PSA
Phone-paid Services Authority

Consultation response form

Consultation on the regulatory framework for phone-paid subscriptions

Please complete this form in full and return by email to consultations@psauthority.org.uk or by post to Emma Bailey, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.

Full name	[redacted]
Contact phone number	[redacted]
Representing	Organisation
Organisation name	Empello
Email address	[redacted]

If you wish to send your response with your company logo, please paste it here:

Empello.

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

Personal data, such as your name and contact details, that you give/have given to the PSA is used, stored and otherwise processed, so that the PSA can obtain opinions of members of the public and representatives of organisations or companies about the PSA's subscriptions review and publish the findings.

Further information about the personal data you give to the PSA, including who to complain to, can be found at psauthority.org.uk/privacy-policy.

Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how the PSA handles your personal information and your corresponding rights, please see our privacy policy.

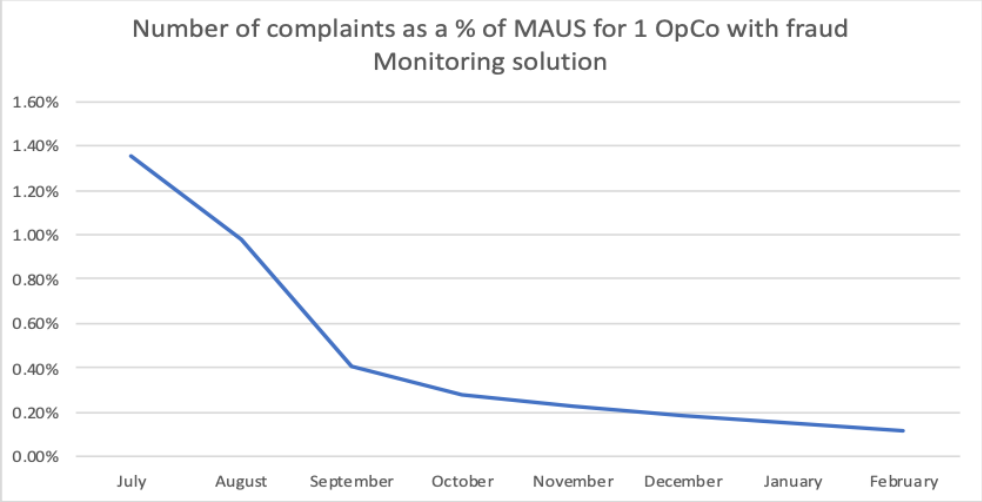
Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?	
Your response: Please indicate how much of your response you want to keep confidential.	
For confidential responses, can the PSA refer to the contents of your response in any statement or other publication? Your identity will remain confidential.	Yes

Your response

Please enter your response to each of the consultation questions in the appropriate box below.

Consultation questions	**Your response**
Q1. Do you agree with the PSA's assessment that the evidence gathered from the research and other information, data and inputs considered support implementation of Special conditions for all subscriptions as an appropriate	There are certainly assessments that we agree with and Jigsaw's conclusions seem to correspond largely with the already mandated Payforit Scheme rules. Referring to point 64 of the consultation, we support all of these points and all can already be ticked by off when compared against the current standard of services on Direct Carrier Billing in the UK and it is very difficult to see an argument otherwise. It is also difficult to see how the proposed Special conditions improve on these points. There are PSMS subscription services that do not correspond with the points and ironically these are likely to prosper in the market after the changes (as many already use a PIN via PSMS). Mandated formats for wording and pricing, along with layout and required information are all currently in place and enforced to a reasonable standard. We can speak to our work with Vodafone where any instance of non-compliance in regard to the scheme rules is a met with a sanction – we support their view that consumers should be completely aware there is a charge for the service. As a result we issue a cards where pricing is not clear and prominent, further to this we require there to be pricing on the banner so the consumer is informed prior to even clicking something that takes their interest. The Jigsaw research is heavily focused on the experience of complainants, the PSA has already accepted there are many services that can boast complaint percentages of less than 1%. Research focused on those with a negative

