



GENERAL GUIDANCE NOTE

Definitions

Who should read this?

All Network operators and providers involved in the provision of premium rate services ('PRS') to consumers.

What is the purpose of the Guidance?

To assist Network operators and providers by clarifying whether they are required to register with PhonepayPlus before operating PRS. This General Guidance Note also sets out PhonepayPlus' expectations around the [PhonepayPlus Code of Practice](#), and how any investigation procedures resulting from suspected breaches of [PhonepayPlus' Code of Practice](#) are likely to operate, depending on how a registered party is defined under the [PhonepayPlus Code of Practice](#).

What are the key points?

This General Guidance Note is designed to:

- Set out the definitions of Network operators, Level 1 providers and Level 2 providers as they appear in the [PhonepayPlus Code of Practice](#).
- Offer an explanation of where those definitions would likely apply within the most common types of value-chains for PRS.
- Explain the responsibilities attached to the definitions.
- Explain how PhonepayPlus would determine responsibility in the event of an investigation.



1. Definitions

Network operator

- 1.1** The definition of a Network operator is set out at paragraph 5.3.4 of the [PhonepayPlus Code of Practice](#), which states the following:

5.3.4 *Subject to paragraphs 5.3.5 and 5.3.6 below [which cover VoIP networks and*

those who aggregate content or resell network access through wholesale arrangements], ‘Network operator’ means, for the purposes of this Code in respect of any premium rate service, a person who falls within Section 120(10) or Section 120(11) of the [Communications] Act and:

- (a) who is a lead network; or*
- (b) has a direct network connection and has direct billing arrangements in respect of that connection with the lead network; or*
- (c) through arrangements made with a lead network, provides electronic communication services to the public and bills the public directly, and can perform or can require the performance of all the obligations that are set out at section 3 of the Code; or*
- (d) if no-one falls within (a), (b) or (c) above, the Network operator shall be the person who falls within Section 120(10) or (11) and, in respect of the premium rate service or services in question, provides or has, in the reasonable opinion of PhonepayPlus, the closest or most substantial connection with the provision of the communications network used for the provision of the premium rate service.*

A direct network connection exists when a person provides switching equipment (to currently accepted industry standards), which by interconnection arrangements made between that person and the lead network, enables the conveyance of signals between the lead network and that person.

- 1.2** The definition of a Network operator has not changed from the previous edition of the [PhonepayPlus Code of Practice](#), and remains consistent with the 2003 Communications Act. If you are unsure whether or not your company would be considered a Network operator, you should contact PhonepayPlus for further advice.

Level 1 and Level 2 providers

- 1.3** Level 1’ and ‘Level 2’ providers are terms which are new to the latest edition of [PhonepayPlus’ Code of Practice](#). They are defined in the [PhonepayPlus Code of Practice](#) at paragraph 5.3.8, as follows:

5.3.8

- (a) A Level 1 provider is a person who provides a platform which, through arrangements made with a Network operator or another Level 1 provider, enables the relevant premium rate service to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant premium rate service.*
- (b) A Level 2 provider is the person who controls or is responsible for the operation, content and promotion of the relevant premium rate service and/or the use of a facility within the premium rate service.*
- (c) In respect of any relevant premium rate service where it is not clear*

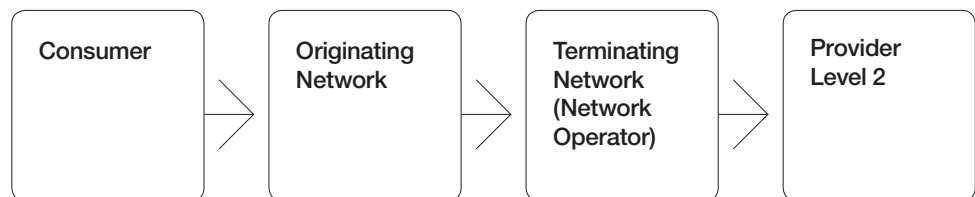


whether a person involved in any way in the provision of the service and/or who receives directly or indirectly any part of the charges made to the consumer for provision of the relevant premium rate service is a Premium rate service provider falling with (a) or (b) above, PhonepayPlus shall determine whether that person is a Premium rate service provider and whether the person is a Level 1 or Level 2 provider with reference to Guidance which it shall issue from time to time.

