

Dear Mr Barker

Consultation on Business Plan and Budget 2019/20

It has just come to my attention that the Phone-paid Services Authority is consulting on its service for the 2019/20 business plan.

It is apparent that most respondents in these consultations originate from the supply sector with very little, if any, input from the consumer be they willing or captive subscribers. I therefore, as a former entrapped subscriber to one such organisation, am making considered comments to you relating to this anomalous situation. To further this I must firstly recount my personal experience and then identify what I perceive to be shortcomings in the current regulation which enables such anomalous situations to develop.

Based on these observations I will then incorporate these, as appropriate, into my responses to the relevant questions outlined in your questionnaire.

Earlier last year I encountered a mysterious charge of £4.50 appearing on my monthly phone bill with [REDACTED] - it showed an unknown number [REDACTED] - which meant absolutely nothing to me. I contacted Vodafone who (initially) said it was a scam via Payfort but because of data protection (the perpetrator rather than mine!!) they could not reveal further details. They did however advise that a further payment was due on the next bill and that I should text STOP to the number and also complain via yourselves (PSA).

I officially lodged a complaint with yourselves which was promptly processed in part due to the fact that the parent organisation [REDACTED] was already under investigation. Your response, for which I am very grateful, was as below and identified the organisation for me.

PSA:

"We're writing regarding the complaint you made about a phone-paid service operated by [REDACTED].

Following an investigation into the company's services, [REDACTED] agreed to an action plan to adjust the targeting of their advertising on YouTube. No changes were required to the service itself.

We're pleased to inform you that the company has also agreed to pay a full goodwill refund to all eligible consumers who have complained to the PSA, during the period of the investigation.

If you haven't already received a refund from [REDACTED], we would recommend contacting them to request it using the details below:

Provider details:

[REDACTED]

If you have any issues with the refund or in contacting the company, do let us know.

We'd like to thank you for raising your issue with us. The information which you provide us with is vital in helping us to ensure that phone-paid services are operating compliantly.

Yours sincerely, Phone-Paid Services Authority “.

I contacted [REDACTED] whose first response, the interactions of which I can in no way personally validate were:

“Whilst browsing the internet you will have seen a button that advised subscribe now to gain access to 100+ Games. This clearly stated directly below the submit button the charge per week for the service. Once clicked the page refreshed asking you to confirm your entry, again advising the charge. This then had a tick to confirm this had been done the page refreshed again asking you to continue to the [REDACTED] website to start playing 100 + games.

- Following the online entry, a text message was sent advising “FreeMsg: U have joined to play games @ [REDACTED] for £4.50 a week. First 24hrs are free. To cancel text “Stop load” to 83463 Help? [REDACTED]” We then sent another text immediately after reading Welcome to [REDACTED] this also contained a link to go straight to the website to start your gaming adventure.

- I can confirm that the entry into this service has been cancelled and no further messages will be sent.

Following our assessment however, taking all facts and comments into consideration, on this occasion we will refund £9.00 to you as a gesture of goodwill. This is being issued to you on the understanding that you have advised that you were not aware of the charges associated with the service, and consider this to be settlement of the query. We can also again confirm that the service has been stopped and your mobile number has been blocked from the use of our services in future.

In order for your refund to be processed please can you send us a copy of your mobile phone bill to verify the bill payer. We do not require the whole bill, any page from the bill, or screenshot/image from your online account, which displays both full name of the bill payer and the mobile number in question will suffice.”

I duly sent the requested copy of the bill but was then sent the following email which complicated any settlement further and involved more SMS from them:

“We kindly ask you to complete and lodge the form. Within maximum 3 days after completing the form, the claims department officer will get back to you. Issuing your refund will take 7-14 working days after you have received the claims department officer's answer.

To issue refunds, we cooperate with the Post Office. Any refund will be issued in the form of a SMS text. The Post Office will send you a free sms text message that contains a unique bar code, which is valid for 30 days. Take this message to any Post Office and upon showing this bar code at the counter, you will immediately receive your refund in cash.

If you want to nominate another phone number to have the refund text send to, please note that we require a copy of the bill for this nominated refund number, so that we can verify ownership and make sure, that the refund will be sent to the

rightful person. The nominated phone number will exclusively be used for delivering your sms text refund.