and proportionate response? If not, please set out your alternative approach and the supporting evidence.	experience is likely to perpetuate the negative view of the industry held by a relative few and I think this is reflected in the proposals. They don't appear to have looked at app store subscriptions where subscriptions are common place without driving complaints to the regulator. Drawing from sectors of the subscriptions market where the experience was largely positive could have led to more rounded results. Overall we feel the proposed special conditions are a disproportionate response. Given the complaint figures in Figure 3 of the consultation, along with Empello data initially presented in the call for inputs, we know that if the impact of the Special Conditions for Subscriptions is the same as that of Competition and Adult, then we will have a considerably smaller marketplace and no complaints for a period as a consequence. In our opinion, the real threat to the market is fraud and, thanks to the security research, there have been great strides made in this area but the work is very much still ongoing and hasn't yet had full support or engagement of the regulator. By taking such a broad approach, the risk is that we end up back with further sets of special conditions in 2 years' time when we realise the problem has shifted. We also have concerns about how 'subscriptions' have been identified as the area of area when it encompasses such a broad part of the industry and whether this gives enough granularity to truly understand where the issues arise from. We must pose the question whether subscription Games, Music, Streaming, Video & Lifestyle services on DCB/Payforit are deserving of this fate when there is strong evidence to say the majority of users are happy and there only a handful of pollutants driving the complaints. The Annual Market Review echoes this sentiment showing increased usership as well as increased satisfactions and trust; both of which suggest the industry is on a positive trajectory. We also feel the proposed regulations need to treat all members of the value chain equally and fairly and we must insist that the PSA consider whether new regulation this will be enforceable across the board including for charities, Spotify, Sony PlayStation, Apple, Google, Microsoft Xbox and so on. We also urge PSA to consider whether the industry will be able attract further brands in such conditions. SS7 which mandates a receipt with every billing event, effectively a weekly SMS for weekly subscriptions also seems highly disproportionate given the mandated PFI rules already require quite a few messages to the consumer. Although proposed by the panel, doesn't seem to be justified by any of the feedback from the Jigsaw research or any other practical research. It is important to consider whether this would have the unintended consequence of re-enforcing a common complainant narrative that they see receipt messages as spam and try to ignore them – it could also lead to increased complaints for the same reason. We would like to see basic testing of whether increased messages would lead to higher satisfaction / less complaints. The Play Store does not use message receipts whatsoever but does have a

	monthly email invoice which and lack of complaints would suggest this is a format consumers are comfortable with. In our eyes a weekly message is excessive and we would suggest that monthly invoicing and statements in line with other services and industries is something consumers are more comfortable with.
Q2. Do you agree with our proposed approach that the proposed Special conditions be applied to all phone-paid subscription services to create clarity and certainty for providers of subscription services, with any additional requirements under other Special conditions not being replicated in the proposed conditions?	In our view we see some services causing harm in the market and subsequently generating complaints and others causing relatively little and also generating a relative little. The narrative of the complaints is commonly 'I never subscribed to the service'. It is, in our opinion, unlikely to be the fact that the service charged on a subscription, or even the payment flow that causes the issues. We would argue that it is more likely to be fraudulent subscriptions obtained without any consent whatsoever. We would like to see time be given for proper fraud prevention measures to be mandated and see how this effects complaints. We have complaint data shared by a Level 1 provider in Kuwait who implemented our product, FraudStop, across all of their Level 2s on one network:  % of MAUS is equivalent to % of total subscriber base. The initial impact is a reduction in complaints of 1% over the first 2 months. The percentage continues to drop over time – a further 0.3% over the following 6 months. Those that wish to cause harm will likely continue to do so unless there are substantial measures in place, and Empello would draw attention to instances of PSMS services that charge without consent and use third party PIN logs as justification. These services have long been a driver of complaints and they will be largely undeterred by these special conditions as so much focus is place on the entry into the service rather than measures that would prevent circumvention.

