



# PSCG Response to PSA Consultation on Business Plan and Budget 2021-22

## Introduction

I run the Phone-paid Services Consumer Group which helps individual consumers resolve their issues with Phone-paid services. We also seek views from consumers on how PSA could better regulate these service and use these to respond to PSA consultations.

This is the fourth year in which I have submitted a response on behalf of consumers. The past year has seen a dramatic reduction in the number of complaints we have received about Phone-paid Services. We also saw the end of the networks' "Payforit" scheme. Sadly, "Payforit" had become synonymous in many consumers minds with "scam". However, in many ways we regret that the scheme was abandoned rather than improved. It represented an attempt to introduce common standards and rules for PRS across all networks. This is still badly needed, and an opportunity to reform and modernise the system has been missed.

Measures which we advocated several years ago, and which took far too long to implement, are beginning to have an effect. With the UK's departure from the EU, it will no longer be possible for companies based in the EU (usually Cyprus!) to evade regulatory action. One lesson that needs to be learnt is that PSA need to be much faster in reacting to issues such as those addressed by the Special Conditions for Subscription Services. The measures ultimately implemented have been highly

effective, but large-scale consumer harm from dubious “subscription services” was allowed to continue for far too long.

The fact remains that when a consumer receives unlawful PRS charges from an overseas entity, they have no effective means of redress. We believe that all services should have a legally accountable UK entity, so that consumers who receive unlawful charges can pursue their case through the UK Small Claims procedure. Where a level 1 provider allows an overseas entity to use their platform, we believe that they should be able to be held legally responsible for any resulting unlawful charges without the need to prove negligence on their part.

Soon after the introduction of the Special Conditions for subscription services in November 2019, we discovered several services using fake One Time Pin (OTP) verification to bypass the new requirements. In one case the OTP was displayed on the screen rather than being sent by text. In the other a PIN was being sent, but the subscription was started regardless of whether the PIN submitted was correct. Phone numbers taken from advertising site Gumtree were being “subscribed” to these services by fraudsters, probably affiliate marketers who took a cut of the unlawful charges. Fortunately, we were able to identify the issues quickly and minimise the consumer harm. The services concerned removed the exploits as soon as we made them aware that they had been discovered. However, despite reporting our findings to PSA, and providing video evidence, no action has ever been taken against the perpetrators.

Unfortunately, as we predicted, the new rules for subscription services resulted in dubious companies moving their attention to other potential revenue streams. Within days of the new rules for subscription charges taking effect, we became aware of a “service” charging consumers a substantial one-off charge, allegedly for a fitness service and using the highly vulnerable “two click” verification now outlawed for subscription services. New guidance on Consent to Charge should have put a stop to this, but again, as we pointed out in our consultation response, this appears to be unenforceable. PSA allowed this blatant and cynical abuse to continue for more than 8 months, despite dozens of complaints and massive consumer harm, before it was finally stopped. PSA needs to be more proactive in protecting consumers and act quickly to stop non-compliant “services” and prevent further consumer harm. Level 1 providers should face regulatory sanctions if they allow such services to continue to operate when it is abundantly clear that something is wrong. PSA should also make greater use of their ability to order a withhold of income from a service where it is likely that regulatory action will lead to financial penalties. This would help reduce the number of unpaid fines which are never collected.

Despite changes to the Special Conditions and Guidance, the fundamental problems with “charge to mobile” and PSMS services remains. Unlawful charges are placed on consumers phone bills, and there is no clear mechanism for them to be disputed.

On the evening of 25th September 2020 we began to receive reports from consumers of receiving a succession of Premium Texts each charged at £1.50. Some consumers reported receiving over 150 such texts over the course of a few minutes. We estimate that well over 6,000 consumers received these texts, and that the total value of the unlawful charges was in excess of £500,000.

The networks wasted no time in telling consumers that they “must have subscribed to the service” and that they would not help. Effectively they were accusing the victims of lying! Consumers who received these responses never received an apology.