2. How definitions are likely to apply within PRS delivery chains

- 2.1** As the technology behind PRS has evolved, so have an increasingly diverse range of value-chains by which PRS are bought by consumers and delivered to them. A single entity may play different roles in different value-chains. So, it is important that PhonepayPlus is able to attach the correct definition, and so properly apportion responsibility, to the role a party has played in a specific value-chain.
- 2.2** Five example value-chains, in practice the most common within the PRS industry, are set out below. These are clearly marked to illustrate where PhonepayPlus would regard Network operators, any Level 1 providers, and the Level 2 provider, to be placed in each value-chain. A short explanation of these placements is provided. However, generally, the Level 2 provider will retain responsibility for the promotion of a service, and the operation of a service may be the responsibility of a Level 1 or a Level 2 provider, depending on who controls any technical platforms.
- 2.3** It is important to remember that there might potentially be any number of Level 1 providers within a delivery chain, or no Level 1 provider at all. However, there will always be one party which PhonepayPlus regards as being a Level 2 provider, and so responsible for compliance with Part Two of the [PhonepayPlus Code of Practice](#), which sets out desired outcomes for consumers and rules relating to PRS:

(a) Traditional 'voice-based' PRS (where an 09 number is used)



- 2.4** The consumer makes a call on their landline through their billing network (e.g. BT, Virgin Media, Kingston, or any of the Mobile Network Operators). This is then relayed through a Terminating Network, which for the purposes of the [PhonepayPlus Code of Practice](#) will be regarded as the Network operator, to a sole provider. This provider provides both the platform for connection to a Network operator and is responsible for the promotion/operation/content of the service itself, so, in effect, could be considered to be both a Level 1 and Level 2 provider. But, because it would be unnecessary to expect this provider to perform due diligence and risk assessment on itself, it is considered the Level 2 provider alone.

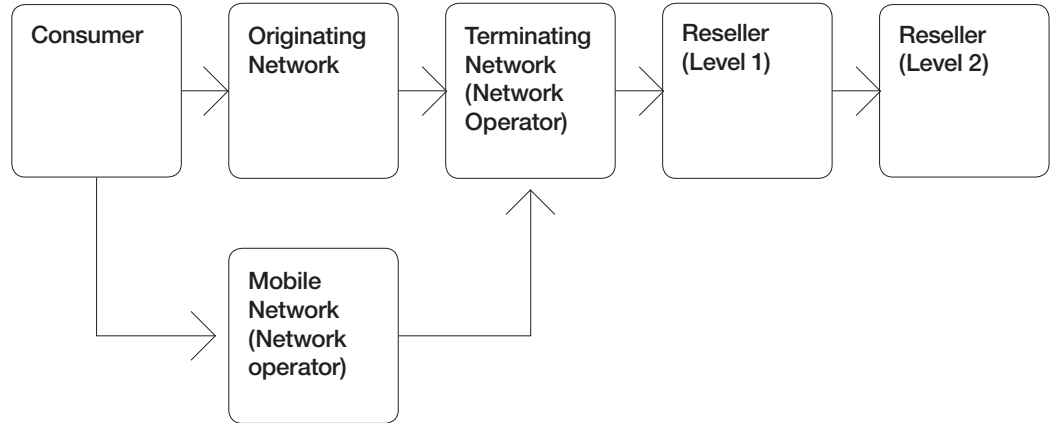
(b) Mobile 'voice-based' PRS (where a mobile shortcode is used)





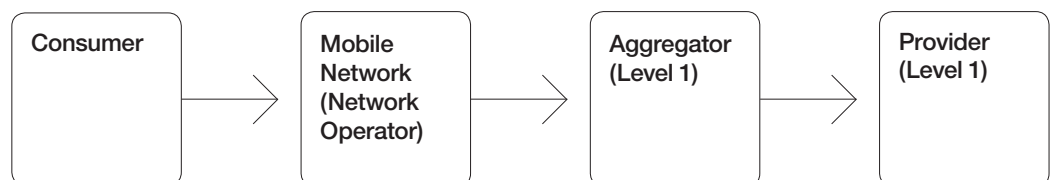
2.5 The consumer makes a call on their mobile. In this case, the Mobile Network Operator acts as both the Originating and Terminating Network; so, for the purposes of [PhonepayPlus' Code of Practice](#) is regarded as the Network operator. As in example a), there is a sole provider who provides both the platform for connection to a Network operator and is responsible for the promotion/operation/content of the service itself. As before, this provider will be regarded as the Level 2 provider.

