

Statement on new Special conditions for Directory Enquiry Services

28 November 2018

Executive Summary

The Phone-paid Services Authority (PSA) is the UK regulator for content, goods and services charged to a phone bill. Our primary function as a regulator is consumer protection. Our vision is of a healthy and innovative market in which consumer can charge content, goods and services to their phone bill with confidence.

Our mission is two-fold:

- To protect consumers from harm in the market; and
- To further consumers' interests through encouraging competition, innovation and growth.

In recent years, there have been significant changes to the Directory Enquiry (DQ) sector of the phone-paid services market. From a high point around 2009-11, DQ sector revenues have declined steadily. This decline has been caused largely by technological change leading to the widespread availability of substitutes for DQ services, including smartphones and other devices from which consumers can search the internet for the contact details of organisations at no cost and whilst on the move.

Ofcom announced its review of the cost of calling DQ services¹ in May 2017 and sought participation and assistance from PSA. PSA and Ofcom both have responsibility for aspects of the DQ market. The PSA regulates the content, promotion and operation of DQ services as it does other controlled premium rate services.

Based on evidence from research undertaken by Ofcom as part of its review, and evidence from our own investigations into complaints about specific services, the PSA's review consulted on two specific proposals as follows:

a requirement that DQ services promoted using IVR messages, or other means, on geographic numbers only use numbers that are active and in use for other purposes for such promotions.

a requirement that DQ services provide the consumer with the cost of any onward connection, giving them reasonable time to consider and decline, before any such onward connection takes place.

We received five responses to the consultation. One of the proposals was supported by all of the respondents, while the other was supported by the majority of respondents with one respondent disagreeing with that proposal. One respondent suggested minor amendments to our proposals while supporting the underlying intention.

Based on these responses, and our consideration of them below, we have made minor changes to condition DQ2. A copy of the final Notice is attached at Annex A. We will also make any necessary changes to our existing Guidance on DQ Services, and issue for consultation soon.

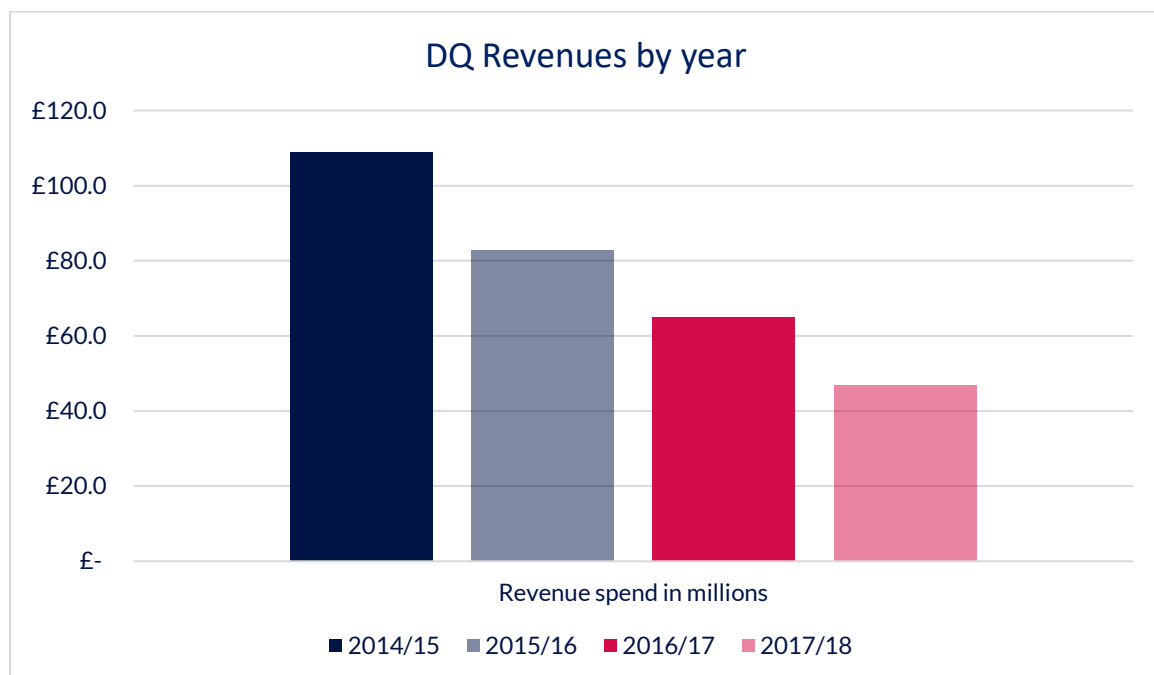
¹ <https://www.ofcom.org.uk/consultations-and-statements/category-1/directory-enquiries-118-review>

