Communications Consumer Panel response to PhonepayPlus' review of prior permission conditions for consumer credit services operating on premium rate

Introduction

The Communications Consumer Panel welcomes this opportunity to respond to this consultation on a review of prior permission conditions for consumer credit services operating on premium rate.

The Panel consists of eight experts who work to protect and promote people's interests in the communications sector. We were established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and small businesses. The Panel has Members representing the interests of consumers in Scotland, Wales, Northern Ireland and England.

There is also cross-membership with Ofcom's Advisory Committee on Older and Disabled People. This means that Members, in their ACOD capacity, also provide advice to Ofcom on issues relating to older and disabled people including television, radio and other content on services regulated by Ofcom as well as about issues concerning the postal sector.

Consultation

The Panel welcomes PhonepayPlus' intention to make changes to existing prior permission conditions for PRS-based consumer credit services to reflect new guidance from the Office of Fair Trading (OFT), to align with new industry best practice measures from BIS and to address identified consumer risks. The Panel agrees that there should be consistency between the various regulations and we welcome the move to align them.

The Panel recognises that PhonepayPlus intends to bring its prior permission regime in line with updated wider industry guidance and best practice as well as to protect consumers from identified risks which are specific to the PRS-based consumer credit market. However PhonepayPlus does not intend to cut across the delivery and value that these services may have for consumers who may not be able to obtain credit through other means. We would make however make the point that while the product itself (a loan or credit arrangement) and the means of a consumer seeing whether he or she can obtain the product (via a PRS call) are inextricably linked the caller is consuming two services – a PRS call and an application for a loan. Whilst the former effectively contributes to the latter it is a separate element. As such, we are concerned that communications service users should be protected from the potential harm of high call costs and/or unexpectedly high telephone bills. By definition it will often be the most vulnerable people who use these services – who may be suffering financial hardship, finding it difficult to manage their debts or potentially to fully appreciate the extent of the costs involved. We are also concerned that people who may be more vulnerable consumers, including those who may be older, experiencing mental health problems or with a disability, could be disproportionally affected. The Panel feels that these consumers need as full protection from potential harm and detriment as possible in respect of the cost of calls, and the easy ability to obtain refunds.

The Panel agrees that many consumers of these services may already be vulnerable, as financial hardship and an inability to obtain credit through the banking system may leave them dependent on other sources of short-term credit. Anxiety to secure a loan may mean that they are less likely to scrutinise the terms of the PRS-based application process, and so be more vulnerable to financial harm. The Panel supports PhonepayPlus's concern that the front loaded way PRS credit services are charged adds a further layer of vulnerability, as consumers may be drawn into paying a premium rate phone call in seeking loans that they have little chance of being offered, or at rates that they cannot afford. As such, we believe that the prior permissions regime for PRS consumer credit services is vital to ensure consumers have a clear understanding of the costs and other terms of the loans being offered, so that they do not incur unexpected additional charges as a result of applying for a loan in this way.

The Panel notes that, when seeking a loan of this type, a consumer would generally make an initial call to a freephone number operated by the PRS provider to make an enquiry about a loan application. Once the PRS-based credit broker was satisfied the consumer was eligible, they would invite the consumer to call a premium rate number to make a formal application. As the consultation notes, in contrast to a commission-based service where a fee is levied only when an application is successful, the structure of these services is designed to require consumers to pay upfront charges for the cost of a premium rate call by which they make an application, whether or not their loan application is subsequently approved. Whilst we understand that the PRS charge is a surrogate for a broker's fee, in our view it is unfair that the vast majority of callers go on to have their loan application refused, yet still have to pay a fee.

The evidence does suggest that current regulatory requirements require review in order for them to work in the best interests of consumers. In our view, consumers are at risk of detriment due to incurring PRS charges in the context of a lack of transparency and early communication of information about very high borrowing rates and very low acceptance rates for unsecured short term loans; high rates of second calls to the PRS line; and very low refund rates. Consumer credit law and PRS regulation are separate entities (albeit linked in the context of PRS based consumer credit services). Given this distinction the Panel believes that *potential* consumer credit consumers are *actual* consumers of the PRS call element. In that capacity, people deserve fair treatment by way of clear communication in respect of what they can expect from the service and what it will cost them. In considering its response to this consultation, the Panel found the following information provided by PhonepayPlus of particular note:

- An initial call to a PRS-based consumer credit service is likely to last between 13-15 minutes, at a cost of £1.50 per minute.
- The examination of one PRS provider found that 32% of applicants for a loan made a second PRS call to the consumer credit service at the same cost - at an average of around eight minutes per call.
- From February and May 2012, an average of 83% of consumers who made a loan application of this type were charged for the premium rate phone call but did not have their application accepted – with the non-acceptance rate being even higher for applicants for short-term unsecured loans.
- APRs on unsecured short-term loans can be up to 70 times higher than an advertised average APR for all loans offered.
- Of the percentage of consumers who applied for a loan during a four-month period in 2012 only 5.6% of eligible consumers were issued with full refunds.