(c) Reseller 'voice-based' PRS



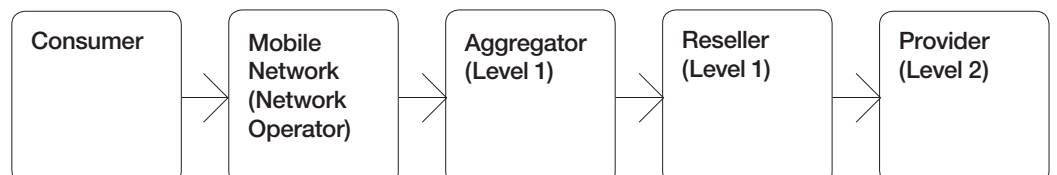
2.6 The consumer makes a call on either their landline or their mobile. Depending on which, the call is relayed through a fixed-line Terminating Network, or through a Mobile Network Operator. Either of these parties would be considered the Network operator under the [PhonepayPlus Code of Practice](#). The next provider in the delivery chain is a reseller, who then relays the call onto another provider who is responsible for the promotion/operation/content of the service. In this example, the reseller would be considered a Level 1 provider, and the next provider along would be considered the Level 2 provider.

(d) Traditional 'text/download-based' PRS



2.7 The consumer sends a text to a mobile shortcode, or clicks on an icon on a WAP site, or enters their number into a website with appropriate PRS payment security; whichever of these actions they perform, it is relayed through their Mobile Network Operator, which would be considered the Network operator. The consumer's original message is relayed onto a mobile aggregator, who provides a platform for connection to a Network operator, and so would be considered a Level 1 provider. The aggregator, in turn, relays the consumer's original message, or signal of intent to purchase, onto another provider who is responsible for the promotion/operation/content of the service, and so would be considered the Level 2 provider.

(e) Reseller 'text/download-based PRS





- 2.8** The consumer sends a text to a mobile shortcode, or clicks on an icon on a WAP site, or enters their number into a website with appropriate PRS payment security, as at example d). Also, as in example d), whichever of these actions they perform is relayed through their Mobile Network Operator, which would be considered the Network operator. As before, the consumer's original message, or signal of intent, is relayed onto a mobile aggregator (considered a Level 1 provider as it has a platform for connection to a Mobile Network Operator).
- 2.9** However, this time, the message is relayed onto a provider acting as a reseller (i.e. the mobile aggregator provides a connection to another Level 1 provider at a wholesale rate). This provider, and any providers like it further along a delivery chain, would also be considered to be a Level 1 provider, as they provide a platform for connection to another Level 1 provider, without themselves being the party responsible for promotion/operation/content of the service. Lastly, in this example, the reseller relays the message onto a further provider who is responsible for the promotion/operation/content of the service, and they are considered to be the Level 2 provider.

3. Responsibilities

Registration

- 3.1** Anyone who is classed as a Network operator, Level 1 provider or Level 2 provider must register with PhonepayPlus prior to being involved in the provision of any PRS (see section 3.4 of the [PhonepayPlus Code of Practice](#)). Because one party which is registered with PhonepayPlus can potentially perform different roles within different delivery chains, there is no need for registrants to class themselves as being a Network operator, Level 1 provider or Level 2 provider upon registering.

Other responsibilities

- 3.2** Beyond registration, Network operators and Level 1 providers have a number of responsibilities as set out within Part Three of the [PhonepayPlus Code of Practice](#). These are most notably, but not limited to, the following:
- Due diligence on clients with whom they directly contract;
 - Risk assessment and control of clients with whom they directly contract;
 - Ensuring in the context of their roles that services are of adequate technical quality.
- 3.3** Level 2 providers have a different set of responsibilities. These are most notably, but not limited to, the following:
- Compliance with Part Two of [PhonepayPlus' Code of Practice](#), which sets out outcomes and rules relating to individual services;
 - Registering the services which they provide with PhonepayPlus (see paragraph 3.4.12 of the [PhonepayPlus Code of Practice](#). We currently define registration of a service as provision of customer contact details for premium rate numbers, shortcodes or other access codes on which PRS are operated);
 - Ensuring in the context of their roles that services are of adequate technical quality.

How is responsibility for promotion, operation and content defined? What about sub-contractors beyond a Level 2 provider?