Background

In recent years, there have been significant changes to the Directory Enquiry (DQ) sector of the phone-paid services market. From a high point around 2009-11, DQ sector revenues have declined steadily. This decline has been caused largely by technological change leading to the widespread availability of substitutes for DQ services, including smartphones and other devices from which consumers can search the internet for the contact details of organisations at no cost and whilst on the move.

During the period that the market has declined, the average cost of a DQ call (including from the providers with the largest market shares) has risen significantly. As an example, the cost of calling a well-known DQ service – which we referred to in the consultation document as “DQ service A” - in 2003 was a 30p connection charge and 9p per minute, whereas at the time of the review the charge for the same service is £8.98 connection plus £4.49 per minute. The cost of calling another well-known DQ service, which the consultation document referred to as “DQ service B”, in 2003 was 30p upon connection and 30p per minute, whose cost at the point of consultation was £2.75 connection with a per minute charge of £2.75 dropping to 77p connection plus £1.55 per minute currently ².

In the Annual Market Review (AMR) commissioned by the PSA, revenue spend is tracked over time for different sectors. The DQ market size measured by revenue shows the following:



This highlights that, the DQ market has been in sharp decline for several years. Through 2017/18 DQ Services have held 8% of the overall phone-paid market share.

² Current pricing quote is not inclusive of network access charges.

Previous distinctive advertising has established strong brand awareness among consumers of a small number of DQ providers/numbers. However, as the market has declined, providers with already established brands have greatly reduced promotion of their DQ services, especially via broadcast media. This in turn has reduced the likelihood that consumers will have seen promotions with clear and up to date pricing information enabling them to understand the changes in prices over recent years.

PSA generally received a low level of complaints relating to DQ services following introduction of our former Prior Permission requirement³. Complaints remained low until the general review of phone-paid service regulation that led to the introduction of the 11th Code of Practice in 2006. As part of that general review, it was determined that DQ services should no longer have to seek Prior Permission. The key Prior Permission requirements were instead inserted into the Code itself. With the introduction of the 12th Code in 2011, DQ was assessed as not being a higher risk service type and the prescriptive 11th Code rules directed at DQ services were considered duplicative and unnecessary. Therefore, the general Code provisions were considered sufficient for DQ, with our expectations added into service-specific guidance on DQ services.

In recent years, pricing transparency has become even more important, due to the potentially greater impact that higher costs for such services could have on consumers. In 2014, two DQ providers – The Number UK, and BT – were found to have breached rules in the PSA Code of Practice around pricing transparency in promotions. At the same time, an adjudication against another provider, Numbergrp, found issues with the promotion and also with the service being operated in a misleading way.

Ofcom announced its review of the cost of calling DQ services⁴ in May 2017 and sought participation and assistance from PSA. PSA and Ofcom both have responsibility for aspects of the DQ market: The PSA regulates the content, promotion and operation of DQ services as it does other controlled premium rate services. Our review uncovered two distinct underlying issues, supported as relevant by research Ofcom had undertaken during its review, and by our investigations into complaints about specific services. These are:

Lack of consumer awareness of the current cost of calling a DQ service, and the cost of being connected through to the number they have requested;

Use of misleading techniques, designed to induce consumers into calling DQ numbers.

On this basis, PSA consulted on proposals to introduce two new Special Conditions which will apply to DQ services. In summary these were:

³ Prior Permission required providers of certain service types, which were deemed to carry a higher risk, to seek permission from the regulator before they began operation. Permission was granted following an assessment that the provider could meet specific conditions designed to mitigate risk. With the introduction of the 13th edition of the Code, prior permission was ended and replaced by the current Special Conditions regimes, with which providers of relevant service have to comply as soon as they begin operation.

