

Statement following consultation on Business Plan and Budget 2019/20

19 March 2019

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1. Consultation process

1.1. Our draft Business Plan and Budget 2019/20 was put out for public consultation on 13 December 2018, with a deadline for comment of 25 January 2019.

1.2. We have received five consultation submissions, from:

- aimm (Association for Interactive Media and Micropayments)
- Action 4
- Telecom2
- Paul Muggleton
- Philip Metcalfe

1.3. We have reviewed each submission in detail and we thank each party for taking the time to make them. Our responses are set out in section 2 of this document and are based on our understanding of the points in each submission that are relevant to the Business Plan and Budget. Our responses should be considered alongside the respective consultation submissions, which are published separately alongside this statement.

1.4. As a result of the consultation, we have amended the Business Plan and Budget 2019/20. These changes are detailed in section 3 of this document.

2. PSA response to consultation comments

The five consultation responses we received came from two industry trade bodies, an individual company active in the phone-paid services market and two individual consumers. Responses were far more extensive in terms of the views expressed on the draft business plan as opposed to the more limited views expressed by respondents in relation to the proposed budget.

The responses reflected a range of views on a number of different aspects of the business plan and budget, without there being a strong consensus emerging from the responses on any single issue raised.

2.1. aimm

- 2.1.1. We are grateful to aimm and its membership for their views on the business plan as expressed in aimm's submission. The submission is helpfully structured in allowing the clear identification of differing views from their membership.
- 2.1.2. We welcome that aimm members "agreed as a whole that the business plan delivers what they expect of a regulator" and that they have enjoyed the regulatory certainty we have been able to give.

- 2.1.3. We have noted aimm’s comments about Special conditions in general, but we are clear that these are subject to the same rigour and process of consultation as any of our regulatory changes. We have set out in the Business Plan and Budget 2019/20 (4.2.1) our approach towards developing Code 15 and will welcome input from all stakeholders as we go through this exercise.
- 2.1.4. We have also noted that some aimm members “felt that a wrap-up of last years plan would be useful”. We consider this is addressed by the substantive overview of our work in 2018/19 that we provide in Section 3 of the Business Plan and Budget. We are satisfied that this approach provides suitable context for our plans for 2019/20 (as set out in the introduction to Section 4), and takes into account the ongoing, evolutionary nature of much of our work. We are also clear that the very nature of business planning requires a degree of flexibility to respond to changes in priorities, timescales and resource constraints – each of which are overseen with rigour by the PSA Board.
- 2.1.5. We do not agree with some aimm members’ views that our work on L1 aggregator platform security sits outside of our remit as a regulator. Our Code states explicitly that “consumers must not be charged for PRS without their consent”, and we have a clear responsibility to understand how consumer harm can happen in this area and what standards could be applied by PSA and/or industry to prevent it. In undertaking this work, we have worked closely with industry and our understanding has been that this has been broadly welcomed, not least since it will inform our plans to update guidance in relation to consent to charge and due diligence. We will of course continue to enforce against any non-compliance with our Code fairly and proportionately.
- 2.1.6. Some aimm members would like to see the Business Plan and Budget 2019/20 recognise that we “intend to understand further the roles and responsibilities of each entity involved in the operation of PFI payment flows” and that “more examination should be made when investigating any breach”. Our view is that we already investigate thoroughly, with any alleged breaches based on evidence which includes understanding the cause of that breach and the party responsible. Paragraph 5.3.8 of Code 14 is clear as to how the PSA determines roles undertaken by parties in any given service, and the responsibilities of each of those roles in the Code is also clear across content, operation and promotion of services. There is not anything further in our view that needs addressing in the Business Plan and Budget 2019/20, other than to note that our intention to begin to lay the foundations for Code 15 will include consideration of any further clarity in this area.
- 2.1.7. As set out in the Business Plan (4.1.1), we will continue to develop how we support consumers to obtain appropriate redress as quickly and simply as possible. We note the comments of aimm members about this, including the desire for a workshop, and we will add to the business plan our intention to continue to engage with industry as part of our work in this area.