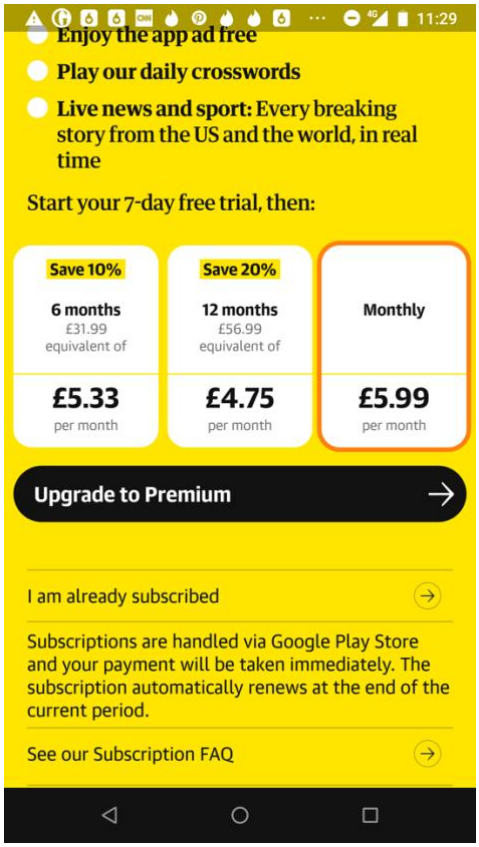
	Whilst placing so much emphasis on research or the experience, and subsequent substantial regulatory change, PSA risks ignoring a serious area of consumer harm that has gone on for years where there is no journey into the service. Our belief is that fraudulent subscriptions are a bigger area of consumer harm than the consumer flows and this area would be much more deserving of substantial regulatory intervention in the form of mandated fraud prevention. In our view, the new special conditions fail to address this area of the market, whilst posing substantial change to an area of the market that is largely clean and clear for the consumer (as is evidenced by the similarities between PFI scheme rules and Jigsaw suggestions). Indeed there is substantial evidence (below) that compliance is actually driven down when the payment flow has increased friction. Mandated fraud prevention at MNO level would be a more effective way of adding certainty to the market in our opinion.
Q3. Do you agree that the research and other information, data and inputs we considered support action on each of the identified issues outlined in this document? If not, please provide supporting evidence?	It is not clear which area of the research cites the subscription model as an area of harm or confusion for consumers. The term subscription is so broad and encompasses so much of the industry – some of which cause complaints and some don't. It is also such an attractive model, and behind much of the growth in OTT services, that with it placed under such regulatory burden, the phone-paid services sector will struggle to compete with other payment mechanics. Without drilling into the complaint data, comparing it with monitoring data, and making effort to understand the deeper reason for the spike in complaints we risk putting ourselves in a situation where in 2 years' time we will have another set of special conditions. We don't feel the document has enough granularity to be able to cite the subscription payment model as a whole as an area of harm or concern for consumers. The OTT sector is driven by the subscription model and the research doesn't, in our opinion, sufficiently support that the subscription model per se is a cause of concern for consumers.
Q4. Do you agree with our analysis using the risk taxonomy (outlined from paragraph 249 of this document)	We feel that it could be from the risk taxonomy that confusion has arisen as to whether the proposed regulatory changes are to tackle fraudulent subscriptions, or subscriptions obtained through compliant, albeit low-friction flows. The narrative here has been confusing and the message from the roundtable was particularly contradictory with talk of fraudulent subscriptions, but a focus on the ideal consumer journey based on research [which will not tackle fraud]. The special conditions are, in our opinion, not an effective response to fraudulent subscriptions and doesn't acknowledge any risk posed by PINs –