- 3.4** Paragraph 5.3.8(b) of the [PhonepayPlus Code of Practice](#) refers to a Level 2 provider as a person *“who controls or is responsible for the operation, content and promotion of the relevant premium rate service and/or the use of a facility within the relevant premium rate service.”*



3.5 PhonepayPlus is aware that not all entities who we would deem to be Level 2 providers will generate all the promotion or content, or perform all the operation of their services, in-house. A significant number of Level 2 providers will sub-contract with other entities to undertake promotional functions (whether in print, broadcast, SMS or the web), to support or supply certain technical platforms involved in the provision of a service, or purchase content which the Level 2 provider will then package and sell under their brand.

3.6 In such circumstances, PhonepayPlus **does not** regard a party which is sub-contracted to provide only one or two of the functions of promotion, operation and content as a provider. Rather, these entities are regarded as affiliates. Affiliates are not required to register with PhonepayPlus and are not considered to be directly regulated by [PhonepayPlus' Code of Practice](#). Rather, the Level 2 provider to whom the affiliate is sub-contracted will be considered to retain responsibility for that affiliate's actions.

What about where some operational aspects of a service are handled by a Level 1 provider?

3.7 PhonepayPlus is aware that, in some circumstances, certain technical aspects of a service will be handled by a Level 1 provider further up the delivery chain from the Level 2 provider. Examples could include, but are not limited to, occasions where a Level 1 provider's technical platform handles the sending of SMS-based marketing, or where the Level 1 provider's platform processes a consumer's instruction to stop a service and ensures no further billing takes place.

3.8 In these cases, where the failure of such an operational component has led to a breach of [PhonepayPlus' Code of Practice](#), we would regard the Level 1 provider as the party responsible for the technical failure, and so the breach itself. The Level 2 provider who would ordinarily be responsible for the service in its entirety would not be held in breach for this particular aspect of any consumer harm. However, they may still be considered responsible for other aspects of consumer harm which arose in connection with the service.

What about the role of TV broadcasters who run premium rate services as part of their programming?

3.9 Broadcast PRS on TV will continue to be subject to prior permission from PhonepayPlus. That is, providers can only run PRS as part of broadcast programming if they have obtained permission from PhonepayPlus prior to operating. This licence is awarded subject to certain conditions around arrangements to ensure 'Connectivity, Capacity and Coherence' within the PRS broadcasting events themselves.

3.10 The responsibility to obtain prior permission sits with the Level 1 provider, not the broadcaster with whom they contract. So, even though the broadcaster could be thought of as the Level 2 in a Broadcast PRS value-chain, the reality is that responsibility remains with the Level 1 as part of the conditions of their prior permission.

3.11 For more information about how to apply for prior permission to operate Broadcast PRS, please see the PhonepayPlus website www.phonepayplus.org.uk.



4. How PhonepayPlus will define Level 1 and Level 2 providers during an investigation

- 4.1** In the event that PhonepayPlus investigates an alleged breach of the [PhonepayPlus Code of Practice](#), it will first request information from various parties within the relevant value-chain to determine each party's role in the service. In most cases, it will be clear fairly quickly whether a party or sole trader is either a Level 1 or Level 2 provider; however, the information we request should include the provider's opinion and reasoning as to where they fall within the value-chain. This is in order that PhonepayPlus can fully consider this issue before any decision is made.
- 4.2** Where this is not the case, paragraph 5.3.8(c) of the [PhonepayPlus Code of Practice](#) permits PhonepayPlus to determine whether a registered party is a Level 1 or Level 2 provider for the purposes of any investigation into their actions. Where the need to determine whether someone is a Level 1 or Level 2 provider arises, then PhonepayPlus will consider each example on a case-by-case basis, taking the following non-exhaustive factors into account:
- Whether the promotion, operation and content have been sub-contracted to a single party further along the delivery chain;
 - Whether the provider controls and promotes a platform to which other parties connect to provide a service (e.g. international call routing);
 - Whether the provider controls any technical platforms which operate specified aspects of a service.
- 4.3** The key factor to remember during this process is that PhonepayPlus will look to identify the responsibilities of each party in the delivery chain, in order that any breaches can be correctly raised against the party responsible for them.

The role of general guidance

General Guidance does **not** form part of the Code of Practice; neither is it absolutely binding on PhonepayPlus' Code Compliance Panel Tribunal ('the Tribunal'). However, we intend for it to assist all Network operators and providers as to how compliance with the Code can be achieved.

Network operators or providers are free to disregard Guidance where they feel that the same standard and expectation of consumer protection can be met by some other means. Should consumer harm occur, the Tribunal may examine the provider's alternative actions (including no action), and whether those actions have achieved compliance with the Code. If they have not taken any action to comply with the Code, then the behaviour is likely to be regarded as a serious breach.