The proposed changes, listed below, should have the effect of increasing transparency and enabling consumers to make a better informed decision, based on clear and transparent information, about whether to engage with PRS-based consumer credit services. The Panel therefore welcomes the new proposals and agrees that they will benefit consumers; but we feel that the proposals could go further in respect of obtaining refunds and the transparency of the costs of calling. We would also make the following additional specific comments:

1. *Calls to the main credit brokerage service – i.e. the application for a loan – must not exceed one call.*
   The Panel supports limiting the number of PRS calls to one, with maximum clarity and transparency around cost and refunds. Given that such initial calls to PRS-based consumer credit services are likely to last between 13-15 minutes, at a cost in the order of at least £1.50 per minute (and potentially higher if calls are made from mobiles), we believe that this is an appropriate condition to apply.

2. *Providers must provide a non-PRS number during the initial call to enable callers to follow up with any enquiries about existing loan applications.*
   We suggest that it might also be worth considering a requirement on providers to publicise a non-PRS number for follow-up on their websites. Although some callers may use that number for a first call it should be straightforward (either through a call steering message/option, or a brief intervention) to redirect them.

   We would also suggest that this condition is expanded to encompass a requirement to provide a non-PRS number for general queries or complaints.

   The Panel notes that a number of consumers – potentially in the order of 32% - who make loan applications via credit brokers call the provider again using the same premium rate number as they used to make their loan application, in order to check on the status of that application. In the examination of one PRS provider, PhonepayPlus found that such calls lasted an average of around eight minutes per call, at a cost of £1.50 a minute.

Making repeat calls to PRS once the loan application has been made risks increasing further the costs associated with the loan application for consumers who are already likely to be financially vulnerable, whilst bringing about little or no gain to the consumer. We are concerned that PhonepayPlus has seen practices that, while falling short of encouragement, nonetheless still prompt consumers to call the PRS line for a second time, for example to find out the identity of loan providers that are considering the loan application, yet such a call (and any subsequent ones) rarely confirms whether the consumer's loan application has been accepted or refused.

3. *Where consumers call up the PRS number for a second time to make an enquiry about their loan application, they must be directed to a non-PRS number.*
   If consumers do place a second PRS call about their application, we would expect such callers to be directed to a non-PRS number without delay. We would also expect that service providers will be required to provide information to PhonepayPlus about the number of such callers, and the duration of these second calls to PRS numbers by way of comparison with calls to the non-PRS number.

4. *Callers must be provided clear information that they have a right to request a refund if their application is unsuccessful, within the first minute of the call.*
   The Panel notes that the current prior permissions condition stipulates that consumers who do not receive or take up the offer of a loan can claim a refund of all but £5 of the cost of their application via PRS - and that some providers go beyond what is required by offering a full refund to consumers who are not successful in their application and subsequently request a refund. However, as the consultation notes, this places the onus on the consumer to make the claim rather than the consumer credit broker to provide an automatic refund.

   The evidence presented in the consultation suggests that the number of consumers exercising their right to a refund for the call cost if their loan application is not approved is extremely low - of the percentage of consumers who applied for a loan during a four-month period in 2012 only 5.6% of eligible consumers were issued with full refunds. In the Panel's opinion, the figures quoted in the consultation in respect of refunds are startlingly low. We would ask the question: who would not claim a refund if they were eligible? We can think of few, if any, instances where this would be the case. It is perhaps possible that some applicants may not appreciate or understand their rights; but this low refund take-up rate does suggests a lack of transparency or consumer confusion around eligibility for refunds, or lack of awareness that they can exercise this right. In any event, in our view these factors strengthen the case for taking steps to further protect consumers from detriment. We would argue that not receiving a refund when eligible is detrimental.