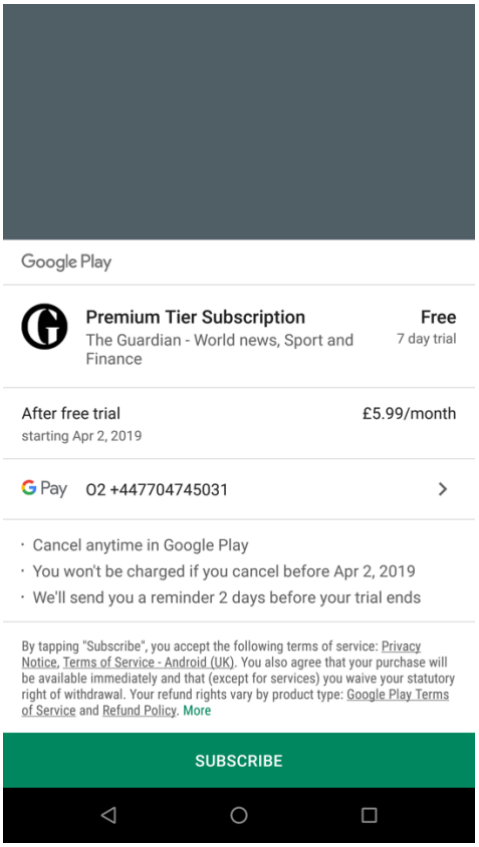
that Special conditions represent a proportionate regulatory response to the risk of harm posed by phone-paid subscription services? If not, please provide supporting evidence.	services behind PIN have long been a driver of complaints, indeed some overseas regulators consider this a largely unsecure method of obtaining consent due to lack of trust. Our work for overseas in markets where PIN is mandated shows that PINs do not stop fraud and can be read and entered by apps. We acknowledge that there is a separate piece of work ongoing for security and fraud prevention and would ask that this be given sufficient opportunity to prove that it could also be one way of tackling complaints of the nature of 'I just received a message to my phone'. Based on the picture above, we have evidence to say that it could. We believe the special conditions to be a disproportionate response and we have legitimate fears [based on data] that the changes could actually have detrimental effect on compliance. Empello can draw on data from the 4 major UK mobile operators to evidence the type of market that exists in the event of [similar to SS5 & 6] mandatory PIN or username and password given that 2 major networks have similar mandates in place already. The MNOs have been anonymised; MNO 3 & 4 do not, during the period, have regulations beyond the PFI scheme rules and the current PSA code. MNO 1 & 2 both have further mandates similar to SS5 & SS6. This is 12 months data from Feb 2018 – 2019: **MNO 1:** Overall Compliance: [redacted]% PSMS Market Share: [redacted]% // DCB: [redacted]% Journeys from Google Ad Network: [redacted]% Journeys from other Ad Networks: [redacted]% **MNO 2:** Overall Compliance: [redacted]% PSMS Market Share: [redacted]% // DCB: [redacted]% Journeys from Google Ad Network: [redacted]% Journeys from other Ad Networks: [redacted]% **MNO 3**: Overall Compliance: [redacted]% PSMS Market Share: [redacted]% // DCB [redacted]% Journeys from Google Ad Network: [redacted]% Journeys from other Ad Networks: [redacted]% **MNO 4:** Overall Compliance: [redacted]% PSMS Market Share: [redacted]% // DCB [redacted]%

	Journey from Google Ad Network: [redacted]% Journeys from other Ad Networks: [redacted]% The purpose of this data is to evidence, without any prejudice, the type of market that exists in the event of a mandate that is similar to SS5 & SS6, and that that is currently in place on MNOs 1 & 2. The conclusions we can reasonably draw: > Overall compliance is lower on networks with a mandate similar to SS5 & SS6 > The market share of PSMS (where flows are less prescriptive) over DCB (PFI) services increases in the event of SS5 & SS6 > DCB compliance is higher, and the market share is greater, where the current mandate is for PFI scheme as well as the current PSA Code only > Proportion of phone-paid services coming from Google's Display Network (web, app and YouTube banners) decreases massively and instead the market is majority driven by affiliate advertising (cheaper advertising channels) Where the payment process has steps such as SS5 + SS6, the trend we reporting is a move toward both PSMS, where the consumer journey is less prescriptive (because there is no scheme similar to PFI). And towards cheaper advertising sources such as affiliates and both of these factors drive **down** compliance. The PSA has previously welcomed the move to direct media sources over affiliation: *"The direct buy advertising model provides greater promotional control for the provider of the service and therefore may be less susceptible to the risk of abuse of the affiliate marketing cost per acquisition model."* It can be reasonably argued that given the data above, whilst recognising the greater control offered by Google DSN and other direct sources, the PSA is actually enforcing change that risks provoking a shift in the opposite direction and a return to CPA models and cheaper advertising routes via affiliates that offer less control. The Annual Market Review reported growth in DCB revenue alongside a fall in PSMS and growth in customer satisfaction alongside this last year. Evidence suggests that the proposed changes could reverse these areas of growth and possibly also, given the above compliance percentages, could also reverse the work done that influenced the increase in customer satisfaction.