- 2.1.8. We appreciate industry's support of our review of industry-based templates and website content, which we believe to be an important part of our balanced approach to regulation. We have overhauled our website structure and content with a particular focus on the "For Business" area, and we continue to welcome feedback on this. As we set out in the business plan (4.2.4, 4.3.1, 4.3.2), we will continue to help both existing and new market entrants to ensure they are aware of regulatory responsibilities and supported through compliance advice.
- 2.1.9. We have noted the desire of aimm members for the production of good news stories, which we will continue to support in so far as it is consistent with our role as a regulator. We will emphasise this further in our business plan (4.1.2), to ensure we build on the range of work we already do:
- we will continue to identify and write blogs that support our vision of a healthy and innovative market
 - we will provide helpful consumer advice through adjudications and use these to show how well regulated the market is (with contextual balance that bad practice is the exception)
 - our Annual Market Review provides material which enables us to promote positive messages about the market as a whole
 - our communications typically lead with reference to services that consumers can identify with as ones that they may have engaged with knowingly and willingly (e.g. music subscriptions, voting on TV talent shows)
 - we will continue to engage positively with high-profile merchants who may be considering phone-paid services as a billing option.

However, we also believe that the primary responsibility and interest in promoting phone-paid services lies with all parties in the value chain.

- 2.1.10. We have also noted the suggestion that "it might be an effective deterrent (to those intending to attempt to avoid paying their debt) to list out the comprehensive process that the PSA will seek to follow in this instance", and we welcome the support for maximising the impact of our sanctions. While we do not think the business plan is the correct document for this level of detail, we will include a commitment (4.2.3) to consider how we can maximise the deterrent effect through communicating the legally exhaustive procedures we follow in chasing down all outstanding debts.
- 2.1.11. We have noted that aimm members "in some cases would welcome further budget increases (...) if it were to positively impact on PR for the industry and actively educate consumers". The business plan (4.1.2) provides an overview of our planned communication with consumers (and 2.1.9 above provides examples of the range of things we already do), and we will work with industry to collectively identify and promote good news stories. However, we remain realistic in our assessment of potential audience reach – including that we

would need a publicity budget running into millions of pounds to get even close to the audience reach that networks have through their customer bases.

- 2.1.12. The business plan (section 6) clearly sets out how retained funds (collected fines and admin charges) are being used to offset the levy required from funders over a period of time. This funding model approach was reviewed and agreed with funders in 2016/17, with a managed levy amount implemented from the 2017/18 financial year onwards. We do not hold separate cash reserves for alternative uses, except for those necessary for the prudent running of a public body.
- 2.1.13. As we reiterated in last year's statement, our decision to move to our current office location in 2015 included consideration of the option of moving out of London, which was rejected for a number of reasons - not least that the costs of re-locating outside London would likely have been greater than those saved due to the loss of key staff and likely redundancy payments. We have a lease agreement on our office premises to the end of 2022, which has delivered savings of over £0.5m on our previous premises and which we believe represents good value for money. While we will of course take any changing circumstances into account, we currently have no plans to review our location and office working arrangements until nearer that time.
- 2.1.14. We have noted that aimm members contributing to this submission recognise that the levy is not paid by the majority of aimm members. We do not agree with the suggestion "that any sizeable reduction in the size of the market should lead to a reduction in the levy". From our discussions with members of the ILP and our broader outreach programme we believe it is generally understood that the funding we require to carry out our role effectively is not a direct function of market size, but rather the nature and amount of resources required to achieve our mission. We remain committed to delivering our plans as efficiently and effectively as possible and this is reflected in the budget.
- 2.1.15. We acknowledge the difference of opinion between aimm members regarding the estimated size of the market for 2019/20, and we have taken these differing views into account in reviewing the assumptions underpinning our projections for the coming year. We note that no alternative estimate has been put forward due to reasons set out in the response.
- 2.1.16. We have noted the value aimm members place on industry gatherings and networking, and welcome the view that PSA based events are seen as a valuable part of the broader industry networking programme. We agree that collaboration and communication across the value chain is a vital component in delivering a compliant market. As set out in the Business Plan (4.3.2) we will continue to deliver a number of different forms of industry engagement to promote the maintenance of compliance in each of the different sectors of the market, including e.g. implementation workshops on refunds, subscription

services etc. We will also include within this part of the business plan our intention to explore with senior MNO and L1 representatives the opportunities and challenges for operator billing growth.

