under previous Codes in accordance with the transitional arrangements.

### **Are there any instances where a prior permission will not be granted?**

In the following circumstances PhonepayPlus will automatically refuse prior permission applications:

- A service relevant to the application is currently under investigation;
- The individual/organisation(s) is/are prohibited from operating in the premium rate industry;
- The individual/organisation(s) is/are prohibited and/or barred from operating specific service types (for which they are applying for prior permission);
- Where the application is incomplete. For example, the applicant has not demonstrated how they will comply with the conditions for that category of service to the satisfaction of PhonepayPlus.

### **Are there applications that will not be processed by the Executive?**

Yes, if:

- If a provider(s) is identified within the application has a current and/or relevant breach history which is of a significant or higher severity rating;
- A named individual/organisations is/are seeking prior permission after their prohibition and/or bar has been lifted;
- The service raises concerns and/or issues;
- The provider(s) has/have had a relevant prior permission certificate revoked; or
- A prior permission trial period that has been imposed has expired.

The Executive may refer these applications (where approved) to a sub-committee of the Board to consider and to apply any further conditions that they consider appropriate or reject the application and provide the reasons for that rejection.

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## **What happens if I have a prior permission under a previous Code – are there any transitional arrangements?**

The transitional arrangements with respect to providers who have prior permissions in place under the 11<sup>th</sup> or a previous Code of Practice are as follows:-

### Where prior permission conditions are fulfilled by only one provider in relation to the service

Where a permission certificate granted under the 11<sup>th</sup> or a previous Code of Practice is already held by one provider, and that provider fulfils all conditions attached to it, they will be required to send an email confirming this to PhonepayPlus.

A new certificate, updated to bring wording in line with the new edition of the Code, will be issued to them within the six month period from 1 September 2011. No administration charge will be incurred. All providers must have their permission certificates updated within the six months after 1 September 2011. In the meantime, all existing prior permission certificates issued by PhonepayPlus under previous Codes of Practice will remain valid for the duration of this period, or until applications for prior permission have been processed, as long as such applications are received before 29 February 2012.

### Where prior permission conditions are fulfilled by more than one provider in relation to the same service

Where a permission certificate granted under a previous Code of Practice is already held by one provider, and the providers who contract with them are now required to have permission in respect of the same service(s), all the contracting providers that fulfil one or more (but not all) of the conditions attached to that prior permission will be required to have permission by the end of the six-month period from 1 September 2011.

PhonepayPlus will provide as much assistance as possible to the provider, in order for it to obtain prior permission for both itself and the other contracted provider(s) fulfilling one or more conditions. The applicant must be the provider who is contracted to, or has arrangements with, the Network operator in respect of the provision of the services(s) requiring prior permission. Where a Network operator alone provides the service, we will work directly with the Network operator.

As part of this process, the provider contracted to the Network operator will need to submit complete information to PhonepayPlus. The application must set out the following:

- The details of all associated providers, who have a responsibility to be registered with PhonepayPlus, who are responsible for fulfilling conditions of the prior permission certificate;
- Who is responsible for the fulfilment of each prior permission certificate condition for each separate service delivery chain; and
- Confirmation from all associated providers that the delegations of responsibility which relate to them as set out within the application are correct. A form is provided by the Executive for this purpose.

If prior permission is granted, then each provider listed in the application will receive a copy of the prior permission certificate, which will clearly set out the conditions which each provider is responsible for and must comply with.

Providers who are currently responsible for fulfilling conditions within an existing permission held by another provider in respect of services they are already involved in providing, should ensure that they have received a copy of a new permission certificate, granting them permission to operate and setting out the key conditions relating to them.

In the meantime, all existing prior permission certificates issued by PhonepayPlus under previous Codes of Practice will remain valid for the duration of this period, or until applications for prior permission have been processed, as long as such applications are received before 29 February 2012.

### **How do I apply to dis-apply a Code provision in relation to a service or services?**

All applications to dis-apply a provision or provisions of the Code in relation to a service or services (pursuant to paragraph 3.10.4a of the new Code) should be emailed to the Industry Services team at [compliance@phonepayplus.org.uk](mailto:compliance@phonepayplus.org.uk).

As part of your application you will need to provide the following;

- The paragraph(s) of the Code which you wish to dis-apply;
- A description of the service;

- A clear description of the other means by which the Code provision you wish to dis-apply can be satisfied without the risk of consumer harm;
- Any further information the Industry Services Executive sees as necessary.

Applications are assessed and approved by the Director of Operations and sent to the PhonepayPlus Board for consideration. The Board will approve, amend or reject the application. Where prior permission for a dis-application of the Code is granted, a permission certificate setting out the dis-applied provision and details of the permission granted for the alternative means (including any conditions), will be created and emailed to the provider(s). Where the prior permission application for a dis-application is rejected, the providers will be informed of the reasons for the rejection and will have their right to request a review explained.

### **What happens if I fail to comply with the conditions of my prior permission certificate?**

Providers who are granted prior permission agree to abide by any conditions set out in the prior permissions certificate. Such conditions may vary by service category, and a failure to comply with them may result in the conditions of the prior permission being breached and the prior permission being withdrawn and/or the Executive formally raising a breach of the Code under paragraph 3.10.6 of the Code for which the Tribunal may impose a range of sanctions.

### **How long does my prior permission last?**

All permissions are issued in perpetuity except when:

- A prior permission has been revoked;
- The permission has been discontinued or altered requiring re-application;
- The service(s) granted under the permission has/have not commenced operation within 6 months of the permission being granted;
- A trial period has been imposed;



- Where permissions were issued under previous Codes and have not met the requirements of the published transitional arrangements.

### **Is there a time limit to activating services given prior permission?**

Those providers who have failed to commence operation of their services within six months of the issue of their prior permission certificate will need to re-apply for permission and an application fee will be charged.

### **What if I don't agree with the decision around my application?**

Providers who are not satisfied with any aspect of the decision by PhonepayPlus may apply to the Chairman of the Code Compliance Panel (CCP) for a review of that decision.

The request should clearly set out why the applicant thinks the decision is wrong based on the evidence it has submitted to PhonepayPlus.

The Chair of the CCP will consider whether a review is merited and, if the review is granted it will be carried out by a Tribunal. Reviews will not however be permitted in respect of incomplete applications or for requests that are appropriate to be considered under the published Complaints Procedure.

### **How are new service categories or conditions added to the prior permission regime?**

The service categories requiring prior permission are identified on the PhonepayPlus website, and PhonepayPlus will normally (although not obliged to) consult publicly before adding new categories to that list.

The introduction of a new prior permission service category requires providers involved in the provision of the service (i.e. who fulfil any of the conditions applicable to the new service category) to obtain prior permission. Providers of these services can continue to operate those services currently in operation for a period of six months from the date of notification of the new prior permission category.

Where conditions are amended or varied with regard to existing prior permission service categories (after consultation where such changes are deemed material) and approved by the Board, these will be applied to all relevant current permissions certificate holders once

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reasonable notice has been given that the conditions of their permission will change. A reasonable period of notice is considered to be six weeks, after which new certificates will be issued and the new conditions would take effect.

**How long will the application process take?**

For standard applications which are processed by the Executive, these will normally be processed within six weeks from receipt. For those applications which require consideration by the Board or a sub-committee of the Board, the applicant will be informed of the likely timescale on a case by case basis.