Q5. Are there any other issues not addressed through our proposed response that you consider warrant regulatory action in light of the research and other information, data and inputs considered? If yes, please provide supporting evidence.	
Q6. Do you have any views or evidence on the use and effectiveness of free trial periods of varying durations to support the PSA in considering what might be appropriate in the context of phone-paid subscription services?	

Q7. Do you have any additional comments?	We would like to propose clarified wording for SS5 & 6 that will detail what is sufficient in terms of SS5 and point to the below examples of consent to illustrate the concerns:





In the above flow The Guardian uses the Play Store to authenticate payment for a subscription once the app is downloaded. The user does not need to have an account with The Guardian and can pay by one of the mechanics in SS6. The user will have setup a password account with the Operating System / App Store and also consciously opted out of having to re-enter the details for every purchase.

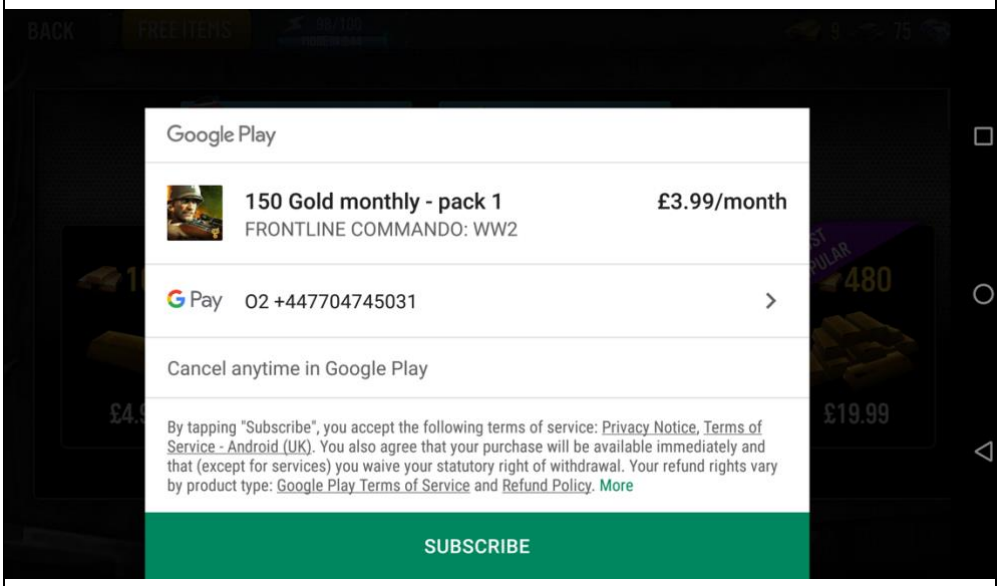
We do not believe that it is clear from the wording whether this would comply with the proposed Special Conditions or not. If the intention is to ensure a username and password is entered for *every* subscription then this would not comply. However it could also be interpreted that first consent - SS5 (a) - has been achieved at the stage setting up the Google Play account. The prior would be considerably restrictive to the market and app stores in particular.