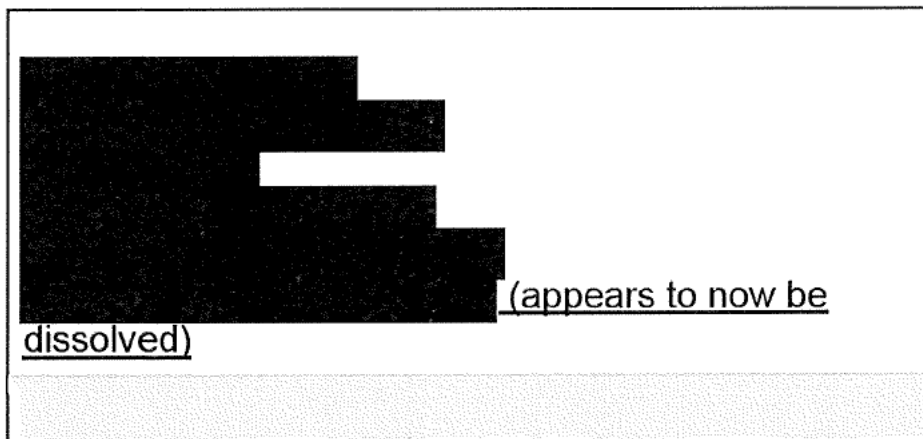
Please use this secure link to our claims form and follow the simple steps:

RETURNS ERROR CODE #404 "THE REQUESTED PAGE IS NOT AVAILABLE".
At the time of writing I have checked the link again and the error is still returned!

I was not aware of any interaction with [REDACTED] especially the complicated sequences that they describe but vaguely remembered coming across an unsolicited SMS referring to "games" which I deleted as phishing or scam.

I had also followed this up with a complaint to [REDACTED]'s Head Office who were very helpful and actually refunded the by then £9 into my account as well as being very concerned about the circumstances necessitating the need to recover a protracted refund via the [REDACTED] route.

[REDACTED] have many "subsidiaries" listed on their company profile:



Their activities (and other PayforIt abusers) have received a lot of media coverage and Googling shows many references to their modus operandi as published in various newspapers, TV sources, blogs, Facebook, the web site payforitsucks.co.uk, and TrustPilot.

Comments and reaction on TrustPilot are all-telling and show a common root cause. They have a minimum 1* (bad) rating and reviewers have tried to call them thieves, robbers, scammers etc with and without expletives. They never offer any subjective comments let alone apologies against the reviews but arrogantly refer comments back to a somewhat complicit TrustPilot as being against TrustPilot's T&Cs. Reviews are then removed pending editing, often several times, but still rank as 1* irrespective of the associated textual content. They disliked my use of the factual term "entrapped subscription".

Censorship at its worst.

They also would appear to retain the services of the London City [REDACTED] firm [REDACTED]:

[REDACTED]: Broadcast and Media - "We also provide the full range of regulatory advice, including pre-transmission compliance advice, independent third party verification, regulatory investigations, hearings and appeals (OFT, OFCOM, ASA and Phone-pay Plus).

Our team includes specialists in specific regulated sectors, such as television, telecoms and gambling; interactive services (including participation TV) and premium rate services. We have a vast amount of experience advising on content-related disputes across all types of platforms and technologies."

The [REDACTED] web site is also all (or not) telling about the nature of this organisation's operations. The front page looks very professional but when one looks at "winners" and sees the last one listed as 2014 and a "blog" stating the winners this week 19th February 2016 .. we've made another three people very happy this week". This all suggests at best poor web site management and update versus no current winners!

Apologies for a somewhat long preamble but as a 72 year old non game playing (!) retired Chief Biomedical Scientist & Quality Manager with experience in writing standard operating protocols and investigating non conformities, complaints, and incidents I think this indicates the nature of [REDACTED] business. This highlights exploited loopholes in Payfort, and the potential for misuse by a business arguably, at best, operating just within legality. I very rarely use mobile access to the web as I normally use WIFI (safe) access via my iPad or laptop - this makes this entrapment even more annoying. Based on my assessment I will now suggest on your questionnaire areas where I think there should be tighter application of the regulations and potential areas that would benefit from further regulation.

Consultation process

Please structure your consultation response as answers to the following questions:

8.1.

Q1 – Do our plans for 2019/20 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

Whilst appreciating PSA's intermediary position between OFCOM and the consumer there is a general consensus that there is, except where glaring anomalies occur, a bias, or at least leniency, towards the subscribing registered provider such that there is customer dissatisfaction and mistrust which does not fulfil one of the prime caveats of the PSA mission statement:

2.3e. Mission

Our mission in the phone-paid services market is twofold:

- to protect consumers from harm
- to further consumers' interests through encouraging competition, innovation and growth.

On 3 October 2018 the Information Commissioner's Office considered a FOI request (FS5072981) regarding communications between OFCOM & PSA and OFCOM and Government Ministers with respect to the subject of refund methods for unauthorised debts by premium rate services. This request was turned down for not being in the public interest in that it could prejudice ongoing investigations. Transparency would obviate any suggestions of collusion and even a delayed response once investigations were completed could have been offered.

*Now is the winter of our discontent - with a **chilling effect** - to quote the buzz phrase which occurs throughout that report!*

████ were fined £30,000 by PSA on █████ (case ref █████) for a "significant" breach of regulations. Then there was the complaint that I was party to in which you reported:

"Following an investigation into the company's services, █████ agreed to an action plan to adjust the targeting of their advertising on YouTube. **No changes were required to the service itself.**" Something of a cop out finding which does not appear in report form on the PSA web site at present.

