

# Consultation response form

## Consultation on the regulatory framework for phone-paid subscriptions

Please complete this form in full and return by email to [consultations@psauthority.org.uk](mailto:consultations@psauthority.org.uk) or by post to Emma Bailey, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.

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Representing	Organisation
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If you wish to send your response with your company logo, please paste it here:

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

Personal data, such as your name and contact details, that you give/have given to the PSA is used, stored and otherwise processed, so that the PSA can obtain opinions of members of the public and representatives of organisations or companies about the PSA's subscriptions review and publish the findings.

Further information about the personal data you give to the PSA, including who to complain to, can be found at [psauthority.org.uk/privacy-policy](https://psauthority.org.uk/privacy-policy).

### Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how the PSA handles your personal information and your corresponding rights, please see our [privacy policy](#).

Your details:	Delete as appropriate:
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We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?	Nothing
Your response: Please indicate how much of your response you want to keep confidential.	None
For confidential responses, can the PSA refer to the contents of your response in any statement or other publication? Your identity will remain confidential.	Yes

**Your response**

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

Consultation questions	Your response
Q1. Do you agree with the PSA's assessment that the evidence gathered from the research and other information, data and inputs considered support implementation of Special conditions for all subscriptions as an appropriate and proportionate response? If not, please set	<p>Confidential? No</p> <p>The proposed Special Conditions seem entirely appropriate, given the high level of consumer harm generated by the current regulation. However they fail to address other deficiencies in Direct Carrier billing such as the lack of a formal disputes procedure and the lack of a refund mechanism that meets current consumer legislation and expectations. In their response to the initial consultation, Lateral Corp said "<i>Rather than just creating confidence, the objective should be positive promotion of DCB as the best and most trusted option for any customer</i>". A laudable aim which these Special conditions will fail to achieve. There is an opportunity here for DCB to really clean up its act and put in place the mechanisms that consumers expect of a 21<sup>st</sup> century payment mechanism.</p> <p>Lateral Corp go on to list (on page 5 ) what it sees as the advantages of DCB. I'm not going to rubbish all of them, although it would be easy to do so, but this is just plain ridiculous:</p> <p><b>Fully refundable transaction:</b>  <i>Carrier Billing is a commercial anomaly. Generally, other payment methods prohibit or seriously limit refunds. Carrier Billing offers full refunds to customers on request, regardless of the reasons for the request.</i></p> <p><b>Surely nothing could be further from the truth.</b>  One of the biggest issues for consumers is the difficulty of obtaining a refund even when it is clear that there was no consent to charge for the "service" and the "service" has not been used. <b>If there was one change which</b></p>

out your alternative approach and the supporting evidence.

**would make a difference to the consumer perception of Payforit, it would be a refunds system that worked as simply as Lateral Corp seem to believe it does now. A compulsory ADR scheme or an ombudsman is desperately needed!**

A system which users can opt-in to, and which puts the MSISDN passthrough behind an account login would be an improvement. If consumers could then access their account to get a real time view of transactions and to cancel subscriptions that would have the potential to be a “game changer”. A disputes mechanism could also be built in to the system allowing consumers to dispute transactions and receive a refund back to their phone account if the dispute was resolved in their favour.

Lateral Corp also give as an advantage of DCB

7)Singular customer support channel: DCB is the only transactional model that leverages an existing service provision relationship. The carrier is not just a payment channel like a credit card company; they are a provider of a number of communication and digital services to their customers. They have customer support infrastructure in place to manage these products and customers have an expectation that any transaction on their account can be dealt with via this support channel. There is no equivalent in the banking industry.

The problem here is that the MNOs are quite clearly unwilling to perform the role that Lateral Corp ascribes to them. They routinely abrogate their responsibility to support their customers when they have a problem with a Payforit “service”. Customers are left to use the Small Claims procedure to pursue their complaint, or have to accept the financial loss from Payforit fraud.

Lateral Corp say” DCB represents the payment method with potentially the highest protection to customers, in comparison to credit card-based systems”. Potential is the operative word here! As currently implemented, Payforit is insecure and allows numerous fraudulent “services” to operate with impunity.