2.1.17. A notice setting out new registration requirements will be published following industry workshops currently timetabled for April. We had originally intended to publish this in mid-January, but wanted to ensure that we optimised the user experience of service providers in completing the new input forms – which has resulted in a delay of around 4 to 6 weeks. In terms of budget, the registration database is a fully integrated component of our core systems and the costs involved relate solely to programming enhancements to an already established platform. The cost of this work will be delivered within our 2018/19 budget.

2.2. Action 4

2.2.1. We welcome Action 4's view that "all attempts to positively present PRS in a good light is always welcome" and agree that much of our business plan activity (especially 4.1.1 and 4.1.2) is supportive of this.

2.2.2. As with last year, we have noted Action4's suggestion of an award event. Our view remains that industry efforts to increase compliance and support good practice are of course welcome and should be celebrated, but this is not something a regulator can be involved in as we need to be (and be seen to be) impartial.

2.2.3. We welcome Action 4's recognition that continued engagement with industry is important to us, and that this is reflected in our business plan.

2.2.4. As we reiterated in last year's statement, our decision to move to our current office location in 2015 included consideration of the option of moving out of London, which was rejected for a number of reasons - not least that the costs of re-locating outside London would likely have been greater than those saved due to the loss of key staff and likely redundancy payments . We have a lease agreement on our office premises to the end of 2022, which has delivered savings of over £0.5m on our previous premises and which we believe represents good value for money. While we will of course take any changing circumstances into account – and we already employ flexible home working and technological solutions to increase efficiency and effectiveness - we currently have no plans to review our location and office working arrangements until nearer that time.

2.2.5. It appears that Action 4 is relying upon inaccurate information – the quoted figure of £763.7m for 2014/15 is incorrect, since the market size (as measured by outpayments from networks) was £443.6m. In any case though, we believe from our discussions with our funders, the ILP and our broader outreach

programme that it is understood that the funding we require to carry out our role effectively is not a direct function of market size. We build up our budget proposal based on the resources we need to carry out our mission, and as a regulator, it is necessarily the case that the bulk of our staff resources are associated with receiving information from consumers, investigating issues and taking enforcement action. These activities are not directly related to the size of the market, but rather to the incidence of consumer issues and of non-compliance with the Code of Practice. We remain committed to delivering our plans as efficiently and effectively as possible and this is reflected in the budget.

- 2.2.6. Our rationale for our draft estimate of £480.0m is set out in Appendix B of the business plan, but, in short, is based upon continued growth in operator billing services delivered by high-profile brands such as Apple, Google, Spotify, Sony etc. Our mission makes clear that in addition to protection of consumers we are committed to encouraging innovation, competition and growth in the market in the consumer interest. We believe our proportionate and flexible regulatory approach as set out in the Business Plan (4.3) describes how we intend to ensure regulation remains appropriate and encouraging of compliant existing and new players and services.
- 2.2.7. We have also noted Action 4's request that we should keep "costs firmly confined within (...) scope of regulation and remit". We agree and are of the view that all proposed and ongoing activity is within our regulatory remit. Our budget is subject to annual approval by Ofcom, and further independent scrutiny is provided by the National Audit Office (whose audit assessment of risk includes consideration of inadequate budget management) and DCMS (who hold us accountable for having due regard to the standards, rules, guidance and advice in Managing Public Money).
- 2.2.8. As something fundamental to the delivery of our Business Plan and Budget in 2019/20, we welcome Action 4's support for our collaborative approach to regulation.

2.3. Telecom2

- 2.3.1. We have noted Telecom2's comments relating to Artificially Inflated Traffic (AIT) and access charges but believe them to be outside of our remit. We have referred them to Ofcom for consideration.
- 2.3.2. With regard to how we manage consumer experiences when they contact us to report an issue, the function of undertaking a Request For Information (RFI) is to establish the nature of any consumer engagement with the service in question in order to assist us in considering whether there has been any potential non-compliance with the Code. We are clear that it is a matter for the consumer to decide whether to contact parties in the value chain to seek any individual redress.