⁴ <https://www.ofcom.org.uk/consultations-and-statements/category-1/directory-enquiries-118-review>

a requirement that DQ services promoted using IVR messages, or other means, on geographic numbers only use numbers that are active and in use for other purposes for such promotions.

a requirement that DQ services provide the consumer with the cost of any onward connection, giving them reasonable time to consider and decline, before any such onward connection takes place.

Responses

We received five responses to the consultation which closed on 22nd August 2018. These were from voice-based networks, DQ service providers, a consumer group and a trade association. We proposed the introduction of two new special conditions to apply to all DQ services. One of the proposals was supported by all of the respondents, while the other was supported by the majority of respondents with one respondent disagreeing with that proposal. One respondent suggested minor amendments to our proposals while supporting the underlying intention.

Responses, and our determination in respect of them, are as follows:

Q1 - Consideration of proposed condition DQ1

In respect of the first condition we proposed, the consultation set out that PSA has received complaints from consumers suggesting that some providers have placed Intelligent Voice Response (IVR) messages on specific ranges of geographic numbers.

The PSA had had cases reported to us where the IVR stated that the number is “out of service” and suggests that the consumer calls a 118x number – usually owned by the provider who has placed the IVR on the geographic number. The PSA regards this practice as misleading or potentially misleading in several ways:

- the consumer is not given information that would allow them to identify that they had misdialled a number
- a geographic number that is “out of service” as opposed to inactive or unallocated would not normally have an IVR attached.

Whilst the consultation acknowledged that such a practice is rare and that the majority of DQ service providers do not and have never used ‘out of service’ geographic numbers to promote their numbers, our consideration was that the potential for very significant financial harm to individual consumers and reputational damage to the sector made our proposed condition a necessary measure to protect both consumers and the legitimate DQ sector.

As such, we proposed the following Special condition:

DQ1 Where DQ services are promoted using IVR messages, or other means, on a number classed as geographic in Ofcom’s numbering plan, only numbers that are active and already in use for purposes other than such promotions must be used.

In our consultation, we asked the following question in relation to this proposed Special condition:

Q1 “Do you agree IVR-based promotions of DQ services on geographic numbers should only be done on numbers that are active and used for other purposes? Do you agree that the proposed requirement will not impact on the promotion of legitimate DQ services? If not are you able to provide evidence to demonstrate an impact on legitimate DQ services?”

Analysis & recommendation

Most respondents agreed with the proposal, also agreeing that legitimate operators would not be impacted. Two respondents agreed whilst also suggesting PSA take additional measures. Finally, one respondent disagreed with the proposal, stating that they believe the proposed provision would impact on their legitimate services. Their points, and PSA’s responses, are set out directly below:

The respondent questioned why a consumer who has dialled an active number would need to use a directory enquiry service.

In the PSA’s view where a consumer has misdialled a number the question as to whether a number is active or inactive is irrelevant to them as they would simply be seeking to reach the organisation or person they originally intended to reach. Consumers that correctly dial an active and in use geographical number would not be misled as to the nature of the service they called on the geographic number (as evidence suggests is the case when inactive numbers are dialled). Where a DQ service or any other phone-paid service is then promoted during such a call and such promotion is not misleading and is accompanied by clear pricing information, such information would be (as with any other form of promotion) sufficient to enable the consumer to make an informed decision as to whether or not they wish to use the DQ service being promoted on the active geographic number.

It should be noted that we did consider an option that would have restricted the use of IVRs to promote DQ services to non-geographic numbers only but considered that there may be DQ services being legitimately promoted on active and in use geographic numbers which are not misleading and are fully transparent on pricing and thereby enable consumers to make an informed decision. In respect of any such promotions we currently do not have any evidence of consumer harm or otherwise anything else to suggest that active geographic numbers are being misused in the same way as inactive geographic numbers. The evidence in relation to the latter shows that callers were misled into believing they had in fact dialled the number of the person they were looking for (or that there was a connection between the number dialled and the person being sought) but needed to dial an alternative (DQ) number to get to that person. There is currently no evidence that geographic numbers actively being used for other services can be used to cause consumer harm in the same way. Therefore, our proposal did not go as far as restricting the use of IVR-based DQ promotions to non-geographic numbers only.

