

Consultation response form

Consultation on revised guidance on Consent to Charge

Your response

INTRODUCTION

Payforitsucks.co.uk is a website that provides help and advice to consumers who find themselves victims of “charge to bill” fraud. We provide the consumer support which SHOULD be provided by the PSA and the MNOs.

This consultation appears somewhat irrelevant. Whilst we welcome changes which clarify what is required, we have no confidence that these rules will be enforceable on a case by case basis. The problem isn't with existing rules regarding “consent to charge”. The problem is with **ENFORCEMENT!**

There is already guidance on “consent to charge” which is being widely disregarded. Payforitsucks is aware of several “services”, operated by a single company, which signed up consumers to a £9 per week subscription, without the additional consent required for services priced at over £4.50 per week, and without being able to produce any proof of consent whatsoever! Several such cases were reported to PSA several months ago, but PSA have done NOTHING about this clear cut breach of the code, and the matter is now awaiting a hearing in the County Court. PSA should have been able to intervene in these cases to avoid unnecessarily clogging up the courts which, in any event, are unable to hear these cases until the New Year!

When consumers claim that they didn't consent to charges, they usually receive some response to the effect that they must have consented by clicking a link. Very rarely is proper evidence of consent provided to the consumer. PSA seem content with this situation which actually runs counter to the law. Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(Part 2, Chapter1, Reg 17), where the existence of a contract is disputed, the burden of proof rests with the service provider to establish the existence of that contract. **The consumer shouldn't have to prove that they didn't subscribe, the service provider should have to prove that they did!** The current (weak) PSA guidance does not accurately reflect this, and it is not uncommon for vendors to ask consumers to prove that they didn't consent to a contract. Not fair, and not in compliance with UK contract law. PSA as a regulator should not be condoning this unfairness.

The single biggest problem is that when consumers are not provided with evidence of consent, there is no ombudsman or ADR scheme to which they can turn to enforce their legal rights. The CommsADR scheme is admirable, but the majority of companies are not members, and regular offenders refuse to use it. Where the errant “service provider” is UK based, it is often possible to use the Small Claims procedure, and this has been successful for many consumers. However many of the “service providers” that generate large numbers of complaints are based overseas, beyond the jurisdiction of the UK courts. To make matters worse, customer service advisors in many MNOs dishonestly mislead disgruntled consumers in to the belief that the PSA will resolve their dispute! This misrepresentation of the PSA's role, and the growing feeling of powerlessness felt by consumers

when they realise they have no means of redress, results in even greater dissatisfaction with Phone-paid Services.

Tightening the guidance for “consent to charge” is likely to have little effect, when the **existing** rules are incapable of being enforced. Instead of tinkering with the guidance, PSA need to be looking at enforcement of the Code and at the provision of disputes mechanisms which are a feature of nearly all reputable payment mechanisms. Adding detailed “expectations” in to the guidance is just “window dressing” and won’t achieve anything if compliance with these expectations is not effectively monitored. When PSA can’t even enforce the Code and the Special Conditions, how credible are these changes to guidance?

Consumers who make a complaint should be provided with details of the consent they are deemed to have given. Vague statements that they must have clicked on a link or assertions that they provided two step authorisation are simply not good enough. They should be provided with FULL details of the transaction (as would be required in the case of a PSA investigation). There needs to be a one-stop shop for obtaining these details, probably the MNOs.

The guidance should make it clear that consumers are entitled full, specific details of their alleged subscription process, and not some generic description of the subscription process. In the absence of such comprehensive evidence of the existence of a contract, the consumer is entitled, by law, to a FULL refund. Failure to refund in these circumstances should result in sanctions from the PSA (but currently results in no action whatsoever!). PSA need to be much more robust in incorporating and enforcing UK contract law in this guidance.

Often, consumers are provided with no evidence that they were lawfully charged, but a refund is refused. Where the vendor is based outside the UK, no mechanism exists for them to exert their right to a refund. This can’t be right! Most of the consumer complaints about unexpected charges relate to “services” which routinely fail to provide comprehensive evidence of consent, have no disputes mechanism and are not members of an ADR scheme.