2.4. Paul Muggleton

- 2.4.1. We are grateful for Mr Muggleton's response. Responses from individual consumers to our consultations have typically been in the minority and we very much welcome input from consumers on the business plan. As set out in the Business Plan and Budget 2019/20 (3.1) we have invested significant resources into increasing our understanding of consumers views and behaviour in relation to phone-paid services as well as improving our communications with consumers.
- 2.4.2. We have had extensive correspondence with Mr Muggleton over the past year or so, including our response to his submission to the Business Plan and Budget 2018/19 consultation. We note that there are a number of points in this year's submission that we have already addressed in correspondence with Mr Muggleton and are not directly relevant to this consultation. Therefore, we do not consider it necessary to respond to all of these points in this statement.
- 2.4.3. However, we note that Mr Muggleton's response appears to be largely focussed on the Payforit payment platform operated jointly by the Mobile Network Operators and some services which use the Payforit platform. Although our consultation did not concern the operation of Payforit we are aware that this payment mechanism was set up with the intention of providing consumers with a simple and convenient way of using their mobile phones to buy online content and services and to charge the cost to their phone bill. Our research shows that where consumers are clearly informed of the costs and understand what they are buying, they find this a convenient and useful payment mechanism.
- 2.4.4. In commenting on whether our plans for 2019/20 sufficiently deliver our role as a regulator, Mr Muggleton makes a number of helpful suggestions and recommendations. A number of these have either already been completed or are part of the business plan. For example, in relation to Mr Muggleton's comment that there has been "no apparent enforcement action from PSA" a number of cases of the type Mr Muggleton refers to were dealt with through the PSA's Track 1 procedure. While this does not involve the level of formality of a Track 2 procedure, or the imposition of formal sanctions by a PSA Tribunal, it is an effective investigatory mechanism which can deliver both improvements in services and redress for consumers. Several hundred consumers have received refunds as a result of Action Plans agreed under Track 1 procedures in 2018/19.
- 2.4.5. It is fair to say that the large numbers of complaints that Mr Muggleton refers to are an indicator that some services are not working as they should, even if there is no identifiable breach of current regulations in many cases. We agree that most of the complaints relate to services that are offered as subscriptions. It is also the case that there are a number of very successful phone-paid services operating on a subscription model and generating almost no complaints to the

PSA. That's why, as an evidence-based regulator and as identified in the business plan (3.2.2), we have been reviewing our regulatory approach to subscription services in 2018/19, concluding with a consultation on recommended changes to our regulatory approach taking place at the end of this period with the intention of increasing consumer trust and confidence in these services, ensuring consumers are protected from harm and supporting growth. We clearly identify (4.2.2) that we will review the impact of these changes in 2019/20.

- 2.4.6. We have also undertaken work as set out in the business plan (3.3.2) in collaboration with industry into L1 aggregator payment platform standards. This should lead to greater assurance that consent to charge has been properly obtained by consumers.
- 2.4.7. We have noted Mr Muggleton's recommendation that we should continue to encourage consumers to report issues to us regardless of whether they have contacted the service provider or not. This is also something we have already undertaken. We clarified our approach towards the end of 2018/19, so that it is clear consumers are able to report regulatory issues to us even if they have not contacted the provider of the service they are complaining about on their individual issue. However, we are still of the view that it is best for consumers to contact the service provider first, since we believe they are best placed in the first instance to discuss any issue that consumers may have with their service. We are also of the view that the response of the service provider may also be useful evidence in reporting any the issue with the service.
- 2.4.8. We welcome Mr Muggleton's support for the PSA setting up a consumer panel and have noted his belief that such a panel has not yet been set up. Following an open recruitment process over the summer, the Consumer Panel met for the first time in November 2018 and has subsequently met twice. As set out in the business plan (3.1.1 and 4.1.1) we are already bringing the Panel's valuable consumer insights into our development of our regulatory approach.
- 2.4.9. We have also noted Mr Muggleton's comments and suggestions regarding consumer refunds and the provision of Alternative Dispute Resolution (ADR) in the phone-paid services market. As set out in the business plan (4.1.1), we have identified actions that will build on the work we undertook in this area in 2018/19, including commissioning research into consumers' expectations and experience with different refund mechanisms, and will consult on any regulatory proposals accordingly. We will expand on this by adding to the business plan our intention to ensure we communicate clearly to all affected consumers about refunds sanctions under Track 2 cases and agreed refunds as part of Track 1 action plans.
- 2.4.10. Mr Muggleton calls for active enforcement of para 2.6.4 of the Code of Practice. We have identified in the business plan (4.1.1) our plans for more work on

customer care guidelines and appropriate enforcement of breaches of the Code in this area.