The Level 1 provider in this case quickly admitted that there had been a “technical error”, that the charges were unlawful and that they would work with the networks to ensure that all affected consumers were refunded. We received correspondence from the level 1 provider saying that the charges would be refunded within 5 business days.

However, the networks continued to tell their customers that they “must have subscribed to something” and that these charges were “subject to two-step authorisation”. The networks, of course, held no evidence to this effect – as no such evidence ever existed! We believe that it should be unlawful for networks to handle payments like these without actually holding the evidence which they claim exist. Networks need to take responsibility for these payments. Instead of telling consumers that they “must have subscribed” they should confront consumers with the evidence that they consented to the charges.

Two weeks later, several networks had still failed to process the refunds, despite them never even having paid the money over to the level 1 provider! One network in particular was still telling its customers that it would not refund after three weeks! It took a further week for this network to issue refunds! Eventually all affected consumers received a full refund, but this process took over a month and demonstrated how broken the system currently is.

This wasn't an isolated incident. We have dealt with many cases of disputed charges for Phone-paid Services and it is very unusual for there to be any evidence of consent provided. On 24<sup>th</sup> December 2020 the same thing happened again. Numerous consumers reported receiving unsolicited premium texts. Once more, the company responsible blamed a “technical problem” and admitted that the charges were unlawful. Once again, the networks refused to help!

There is no simple system which allows networks to automatically reverse these charges, and that is part of the problem. This does great harm to consumer confidence. Here are some typical consumer comments taken from one popular number lookup website. As PSA will insist on it, names of the offending service provider and networks have been redacted to protect the guilty:

*"[service provider name redacted] sent text telling me they had charged me £3.00 for a text message and to get my refund to go to post office to claim my three pounds back. Checked my mobile account with [network name redacted] and £3.00 had been added to my bill. It's a scam mobile providers should be refunding customers"*

*"Got txt 24/12/20 wishing me happy Xmas etc. Then 2 txt's yesterday saying is been over charged to take bar code to post office for refund. Checked my phone bill and saw it had cost me £3.00 have contacted [network name redacted] my phone provider and they have said they will waver it, my phone bill goes out today so don't hold out much hope. Very scary these people can send messages and people get charged. Have blocked this number but worried I will get more scam txt's."*

*"received a text on the 24th of december and have been charged £2.50 to receive it. received two further texts today about claiming a refund from the post office. clearly a scam. trying to deal with [network name redacted] about it."*

*"I was also charged £3 on 24/12/20 I'm with [network name redacted] and the money was taken from credit, received anther text today telling me to go to the post office with a code for a refund !? Why didn't [network name redacted] just refund ? Why do I have to go out of my way to do something I have No clue how to do during a Lock down ?? Are these people for real !! Total joke and fuming"*

Phone-payment, as currently implemented, is an appalling system which fails to provide the disputes procedures, refund mechanisms and fraud prevention measures expected of modern payment mechanisms. FCA require these of other payment processors and the telecom exemption from PSD2 is being abused. It is time that PSA acted to end this abuse and apply the same standards to phone payment as FCA apply to other payment mechanisms.

If thousands of Paypal payments had been taken in error, Paypal themselves would be able to easily reverse them. There is no such simple facility with Phone-payment. The payments can't be simply reversed by a network or even by a Payment Aggregator. Instead, they are dependent on service providers processing and applying refunds. It is outrageous that, in this day and age, such a payment mechanism is allowed to exist. Any reputable payment mechanism should be able to reverse payments like these almost instantly.

The situation is exacerbated because the networks surreptitiously opt consumers in to this insecure, unfit and fraud ridden system without seeking any explicit consent. We believe that a third-party charge bar should be applied to all new mobile accounts, and that consumers who wish to use phone-paid services should be required to ask for this bar to be removed. If consumers wish to expose themselves to the risk of fraud by charging third party services to their phone bill they should, of course, be free to do so.