The Empello submission makes these points in relation to PIN flow:

- *Recent data presented by Empello at the Global Carrier Billing conference shows that PIN does not necessarily prevent Payments Fraud, as App Malware has now evolved to automatically read and submit PINs without any user interaction.*
- *The internal security of PIN systems is questionable given recent cases in one European country where it was shown that there have been multiple security breaches*

I don't accept that the argument that a measure may not be 100% effective is a reason not to employ it. However Phone-paid Services have been a vehicle of choice for fraudsters for many years. Many of the “services” currently on offer are a cynical attempt to exploit the current vulnerabilities of the system. The proposed Special conditions should defeat the exploits currently being used, but there is no doubt that attempts will be made to circumvent these measures. The industry needs to take fraud prevention much more seriously.

	<p>There is a danger that as has happened before, these Special conditions are “too little and too late”.</p> <p>In its response to the initial consultation, Lateral sought to minimise the incidence of fraud in DCB transactions by saying:  <i>If the Carrier Billing industry thinks it has a fraud problem, we should be aware that it is miniscule compared to other types of on-line fraud, which amounts to 1.5 trillion dollars each year.</i></p> <p>However the transaction value handled by Carrier Billing is also miniscule. If the credit card industry had a percentage of fraudulent transactions equal to that of Direct Carrier Billing, the losses would be horrendous and unsustainable, especially, as unlike DCB, the credit card companies can’t make consumers pay for their irresponsible business practices.</p>
<p>Q2. Do you agree with our proposed approach that the proposed Special conditions be applied to all phone-paid subscription services to create clarity and certainty for providers of subscription services, with any additional requirements under other Special conditions not being replicated in the proposed conditions?</p>	<p>Confidential?No</p> <p>Yes, I can see no benefit in complicating matters by exempting any services from the proposed Special Conditions.</p>
<p>Q3. Do you agree that the research and other information, data and inputs we considered support action on each of the identified</p>	<p>Confidential? No</p> <p>Yes, your proposed actions still fail to address some of the issues, such as the difficulty consumers have in getting redress. If the intention is to “clean up” this sector of PRS, consideration should have been given to complaints procedures and refund mechanisms. Consumers should be able to opt out of having their numbers passed to third parties via the Payforit API.</p>

<p>issues outlined in this document? If not, please provide supporting evidence?</p>	
<p>Q4. Do you agree with our analysis using the risk taxonomy (outlined from paragraph 249 of this document) that Special conditions represent a proportionate regulatory response to the risk of harm posed by phone-paid subscription services? If not, please provide supporting evidence.</p>	<p>Confidential? No</p> <p>I really don't see how, given the level of complaints and consumer harm, you could do any less!</p>
<p>Q5. Are there any other issues not addressed through our proposed response that you consider warrant regulatory action in light of the research and other information, data and inputs considered? If yes, please provide</p>	<p>Yes</p> <p>Having identified "Post-purchase experience and complaint handling" as an area to consider, no proposals have been made to deal with the high levels of consumer dissatisfaction.</p> <p>If Direct Carrier Billing is to compete with other modern payment methods there are issues other than consent to charge which need to be considered. Other payment methods have clear, published disputes mechanisms which actually work. Much of the consumer dissatisfaction with Payforit stems from the difficulty they experience in resolving disputes. If nothing is done to correct this, no amount of fraud prevention will restore trust.</p> <p>In the consultation the PSA say:  <i>188. Section 2.6 of the Code sets out the requirements for Level 2 providers in relation to complaint handling. The Code outcome that relates to this is that consumers can have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is also provided quickly and easily. The Code also requires that Level 2 providers must provide an appropriate and effective complaints process which is free or low cost.</i></p>

supporting evidence.

There is a serious problem here, not with the code, but with the enforcement thereof. In the past year, numerous consumers have been forced to resort to the Small Claims procedure, because of the lack of a “appropriate and effective complaints procedure that is free or low cost”. Other consumers have been forced to accept losses because the company which has taken their money is based overseas and there is no accessible complaints procedure.

The difficulty of obtaining redress for consumers who have had money taken by a Payforit subscription service is one of the principal drivers of consumer dissatisfaction. A statement that PSA will in future **robustly** enforce this aspect of the code, followed up by such robust enforcement would help restore consumer confidence. Maybe the Special condition could require that a company’s complaint procedure must be published on its website.