2.4.11. In addition, we have noted Mr Muggleton's comments about the customer service provided by mobile network operators (MNOs). As set out in the business plan (4.1.3), we will continue to have "ongoing engagement with MNOs, to minimise the impact of any instances of poor customer service where consumers contact their network first".

2.4.12. With regard to Mr Muggleton's views on the passing of consumer phone numbers by MNOs to service providers on a 3G/4G connection, we are clear that compliance with the General Data Protection Regulation (GDPR) is a matter for each of the MNOs. Enforcement of non-compliance with the GDPR is in law a matter for the Information Commissioner's Office (ICO) and it would therefore not be appropriate to seek to use the Code to address possible non-compliance in this area.

2.4.13. We have noted Mr Muggleton's comments regarding the registration of phone-paid services and how the Service Checker can be developed. As set out in the business plan (3.1.2, 3.2.2, 3.3.2) we have made significant developments in this area in 2018/19, and have identified actions (4.1.2, 4.2.2, 4.3.2) that will build on this area in 2019/20.

2.4.14. We also draw attention to our plans (4.1.2) for "developing consumer education content and continuing to pursue opportunities to promote this content through industry partners with significant audience reach".

2.4.15. With regard to how the levy is paid in practice - it is paid by the MNOs and fixed-line terminating networks, based on the total outpayments they make to the next parties in the value chain. In effect each funder pays the levy based on their share of the overall market, and this would not be materially affected by any attempt to calculate the levy on a different basis (assuming there is sufficient data available to do so in the first place).

2.5. Philip Metcalfe

2.5.1. We welcome Mr Metcalfe's response from a consumer perspective, and for setting out his experiences with phone-paid services. Responses from individual consumers to our consultations have typically been in the minority and it is good to have input from consumers on the business plan.

2.5.2. Our business plan sets out clearly the actions we take to deliver our mission to protect consumers from harm and to further their interests through encouraging competition, growth and innovation. We believe these actions represent a fair and proportionate approach towards our role as a regulator and

we do not agree that we are biased towards service providers. In the context of consumer reports on potential issues with services, our approach to considering how we would look into the service and consider any non-compliance is as follows:

- we receive and analyse information about individual services. This will include any intelligence gathered about the service through monitoring, and issues reported to us by consumers.
- we then make enquiries of the service provider and give them the opportunity to explain the interaction the consumer has had with their service
- where we believe there has been a potential breach of our Code, we investigate further under one of two formal investigation procedures in the Code (either Track 1 or Track 2) and capture and assess evidence in respect of the potential breach
- where the severity of the potential breaches warrants a Track 2 level investigation, we then present evidence to a PSA Tribunal which must be able to show on a balance of probabilities that a breach or breaches of the Code occurred. If the alleged breaches are upheld by the Tribunal, they will then decide what sanctions, including fines, to impose.
- if, having considered all the evidence available we reach the conclusion that it is not sufficient to meet this standard of proof, then we would not pursue a Track 2 investigation
- where we believe that there remains an issue that needs addressing that is not suitable for or resolvable through a Track 1 investigation, we would consider alternative regulatory approaches, including policy work, with the aim of delivering our mission better.

2.5.3. We welcome Mr Metcalfe's comments and suggestions regarding the regulation of phone-paid services charged for on a subscription basis. As identified in the business plan (3.2.2) we have been reviewing our regulatory approach to subscription services in 2018/19, concluding with a consultation on recommended changes to our regulatory approach taking place at the end of this period with the intention of increasing consumer trust and confidence in these services, ensuring consumers are protected from harm and supporting growth. We clearly identify (4.2.2) that we will review the impact of these changes in 2019/20.