At the same time consumers need to be provided the full company details of the company making the charge and details of any disputes mechanism or ADR scheme available for resolving the dispute. As the responsible regulator, PSA should be ashamed of the number of these cases which are being resolved through the Small Claims procedure for the want of any disputes process for “Payfortit” transactions.

In some cases the details of the transaction will enable the consumer to recognise the charges. This can avoid unnecessary disputes. Consumers expect other payment processors to be able to provide this information, and there is no reason why charge to bill arrangements should be treated differently.

In any discussion of “consent to charge” there needs to be consideration of the process to be followed when consumer believes they have been charged without consent. This appears to be conspicuously missing from the consultation document. At the very least, companies should be required to provide a copy of their disputes procedure to PSA, and publish it so that consumers who believe they have cause to dispute a charge know the process to follow. As you correctly identify, a majority of the complaints you receive relate to “charging without consent”. Because of your limited resources, the vast majority of those complaints go unresolved, generating consumer dissatisfaction and mistrust. The provision of a standardised mechanism for dispute resolution would do much to resolve this.

Para 45 of the consultation document states:

“We do not consider the current requirement within the Code – i.e. that consumers are not charged without their consent, and that providers must be able to provide evidence which establishes that consent – to be ineffective.”

The level of complacency displayed by this statement is staggering! The level of complaints about fraudulent Payforit transactions is disgraceful and shows a lack of control by PSA and the networks. Turning a blind eye to wholesale fraud is not the answer. Bearing in mind that PSA are a regulator and not an ombudsman, the provision of a standardised disputes procedure for third party charges is an urgent requirement which is ignored by this guidance.

Enforcement of the existing rules is a joke. Much was made of a recent £600,000 fine imposed on a level 1 provider. It is clear from the adjudication that the **fraudulent** charges made by this company weren't the result of poor administration or even of negligence. This **was a case where the fraud** was deliberate.

The fine imposed will probably never be paid, as the company is in administration. The persons responsible **for this fraud** have formed a new company and will doubtless use this as a vehicle **for further fraud**. Action should have been taken to disqualify the directors from further involvement in Phone-paid Services and the matter should have been referred to the police **as there appears to be substantial evidence that the behaviour of the directors was criminal**. The complacency exhibited by PSA is staggering. PSA are failing to protect consumers in a spectacular manner.

Fraud on this scale would once have been a matter for a criminal investigation and the criminal courts. It is a sad sign of the times that fraud is no longer considered a criminal activity and is dealt with by toothless authorities like PSA.

The recent adjudication in the case of Veoo Ltd raises a number of serious issues. It is clear from the adjudication that the directors of this company deliberately allowed level 2 providers to make **fraudulent** charges to consumers. Companies that behave like this, and the individuals responsible need to be denied the opportunity **commit further fraud**. Essentially, a large number of consumers were charged without any verifiable evidence of consent.

The time between the initial investigation and the eventual sanctioning of the company is a cause for concern. The breaches of the code occurred in late 2014/early 2015. Why has it taken over four years to bring the company responsible to account? Veoo was in breach of the code and yet it took PSA years to take enforcement action. How much notice do PSA think a company like Veoo is going to take of their new “expectations”!

The tribunal found, on the balance of probabilities, that this company deliberately applied unfounded charges to a large number of consumers' phone accounts. The company was allowed to continue its dubious practices throughout the period of the investigation with its directors deriving benefit from these **fraudulent** charges. Justice delayed in this way is justice denied!

To add insult to injury, the PSA then asked Veoo Ltd what level of fine might be “survivable” for the company. What level of **fraudulent** charge does the PSA think might be survivable for a single parent on the National Living Wage? What level of **fraudulent** charge is survivable for a pensioner living on the state pension. PSA seem to be prepared to accept a level **of fraud** as long as it remains at a level of £4.50 per week or less. They have no understanding of the damage it can do to consumers who are living on modest incomes. I suspect that the majority of consumers would prefer companies that cynically exploit the system, like Veoo, NOT to survive!