The MNOs are responsible for the design and implementation of the Payforit system and profit considerably from it. However they are currently abrogating their responsibilities as payment processors.

MNOs should be made to accept their responsibility for dispute resolution under the Payforit rules.

clear for you and enabling you to charge these purchases to your mobile monthly account or prepaid credit

The scheme is operated by parties (called Payment Intermediaries) that contract to your network to provide the relevant information to you so that you can make your own decision about the purchase. Payforit is not a legal entity and is not a party to any transaction for products or services.

When you make the decision to purchase and indicate your decision by pressing a button or an appropriately worded icon, you agree a contract with the party selling the product or service ("the seller") that you will pay the price detailed by charging the purchase to your monthly account or prepaid account provided by your network. Your contract is with the party selling the product or service ("the seller") not with your MNO. Your MNO has agreed with the seller simply to charge the amount directly to your bill or prepay account. Once this charge has been authorised by you, the seller must provide the product or service detailed and you must pay your network (for monthly accounts) the amount charged. You are therefore wholly responsible for checking that you are happy with the price, the product or service and the seller before making a purchase commitment.

When choosing to pay by your mobile account or prepaid credit, you have either provided your mobile number to the payment intermediary or you have agreed for your network to pass your number directly. If you did not opt out of marketing (by un-ticking the relevant box), the seller may use your mobile number in accordance with its privacy policy, terms and conditions.

You have 14 days from the date of the purchase to change your mind, cancel the purchase and receive a refund. You will need to contact the merchant on the contact number given in the receipt that you will receive after the purchase is made. The merchant may have asked you to agree to an immediate delivery of the service or content and in doing so, you will have waived your right to cancel. If your purchase is a subscription service with a recurring charge, then you have the right to cancel the service and all future charges by following the instructions given in the text message sent to you after your purchase. Other rights that you may have (statutory or otherwise) including rights related to faulty or incorrectly described goods are between you and the merchant and any enquiries or disputes must be addressed directly with them using the phone number provided in the receipt message. Your network has added value in terms of access, search, the Payforit scheme and the charging mechanism and you can escalate any dispute between you and the seller to your network for them to take a decision as long as you have discussed the dispute with the seller and can provide evidence of that discussion to your network.

The operation of this payment facility is regulated under the PhonepayPlus Code of Practice and is bound by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations.

If they are not willing to do this, a compulsory ADR scheme should be introduced.

Similarly, the lack of a refund mechanism is likely to detract from attractiveness of carrier billing. I note that this is being considered as a separate issue, but the inability to refund directly and speedily to the consumer’s phone account is another area where Carrier billing lags way behind other payment mechanisms.

As a consumer, I like to know that the payment mechanism I am using has safeguards in the event that something goes wrong. I don’t want to have to make a multitude of phone calls to resolve a simple problem or to employ a private detective to find out the identity of company taking my money. I would expect the carrier billing mechanism to offer the same kind of account controls as I enjoy with other payment mechanism.

If a company generates a disproportionate volume of complaints, they will have their ability to accept credit card payments rescinded. No such safeguards seem to apply to carrier billing, where rogue Payforit services generate large volumes of complaints, but the MNOs continue to allow them to use the Payforit mechanism.