The respondent also suggested that the promoting of DQ services on what they described as “unallocated” geographic numbers is valuable for consumers who have no access to a phone book or internet.

The PSA disagrees with the argument put forward by the respondent. The contention is that this is a valuable service for consumers with an urgent need for a telephone number. Evidence in recent adjudicated cases from consumers who have complained to us about the practice

(being generally those that had misdialled) is that they were unaware that the geographic number they had called was inactive and wholly unconnected to the person or organisation they were seeking to reach.

At the point of initiating a call to a geographic number, the consumer expectation is that they will connect to the organisation or person they are intending to reach. At no stage in this process is a consumer seeking a DQ service to call, therefore information placed on an inactive geographic number such as the DQ number to dial along with pricing is unexpected and so likely to be more difficult for a consumer to process. This limits their ability to make a fully informed decision as to whether calling the provided DQ number is the most practical/cost effective method of reaching the organisation or person they wish to contact.

There is also a risk that the promotion may provide unclear pricing, delayed pricing or in some instances, no pricing at all.

The respondent also argued that the placing of such a DQ promotion on numbers which they described as “unallocated” in their response was compliant with Ofcom’s General Conditions of Entitlement 17.2 (which is now GC B1.3), which reads as follows:

“The Communications Provider may only use a Telephone Number from Part A of the National Telephone Numbering Plan where that Telephone Number has been Allocated to a person, unless the use in question is for the purposes of indicating that the Telephone Number has not been Allocated”

We do not agree. The effect of GC B1.3 is that an unallocated number may only be used to inform the caller that the number has not been allocated. It may not be used to promote a DQ service. Further, DQ providers must comply with the PSA Code.

In relation to the example adjudication quoted by the PSA in the consultation (Numbergrp Limited), the respondent asserted that the problem was not the IVR, but rather the content of the IVR, pricing, registration, and failure to disclose information and that effective enforcement is the way to deal with these. We agree that all of these factors were present in the case cited, but we note that none of the issues would have arisen at all but for the practice of promoting via an IVR on an inactive geographic number.

The PSA’s experience is that we continued to receive consumer complaints relating to IVR promotion of DQ services throughout the consultation period. This has also led to us continuing to open investigations, and a further adjudication against a company engaging in this practice⁵ has been made since our consultation closed. This is clear evidence of continuing consumer harm.

The Code already has rules about clear pricing, but on their own these have not been enough to deter such practice on inactive geographic numbers. If it were not for the IVR the consumer

⁵ This was an adjudication against the provider Powertel Ltd, published on 2 October 2018. This adjudication regarded the breaches of the PSA Code as “very serious”, and the Tribunal imposed a fine of £200,000 amongst other sanctions <https://psauthority.org.uk/for-business/adjudications/2018/10/powertel-ltd-12895-track-2-08bae4e2-0fbc-e811-80de-00155d0519e3>

would hear the “number unobtainable” tone, be more likely to realise they have misdialled, and redial successfully. The placing of an IVR on an inactive geographic number, whether the consumer is accurately informed of the price of calling an advertised DQ number or not, is in our view more likely to mislead a consumer into believing that calling the advertised DQ is the only way to obtain the number or service they originally sought.

Two respondents, who agreed with our proposal, suggested that the condition as worded would not capture all the harm. One respondent suggested that it is easy for providers to set up a seemingly legitimate service on unused numbers to make them appear active

In order to prevent a potential loophole being exploited, the same respondent suggested that we alter the proposed condition to define the terms “active” and “in use”.