2.5.4. With specific regard to Mr Metcalfe's recommendation that "all mobile service providers should sell new phones and contracts with Charge to Bill blocked", we consider this to be a matter for the Mobile Network Operators and outside of PSA's remit.

2.5.5. We have noted Mr Metcalfe's comments and suggestions regarding consumer refunds. Refunds is a priority area in the coming financial year. As set out in the business plan (4.1.1), we have identified actions that will build on the work we undertook in this area in 2018/19, including commissioning research into

consumers' expectations and experience with different refund mechanisms, and will consult on any regulatory proposals accordingly.

- 2.5.6. In relation to how the levy is paid in practice - as stated at paragraph 2.4.15 above it is paid by the MNOs and fixed-line terminating networks, based on the total outpayments they make to the next parties in the value chain. Essentially, each funder pays the levy based on their share of the overall market, and this would not be materially affected by any attempt to calculate the levy on a different basis (assuming there is sufficient data available to do so in the first place).
- 2.5.7. With regard to Mr Metcalfe's comments regarding the fee for registration, the principles behind the fee level are set out in the Business Plan (7.2).
- 2.5.8. In terms of Mr Metcalfe's comment about our "accountability to the consumer in terms of value for money v budget", we are committed to operating economically, efficiently and transparently. Our budget is subject to annual approval by Ofcom, and further independent scrutiny is provided by the National Audit Office (whose audit assessment of risk includes consideration of inadequate budget management) and DCMS (who hold us accountable for having due regard to the standards, rules, guidance and advice in Managing Public Money).

3. Business Plan and Budget 2019/20 final version

3.1.1. After full and due consideration of the comments received, we note the following in respect of the Business Plan and Budget 2019/20:

- many of the comments made or issues identified in the consultation responses will be addressed by the planned activities already set out
- we have provided explanations (in section 2 above) as to why some suggestions will not be taken forward, including where these relate to issues outside of our remit.
- the consultation responses have helped us identify some areas in which we can make our activity plans clearer, and the Business Plan and Budget 2019/20 has been amended accordingly. These changes are:
 - at 4.1.1 we have added to our plans for developing how we support consumers to obtain appropriate redress as quickly and simply as possible by explicitly stating our intention to (a) continue to engage with industry as part of our work in this area and (b) ensure we communicate clearly to all affected consumers about refunds sanctions under Track 2 cases and agreed refunds as part of Track 1 action plans.
 - at 4.1.2 we have added to our plans for communicating with consumers, through an emphasis on working with industry to identify good news stories.
 - at 4.2.3 we have added to our plans to maximise the effectiveness of our sanctioning process, by including a commitment to consider how we can maximise the deterrent effect through communicating the legally exhaustive procedures we follow in chasing down all outstanding debts.
 - at Appendix B, we have included explicit reference to the fact that we have taken differing views into account in reviewing the assumptions underpinning our market size projections for the coming year.

3.1.2. We have also identified some changes we wish to make following our internal review of the draft Business Plan and Budget 2019/20 in February 2019:

- we have made the following changes to described activities:
 - at 4.1.1 we have added examples to illustrate the possible focus of the consumer panel in 2019/20
 - at 4.1.1 we have added to our plans for developing how we support consumers to obtain appropriate redress as quickly and simply as possible, by explicitly stating we will review the refunds research and consult and implement proposals
 - at 4.2.2 we have added separate reference to the work we intend to do on due diligence, risk assessment and control during 2019/20
 - at 4.2.3 we have also added to our plans to maximise the effectiveness of our sanctioning process, by including a commitment

to consider whether publication of agreed Track 1 action plans will improve transparency and increase deterrence.

- at 4.3.2 we have amended our plans for industry engagement on operator billing, by replacing our aim to provide focus through an ILP working group with an intention to explore at a senior MNO and L1 level the opportunities and challenges for operator billing growth.
- at 4.3.3 we have added a specific reference to how our enforcement strategy will support the implementation of our policy work and key regulatory changes.
- we have made grammatical changes where relevant.

3.1.3. The final version of our Business Plan and Budget for 2019/20 is published alongside this statement and follows approval of our budget as £3,939k by Ofcom. It contains confirmation of the adjusted levy at 0.38% of outpayments for 2019/20, based on estimated outpayments of £480m from network operators to their industry clients.