Another feature of this adjudication is that it provides some numbers to help establish the scale of fraud in the industry. In the case of the first level 2 provider (Rhydel Ltd) it is revealed that of 12,601 numbers charged; only 12 could be verified! On that basis 99.9% of the charges were fraudulent! Most of these consumers will never have had the fraudulent charges refunded.

For service 3 (Virtual Rainbow Ltd), the corresponding figures are 31,651 numbers charged, of which only 224 were verifiable, making over 99% of the charges fraudulent.

PSA have not revealed full statistics for the other “services” involved in this case, but I would expect them to prove that the vast majority of these charges were fraudulent.

PSA try to give the impression that the vast majority of these charges are legitimate and that most disputes are the result of consumer error leading to “inadvertent” subscription. These figures suggest otherwise.

[In May this year BBC Watchdog commissioned a report on Payforit.](#) As well as identifying some of vulnerabilities in the system which are facilitating fraudulent charges, they also concluded in relation to Payforit:

“Various media outlets have reported on this issue, as well as the BBC Watchdog program investigating the problem. The consensus is that the majority of payments being used by the service have been made fraudulently without the users being aware.”

It is time that PSA took its responsibility to consumers seriously and stopped protecting bad actors in the Phone-paid Services industry.

Please enter your response to each of the consultation questions in the appropriate box below.

Consultation questions	Your response
<p>Q1. Do you agree with our definition of informed consent at paragraph 1.4? If not, why not?</p>	<p>Confidential? No Para 1.4 needs to make it clear that consumers are entitled to see proof of their consent on demand. Too many service providers claim to have proof, but are unable to produce it when asked. In May this year, O2 and GiffGaff introduced a requirement for “affirmative action” by a consumer before entering in to a “Payforit” subscription. This has had the effect of greatly reducing the number of complaints we receive about Payforit scams on the O2 network. However, one company seems to have found a way of circumventing these new rules and continues to generate a large number of complaints. This one service now accounts for more than 80% of Payforit complaints from O2 and GiffGaff customers. However, this company refuses to tell customers how they came to be subscribed, making it impossible to discover how they are circumventing the new rules. Enforcement action</p>

	<p>from either PSA or O2 appears non-existent. Previous consultations have highlighted the need for consumer education around “charge to bill”. One method of advancing this is to explain clearly to consumers who receive unexpected charges, what they did to cause those charges. I’m sure that many consumers do “inadvertently” subscribe to these “services”. Showing those consumers how they were tricked into starting a subscription will help them avoid making similar mistakes in the future. Failing to do this leaves the consumer with the feeling that the charge was fraudulent. The guidance should make it clear that consumers should be given full details of how and when they subscribed, regardless of whether or not a refund is issued.</p>
<p>Q2. Do you agree with the changes to Section Two of the Guidance at paragraphs 2.9 to 2.13? If not, why not?</p>	<p>Confidential? No Once again, it needs to be made clear that consumers are entitled to be provided with proof of consent when there is dispute as to the existence of a contract. Services should be required to publish the procedures they will follow when a consumer disputes that they have consented to charges. These should include an entitlement to see proof of the contract the service claims exists, and access to an ADR scheme to resolve disputes.</p>
<p>Q3. Do you agree with the proposed Technical Expectations? If not, why not?</p>	<p>Confidential? No It’s good to see thought being given to this. However I have zero confidence in the ability of PSA to enforce these expectations. Existing rules are being flouted without any enforcement action by PSA.</p>
<p>Q4. Do you agree with the proposed Staffing and Training Expectations? If not, why not?</p>	<p>Confidential? No These seem fair and sensible, but once again, I doubt the ability of PSA to hold providers to these standards. How is this to be enforced? Will PSA be auditing compliance?</p>
<p>Q5. Do you agree with the proposed Risk Control and Incident Response expectations? If not, why not?</p>	<p>Confidential? No It seems unlikely that there will be any serious attempt to comply with these expectations which appear to be unenforceable. How do PSA propose to monitor how well suppliers are conforming to these expectations?</p>

If you have any supporting imagery for your responses, you can paste them in your responses in the table above or here:

Submit your response

To send your responses to the PSA please email this completed form to consultations@psauthority.org.uk or by post to Mark Collins, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.