Whilst we acknowledge the point made by the respondent, we have no evidence at present demonstrating that geographic numbers which are active and in use for other purposes could be misused in the same way that we have seen with inactive geographic numbers. Neither of the respondents who suggested that the proposal may not go far enough presented evidence of actual harm occurring or having occurred on active geographic numbers. They were understandably concerned with the theoretical risk. We believe that rather than seeking to define the words ‘active’ and ‘in use’ at this point it is sufficient to set out clear expectations around the use of ‘active’ and ‘in use’ numbers.

Providers should note that we expect active numbers to be used for legitimate purposes. This takes two forms: Firstly, services operated and promoted through such numbers, and use of the telephony system and network, must be lawful. Secondly, the service or information provided to consumers through the active geographic numbers (i.e. other than the DQ promotion) must be of clear value to the caller. Put in another way it should be a service or information that a caller would wish to receive and would knowingly ring the geographic number in order to do so. We would also expect providers of such services to consider the fact that some callers may have misdialled and should therefore ensure that in the design of such a service such callers will immediately know that they have misdialled. Furthermore, such callers should not at any point be placed under the impression that they should use any promoted PRS service in order to reach their intended person or organisation. We expect that the outcomes of the Code, particularly with regard to fairness, transparency and pricing are complied with in respect of any DQ service promoted through such geographic numbers.

We have decided therefore to amend the condition to reflect these expectations. However, we will keep the issue raised by the respondents under review and revisit the condition in the future if the need arises. The condition as amended will now read as below and in the Annexed Notice of Special Conditions:

DQ1 Where DQ services are promoted using IVR messages, or other means, on a number classed as geographic in Ofcom’s numbering plan, only numbers that are active and or already in use for legitimate purposes other than such promotions must be used. Such promotions must not be likely to mislead by its nature or placement within the call and must contain clear pricing information proximate to the DQ number promoted.

Q2 - Consideration of proposed condition DQ2

In respect of the second proposed Special condition, it was clear from Ofcom's consumer research that a significant number of consumers do not properly understand the current cost of a call to a DQ service⁶. The consultation set out PSA's intent to ensure as far as possible that this lack of understanding cannot be exploited to mislead consumers.

In view of these research findings, the consultation proposed to formalise our current service specific guidance for DQ services that consumers are provided with price information when they ask to use the DQ providers onward call connect service. The second proposed condition was therefore set out as follows:

DQ2 Prior to any onward connection being made by a DQ provider, the consumer should be clearly informed of the cost, and have the opportunity to decline the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at no additional charge.

The consultation considered that a similar requirement to this condition already existed within the PSA's Guidance on DQ Services. Whilst this guidance does not form part of the Code, our monitoring of DQ services has not identified any providers who offer onward connection and do not follow this guidance. As such the proposal carried the additional benefit (however marginal) of levelling the playing field for DQ service providers.

We asked the following question in relation to the second proposed condition:

Q2 Do you agree that mandated provision of pricing information upon onward connection will not impact ongoing provision of either DQ services or the consumer experience when using them? If not, please provide supporting information.

Analysis & Recommendation

All 5 respondents to the consultation agreed with this recommendation, with two having further suggestions as to how the intent could be clarified.

One respondent agreed with the proposed Special condition but asked how the PSA intended to monitor that providers are indeed providing pricing for ongoing connection?

The PSA's monitoring to date of DQ services has not made us aware of any providers failing to provide pricing at the point of ongoing connection. However, we continue to conduct proactive monitoring both in bulk and on a case by case basis to ensure that we are satisfied that this remains the case.

One respondent suggested that where enquiries are made from a device which is able to accept SMS, the justification for allowing a provider to continue to charge for ongoing connection is weak. They qualified this by stating that the ongoing connection would only be of

⁶ Kantar Research for Ofcom, December 2017. Indicated that 1 in 5 users of DQ knew the cost of a call before making it, falling to 1 in 10 in the DE socio-economic group. Overall, 43% of DQ users did not know the cost of their last call before making it or have any idea what it would be.

benefit to few users who may be driving. They went on to suggest that where ongoing connection was considered necessary, it should be limited to specific Service Charge Codes (i.e. specific tariffs). This is because these codes have a high initial per minute cost to cover the cost of providing the service, and a much lower ongoing charge to fulfil connection and continued interaction with the destination number. The issues of tariffs and tariff structures fall within Ofcom's remit rather than PSA's and tariff issues have been addressed in Ofcom's own review of DQ services.