Less scrupulous services have often targeted children with a view to getting them to unwittingly “subscribe”. We receive numerous complaints from parents who have given a phone to their child, and have been hit by large third-party charges. Often these parents believed that they had protected themselves by putting a spending limit on the account. It is a disgrace that spending caps are not required to include such charges.

It isn't just children who need protection from the aggressive practices of some companies providing PRS. In the past year we have dealt with cases involving vulnerable adults. It is distressing for carers to have to deal with unsympathetic networks and service providers when seeking justice in these cases. Once again, this could be avoided by providing a third-party charge bar by default.

We applaud the PSA efforts to demand higher standards of Due Diligence, Risk Assessment and Control from the level 1 providers. One payment aggregator has been responsible for more than 50% of the complaints we have received in the past 3 years and it needs to be possible to hold them to account for their failure to properly vet and monitor their “business partners”.

We were disappointed that work on refunds guidance was discontinued due to COVID. It is to be hoped that this issue will be addressed as part of the development of Code 15.

We were pleased to be able to have dialogue with PSA during the year. Although we have different perspectives, we are both interested in protecting consumers. We were also delighted that PSA held a webinar where consumers could be informed and ask questions about the development of the new Code. It is our hope that PSA will continue to encourage and develop consumer involvement in their processes.

Q1 – Do our plans for 2021/22 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

It is right that PSA should concentrate on the development of Code 15 during this period. Code 14, together with Special Conditions and Guidance, has reduced

complaints to a trickle and it is important that Code 15 continues to encourage good practice and discourage fraud and abuse.

We are concerned at the suggestion that the new code “will allow for individual bespoke agreements with providers, where they are able to demonstrate their delivery of phone-paid services meets the required standards but in a different way to that specified in the Code.”

We have seen the result of such “bespoke” arrangements in recent years, and it hasn’t ended well (see the MobBill adjudication where PSA failed raise concerns regarding a “single click” authorisation model). We believe that any such arrangements would need to be subject to close monitoring of complaints and that such arrangements should be speedily withdrawn if shown to be disadvantaging consumers. However, in the example above, despite such supposedly close monitoring, large numbers of consumers were affected and it took months to put a stop to the abuse.

Q2 – Do you have any comments on the proposed budget for 2021/22? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon.

No.

Q3 – Do you have any comments on the proposed levy for 2021/22?

We remain of the view that the cost of regulation should fall most heavily on those companies that break the rules. In an ideal world, the fines imposed for breaches of the Code would go a long way towards meeting this aim. However, as fines are rarely collected, the next best solution would be a graduated levy, based on factors such as the type of service and the volume of complaints generated by the company’s services in the past year.

Q4 – What is your view on the estimated size of the market for 2021/22?

We believe that the estimates are realistic.

Q5 – Do you have any other comments on the Business Plan and Budget 2021/22?

We believe that the consumer section of the website is still in need of improvement. We would suggest:

- Extending the information on the Service Checker to include details of the Level 1 provider (with a suggestion to contact them if a consumer is uncertain who is responsible for the charge they have received).
- Ensuring that the Service Checker is always up to date with the Registration database, thus ensuring that details are publicly available within days of a new service starting.
- A page explaining how Phone-paid services work, including the roles of the Service provider, the Level 1 provider and the MNO.
- A page giving advice to consumers on their legal rights where the service provider fails to engage with them or fails to evidence the purported contract under which the charges were taken. By omission, the current website leads some consumers to believe they have no means of redress and this is not true.
- Publishing details of refund arrangements agreed with service providers outside of a formal Tribunal hearing.

There are also issues around communication with consumers. Consumers often receive emails telling them that a service provider is being investigated, then hear nothing for months (or in some notorious cases years). This lack of communication serves to discourage consumers from reporting their issues to PSA.

PSA are sometimes slow to pick up on potential issues affecting consumers. Better monitoring of social media and forums operated by the major networks might provide early warning of issues. Complaining to PSA is usually well down the list of actions taken by consumers when they have a problem, and relying on such complaints risks grossly underestimating the scale of such problems and delaying regulatory action.

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