Now according to a current post (until censored) on TrustPilot a reviewer reports that his (and other) cases against █████ are once again under investigation however a review from a few days earlier quotes the reviewers response from the PSA which is verbatim to the one I received last year!

This suggests at least three investigations, and given my earlier supportive evidence about █████ modus operandi suggests a suspect organisation which quite frankly should have their "registration" withdrawn. Three strikes and they're out principle - indeed the following is to be found in the PSA Code of Practice.

4.6.1 At any point during the course of the Track 2 procedure, where paragraph 4.5.1(a) is satisfied, the PSA may seek a direction from a Tribunal for suspension of part or all of the service(s) in question (a 'suspension' direction) or such other corrective action as is considered appropriate in the circumstances.

PayforIt has many, when the consumer desires, legitimate uses, eg charity donations, TV voting and legitimate services to subscribe to, but there are many inherent flaws. Speaking as someone who does not (willingly) use this service I would not have been caught out if it had been blocked on my phone.

As a belt and braces approach I feel that all mobile service providers should sell new phones and contracts with "Charge to Bill" blocked. This would afford protection to people like myself but those wanting to avail themselves of associated services could ask their service provider to enable it for them if they could not personally enable it ie an Opt-in. Post the event I have barred Charge to Bill myself plus some other dubious default enabled features. Of course we all know that the 4 major service providers are the "owners" of PayforIt and receive a small commission on all SMS transactions.

It is not a coincidence that all these reported entrapped subscriptions amount to £4.50 or below. Over this price band two factor authentication is needed to proceed with a subscription.

There is a need for two factor authentication for all PayforIt subscriptions regardless of the charging fee. Under £4.50 a week or even month may not seem a lot but if the entrapped subscriber is not aware this could, and has, in some reported instances resulted in £100s being

billed. THIS SUGGESTION MUST BE A REQUIREMENT IN VIEW OF THE VARIOUS REPORTED PAYFORIT ABUSES ALBEIT BY A FEW BORDERLINE OPERATIVES.

Further to the very circuitous reimbursement process that I encountered with [REDACTED], that I described in my preamble, the PSA should insist that all such payments be made to the originating funding account ie:

4.8.4 a). Where refunds have been ordered under paragraph 4.8.3(j), they shall be credited directly to the consumer's account with his or her originating communications provider.

This should also be easily facilitated:

2.3.11 Where the means of termination is not controlled by the consumer there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.

2.6.4 Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner.

Having had a disputed household insurance claim the company along with their refusal letter in fairness posted me instructions on how to complain to the Financial Ombudsman Service along with a very professional leaflet describing the FOS role. Apart from the ongoing dispute this represents industry good practice.

Where there are disputes over payment involving PRSs it would be good practice if a corresponding information leaflet was sent from the network supplier and/or the registered provider with clarification on how to escalate to the PSA. Appreciating that the consumer probably doesn't want to disclose their home address this could be in the form of an email attachment in the providers response. Reading other "consumer's" pleas for help I don't think that the course of action is commonly known and such good practice should be mandatory. Any default on this should result in additional penalties against the registered provider. I think that the number of "consumers" who have reported these issues is but the tip of the iceberg.

Q2 – Do you have any comments on the proposed budget for 2019/20? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon?

I can not offer any qualified comment on this.

Q3 – Do you have any comments on the proposed levy for 2019/20?

The fee for registration in 2018/19 was £155 plus VAT and this remains unchanged for the 2019/20 budget.

This is remarkably economical for the larger registered providers. Putting it into perspective It should be noted that there are several complainants who have each been charged over £150 (each) This or so, without expressed consent, by these registered providers.

Although not qualified to comment on the accountancy aspects of the levy mechanism I think it would be fair to fully compliant providers if those who are persistently non compliant had to pay a much larger levy.

Q4 – What is your view on the estimated size of the market for 2019/20?

Although not qualified to comment on the market trends/potential it would be fair to suggest that consumers are increasingly expressing concerns about the inadequate regulation of the market and a potential worsening with over expansion. This again is at odds with the PSA Vision and mission:

2.2. Vision

Our vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

2.3e. Mission

Our mission in the phone-paid services market is twofold:

- to protect consumers from harm**
- to further consumers' interests through encouraging competition, innovation and growth.**

Q5 – Do you have any other comments on the Business Plan and Budget 2019/20?

Although not being qualified to comment on the PSA Budget, as a consumer, from a Business Plan perspective I would advise:

There is a need for more accountability to the consumer in terms of value for money v budget and curtailing a perceived bias in favour of the subscribing registered provider. Again there needs to be more public openness with some feedback on investigated issues instead of the current closed doors approach. My personal experience with PSA was timely and appropriate for me largely due to the timing of the complaint in relation to others which were ongoing. However the overall judgement against sb7's modus operandi is at best weak and ineffective. Current reviews suggest that they are still operating with their we're untouchable arrogance towards whom they claim are willing subscribers to their "services".

Kind regards

Philip

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Peter Barker