The same respondent also commented that providers should provide pricing information including that the network access charge would continue to apply, and that service providers should be able to evidence this through making individual recordings of calls.

Regarding the suggestion that providers should record calls, we note that a number of DQ providers, including those with significant market share, already voluntarily record each call to them for purposes of quality control and their own complaint handling. Given this, and the fact that a failure to record calls has not proven to be an issue previously, we are not minded to currently introduce such a requirement.

The same respondent also mentioned the risk of a called party not disconnecting at the end of a call, potentially generating a higher cost to the consumer. Once again, we have not received any consumer report nor evidence of this occurring, and therefore do not consider that a further amendment to cover this possibility at this time is appropriate or justifiable. We will continue to monitor services and consumer information in case this situation should arise.

Another respondent who provides DQ services suggested a minor drafting change to this proposed condition. The Special condition as proposed within the consultation states the caller who declines onward connection should be given the telephone number at "...no additional charge." Whereas naturally, in the course of a call, the consumer would continue to be charged at the rate at which they called until the number has been provided to them and the call is terminated. We recognise that this could be taken literally to mean that no charge of any kind can be applied.

The respondent suggested that any potential ambiguity can be removed with additional wording appended to the condition.

"...If the consumer declines this option, they should be provided with the requested number at no additional charge over the pence per minute Service Charge applicable to the directory service called."

The PSA believes that the current is clear in its reference to 'additional' as opposed to 'further' charge. However, to make this absolutely clear we have decided to amend the condition as below and in the Annexed Notice of Special Conditions:

DQ2 Prior to any onward connection being made by a DQ provider, the consumer should be clearly informed of the cost, and have the opportunity to decline the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at the same Service Charge rate that applied to the consumer prior to this point.

List of Respondents and Next Steps

We received five responses, from the following respondents:

Action 4

BT

Fair Telecoms Campaign

Telecom 2

The Number UK

Following the consultation, and our consideration of the responses as above, we have determined to publish a revised Notice as per the changes we have outlined above.

The final Notice is attached to this statement for reference and will take effect on **4th February 2019**.

The PSA will continue to monitor compliance with this and other notices which we issue. We will revise our existing Guidance on DQ Services to take account of the new Special conditions, and then issue for consultation soon.

Annex A

Directory enquiry Services

Notice of Special Conditions

This Notice is being issued to inform all providers involved, or intending to be involved, in the provision of directory enquiry services that Special conditions apply. Level 2 providers are required to comply with the PSA's [Code of Practice](#), and the Special conditions set out below, which are imposed under paragraph 3.11.1 of the Code.

Under paragraph 3.11.3 of the Code, "*a breach of any special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code*".

Directory enquiry (DQ) services are defined by the PSA as follows:

Those premium rate services which provide the consumer with telephone numbers of other individuals, companies or services by searching one or more sources of information, based on information given by the consumer to the provider.

Special conditions

Imposed under Annex 2, Paragraph 1.1 (b) and (k):

(b) requirements as to the mechanism and processes used to deliver services to, and to enable exit from services by, consumers.

(k) information that is required to be given to callers in promotional material or at various stages before and during provision of a high-risk service (including as to receipts).

DQ1 Where DQ services are promoted using IVR messages, or other means, on a number classed as geographic in Ofcom's numbering plan, only numbers that are active and or already in use for legitimate purposes other than such promotions must be used. Such promotions must not be likely to mislead by its nature or placement within the call and must contain clear pricing information proximate to the DQ number promoted.

Imposed under Annex 2, Paragraph 1.1 (k):

(k) information that is required to be given to callers in promotional material or at various stages before and during provision of a high-risk service (including as to receipts).

DQ2 Prior to any onward connection being made by a DQ provider, the consumer should be clearly informed of the cost, and have the opportunity to decline the connection, whether by hanging up before they are connected or otherwise. If the consumer declines this option, they should be provided with the requested number at the same Service Charge rate that applied to the consumer prior to this point.