We find it difficult to see the case for anything other than an automatic refund of the call charge above the £5 threshold. The Panel notes that if the implementation of the OFT's requirement does not achieve improved refund rates, then PhonepayPlus will consider further other options to achieve this, including the possibility of automatic refunds for consumers who are eligible, in line with the Consumer Credit Act. We would urge PayphonePlus to give this serious consideration now. In cases where the consumer has been refused a loan it seems unfair that he or she makes a high cost contribution when he or she has received nothing of value in return. Automatic refunds would in our view be fair, would protect vulnerable consumers and would militate against debts on telephony services.

If this is not considered possible at the moment, the Panel would suggest that, at an absolute minimum, the information provided to consumers about refunds should also include brief details of how to request such a refund and an assurance that requesting such a refund will not adversely affect any future application for a loan.

5. *Consumers must be informed of the cost of borrowing in promotional material (in addition to when they are connected to the service).*
   In general, the Panel supports maximum transparency. Therefore, as consumers start being charged as soon as they connect to the services' premium rate numbers, we believe it is only fair that they have an understanding of the likely terms of any loan, in order to make an informed decision about whether to proceed with an application and incur the PRS related costs.

6. *Consumers must be informed of the average repayment cost per £100 borrowed in addition to the average APR.*
   We believe that such an illustration may help to aid greater understanding of borrowing costs and be more accessible than an APR figure.

7. *Consumers who are interested in applying for a short-term unsecured loan must also be given an average APR and cost per £100 borrowed for those products specifically.*
   The Panel agrees that, as repayment rates can vary significantly between different financial products reflecting the credit risks involved, an average for all products offered by a broker may not be indicative of the high repayment rates that can apply to short-term unsecured loans. We note the example quoted in the consultation whereby APRs on unsecured short-term loans can be up to 70 times higher than an advertised average APR for all loans offered. In order for consumers to make informed decisions, it is vital that they are appraised of the likely average repayment rate for short-term unsecured loans as soon as possible during the call, and certainly as soon as it becomes apparent that this is the loan type they are looking for.

8. *Average acceptance rates must be included in promotional material for PRS consumer credit services and also given upon connection to the call.*

As noted above, we believe that greater transparency (providing it is clear and does not overwhelm consumers with too much information) is helpful for consumers. The Panel notes that the average acceptance rate of PRS-based brokerage services from February and May 2012 was 17%, although this varied from 1% to 42% dependent on the type of loan being applied for and the lender concerned. Moreover, applications for short-term unsecured loans had particularly low acceptance rates. As an average of 83% of consumers who made a loan application in this period did not have their application accepted but were charged for the premium rate phone call – and only 5.6% of eligible consumers applied for a refund - it is vital that potential consumers of PRS-based consumer credit services are fully informed of the acceptance rate prior to making a call and incurring a PRS charge.

9. *Consumers who are interested in applying for a short-term unsecured loan must also be given information about the average acceptance rates for those products specifically.*
   As in point 8 above, we would expect this information to be given to consumers in promotional material for PRS consumer credit services and also upon connection of the call as soon as it becomes apparent that this is the loan type they are looking for – particularly as acceptance rates for these loans can be much lower than for other types of loan.

10. *Promotions should provide signposting to free and independent debt advice prior to the consumer being charged.*
    Given that consumers contacting these services are likely to include disproportionate numbers of people who might otherwise not be able to access credit offered by banks or building societies we fully endorse this condition, upon connection of a call and also in promotional material.

11. *State the total maximum cost of the call in addition to the numeric cost per minute and maximum duration of the call.*
    We strongly support the proposed new condition and presume the information would be provided upon connection of a call and in promotional material. Consumers need to be fully aware of how much a call is likely to cost. The potentially higher cost of calls made from mobiles must also be made clear, particularly as people on lower incomes are more likely to rely on a mobile at home.

Finally, in relation to the regulatory impact assessment, we would make the observation that this industry operating via PRS is a different model to other types of consumer credit provider – therefore we do not believe that it is unreasonable for there to be different characteristics for that model. Looking at the statistics in the consultation it could be argued that the current provision appears to achieve undue revenues from non-delivery of a product.

The provision of information in and of itself should not place a huge burden on providers, whilst benefitting consumers. We appreciate that PhonepayPlus recognises that publishing repayment costs and average acceptance rates may impact on the number of consumers calling a PRS-based consumer credit service to apply for a loan, therefore adversely affect providers' revenue streams. However, we believe it is important that consumers, especially financially vulnerable ones, are clearly informed of all key information before entering into a service. If current revenues are in part unduly augmented from call incomes generated by unsuccessful loan applicants (as the figures in the consultation suggest) then that is inherently unfair.