	<p>MNO's should be required to provide a bar that blocks charges from these services. Some networks still fail to allow this. It is a legal requirement in many parts of Europe, but not in the UK. It should also be required that charge caps, where implemented, include Payforit charges.</p> <p>It should be made possible to stop future recurring charges even in the event that it is not possible to contact the service. Consumers often draw an unfavourable comparison between Payforit and Direct Debit or Continuous Credit Card Authorities in this respect. They expect to be able to stop future payments by contacting the payment processor (their network), in the same way that they would cancel a standing order or direct debit.</p> <p>The leaking of MSISDN's via the Payforit API (MSISDN Pass-through) is unnecessary and has caused much consumer harm. It is possibly a breach of GDPR. Although the proposed Special conditions will provide additional safeguards, I still believe it to be wrong in principle to be leaking consumers MSISDNs in this way without their explicit consent. Consumers are often unaware that this happens. Consumers should be made aware of it and be allowed to opt-in or opt-out as they wish. This would make the processing indisputably lawful. Consumers opting out wouldn't be prevented from signing up to subscription services, but would experience additional "friction" as Payforit would revert to the WiFi path requiring them to manually enter their MSISDN.</p> <p>There is a problem with the STOP mechanism, as often consumers find it difficult to identify the originator of the charges they are receiving. Currently a number of services appear to be operating in breach of the registration requirements. Although company was recently fined £50,000 for failing to register, it was allowed to operate for months without registering! Enforcement is key here. Services are required to register within 48 hours. If they fail to do so, they should be given 48 hours in order to register. If they fail to do so, the non-compliant should be stopped until compliance is established.</p> <p>As long as the shortcode can be orrectly identified, I agree that the STOP mechanism generally works well. However, I believe that the STOP text should be free. A problem sometimes arises with some consumers of PAYG networks. These consumers buy a monthly bundle of texts, calls and data. They operate their accounts with no airtime credit. When they find themselves signed up to a subscription service (whether inadvertently or as the result of fraud), they are unable to send the STOP text as they lack the credit to do so. If they do add airtime credit, the charge for the unwanted subscription will be taken. This situation is unsatisfactory and could be avoided by making texts to STOP subscription services free. Other consumers are reluctant to send the STOP text because their phone warns them that it is chargeable . Consumers often confuse the subscription charge of £4.50 or £3 with the much lower charge for the STOP text. They believe they were charged £4.50 for sending a STOP text. This confusion can't be good for the industry.</p>
<p>Q6. Do you have any views or evidence on the use and</p>	<p>One of the problems PSA face is that there are a number of companies which will seek to stretch any rules to their limit with a view to defrauding consumers. As long as PSA continue to turn a blind eye to these practices, they will continue. This is likely to be an issue with any rules around free trial periods. Any rules should perhaps be reviewed after 12 months, so that any</p>



<p>effectiveness of free trial periods of varying durations to support the PSA in considering what might be appropriate in the context of phone-paid subscription services?</p>	<p>abuses can be identified and eliminated.  Free Trial periods can be effective in allowing new services to demonstrate their value to consumers. It is a common feature of subscription services and needs to be allowed under the rules.  However, there do need to be safeguards  Either:  Payment details should be taken using a double opt-in procedure at the time the free trial period starts (this tends to be the norm for other payment mechanisms) . This makes it obvious to the consumer that, at the end of the free trial period, the service will become chargeable.  Where there is an extended free trial period of 1 week or more, there should be a requirement to send a reminder text 24 hours before the first charge is taken.  Or:  The subscription should end at the end of the free trial period unless the consumer has extended it by going through a double opt-in procedure.</p> <p>Free trial periods should be able to be terminated by using a STOP text. Free trial periods should not be so short that it is impossible to cancel if, for some reason, the STOP text can't be sent. 24hour free trial periods can be problematic in this respect. This is a particular issue where helplines are not manned at weekends.</p>
<p>Q7. Do you have any additional comments?</p>	<p>Fraud prevention has been a very low priority for far too long. If this opportunity is not taken for the industry to clean up its act, other payment mechanisms are likely to take the largest share of any growth. Consumers who have been defrauded by one of the rogue operators are going to take a lot of convincing to use this payment mechanism Those who believe that Carrier Billing and Payforit don't have an image problem need only do a search for "Payforit" on one of the networks customer forums to see the uphill struggle they will have to regain consumer confidence.</p> <p>If/when the new Special conditions take effect, consideration will need to be given to subscriptions already in force. It is not unusual for consumers to discover they have been paying for a weekly subscription for a period of 2 years or more. The Payforit 120Day rule doesn't seem to be having the effect that it should, probably because it is not being properly enforced by the MNOs.</p> <p>If action isn't taken to reconfirm existing subscriptions, either by confirming that the subscriber is regularly interacting with the service, or by asking the subscriber to confirm that the service is still required, it is likely that complaints (and corresponding damage to the image of DCB) will continue for months, if not years, after the introduction of the new regime.</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](mailto:consultations@psauthority.org.uk) or by post to Mark Collins, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.