

Consultation Response on revised guidance on Consent to Charge.

Confidential start



Confidential end

Overview of response

The first issue that needs to be identified with this consultation is that it appears to be addressing two separate issues, which should have been dealt with in two separate consultations. There is the issue of robust forms of, and evidence of consent to charge and ensuring that this is obtained correctly, but then the issue of overall platform security is separate to this. We therefore believe that questions 3 to 5 should have been dealt with by a separate consultation and we will be providing our response to this consultation in two separate documents to reflect this.

The Consultation itself states that the very reason that the PSA has raised this consultation is because of a 28% rise in complaints about Subscription Services over the past financial year. It then goes on to state that there is already a separate review in place to help consumers better understand their interaction and journey with regards to Subscription Services. The results of this review, the Special Conditions for all Subscription Services comes into force on the 1st November 2019, and 6th January 2020 for charities.

Given that the PSA has already identified that there is a need for a review with regards to subscription services and have implemented additional conditions on those providing these types of service, would it not be better to wait to see the implication of these new conditions on the industry before suggesting further amendments to peoples processes and procedures? With two different types of regulation being implemented we are curious as to how the PSA plan to measure the effectiveness of these given that they are so close in implementation date and apply to the same service type. In our opinion the PSA should have allowed a period of time to allow for the first changes to be implemented and a review undertaken of this before any further changes are made. This consent to charge consultation should have been conducted and implemented then monitored for a period of time, (usually at least three months), before the subscription services consultation was released if it was needed at all.

Consultation Questions:

Q1. Do you agree with our definition of informed consent at paragraph 1.4? If not, why not?

Whilst we agree with the definition of informed consent as set out in the new guidance, we do not see how it varies in any significant way to that already in place under the existing guidance other than it being more prescriptive.

The current guidance covers the issue of robust consent and the need for it to be accurate and not tampered with too, stating “By ‘proper verifiable’, we mean a clear audit trail that categorically cannot have been initiated by anything else other than a consumer legitimately consenting, and cannot have been interfered with since the record was created”. How does the new guidance provide anything extra to the additional requirements under the existing guidance?

We did not think that the definition of informed consent was the issue either, but that of robust consent. The very items listed under 1.4 of the revised guidance is the same as those listed under 2.3

of the guidance on Promoting Premium Rate Services and provided that providers are complying with this guidance then there is no need to be so prescriptive in this revised guidance. Informed consent is something that is related to the promotion of the service(s) and we do not feel is something that is relevant here. The issue that the testing has raised is that of ensuring that it is genuinely the consumer giving their consent, and that it is not being falsely given.

Q2. Do you agree with the changes to Section Two of the Guidance at paragraph 2.9 to 2.13? If not, why not?

Again the guidance seems to be over prescriptive, including details of the make-up they would expect to see in a PIN, whilst in other places failing to provide sufficient guidance, e.g. by not providing a time for the PIN to expire as the current guidance already states. There seems to be some confusion as to what the PSA trusts the providers to do.

Again, the revised guidance does not seem that different to the current guidance, other than being over prescriptive in places.

We think the revision to allowing (but not mandatory) service and brand names on the MT message is a vast improvement on the previous guidance which prohibited it. It makes it clear what the consumer is looking to purchase and also acts as a reminder after purchase to ease the end user mind. It also allows a clear trail of the charge should the end user have any queries regarding the product or service at a later date. This should also be allowed to promote the service as well if it is to be classed as a promotional message, the reason it was not allowed in guidance before. This does make a massive change in the industry where it will change a 'service message' to a 'Promotional message' which then in turn is confusing and does not align with other PSA guidance.

With regards to the suggestion on the use of biometric technology and the consumer using fingerprint or facial recognition to confirm the purchase, we are unsure how this would work. The biometric data is held on the handset and not by the MNO or platform provider so how would this authorisation be obtained and verified?