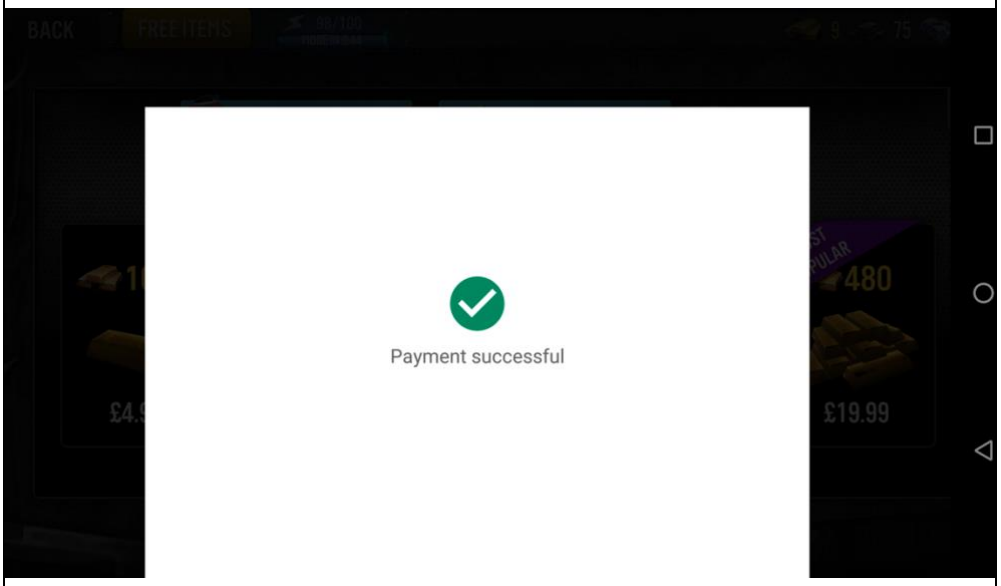
If the intention is to have the password system controlled by the Level 2 or Level 1, this would also place extra regulatory burden on them as they would then have to store details (which The Guardian avoids in the above instance).

It is not clear in current form who the PSA believes needs to control the password system and subsequently who provides the first consent for SS5. in the above instance, and in many other instances, the Level 1 or Level 2 provider

is not the one responsible for the password system. In the example, The Guardian does not need to take any personal details at all. Many of the most popular apps also use password systems embedded from platforms such as Facebook so they don't need to collect the data themselves. This potentially places quite substantial burden on the merchant who would need to ensure they are setup to handle such a database.

It would also dramatically reduce choice for the consumer as they would then not be able to apply the mechanisms of SS6 across multiple services as is currently enabled by Apple and Android. It is also easy to then see why a merchant such as The Guardian would then opt out of using mobile payments due to the extra burden on both them and their consumers.





Glu Mobile is a developer of games, most of which offer in-app subscriptions via Google Play. The above example is taken from 'Frontline Commando' and the majority of their games follow the same format. Playing the game requires no account setup – users are assigned a random username - so the app developer

	currently offers no password system. When it comes to enter the subscription the consumer can effectively go straight to SS6 and this is just one example of the typical Play Store user journey for a subscription. The service is arguably further out of line with the points in Jigsaw's research than those currently on PFI scheme rules; there is no explicit mention of charging to the mobile bill, the frequency is not in full - '/month' instead of 'per month', the service charges immediately with no SMS or email receipt, no opt-out information or helpline is sent as is the case on PFI. There are no contact details, and the user cannot exit the subscription from the app itself – it must be done via the Play Store account - and there are considerable more steps needed to opt-out than to opt-in. This could also be an argument to say the targeting of the subscription model is misguided given [we presume] the Play Store is not the main driver of complaints. However if subscriptions as a whole sector are to be the intended target then this must be applied in a way that is fair and proportionate to the whole industry. At the roundtable, it was clearly pointed out the PSA did not think Google would be affected by the proposed Special Conditions. It is therefore vitally important the regulations are clear exactly in regard to the rules will be around SS5 and how these intend to be applied fairly. If they already have potential exemptions in mind then this should also be made clear. The regulations must be the same across industry and, if this type of subscription and user flow is to be exempt from the proposed Special Conditions, or is deemed compliant, then the wording must be made clearer to avoid misinterpretation. We would argue, with the above example in mind, that the wording needs to be made explicit in terms of which password system provides acceptable consent for SS5, and under what terms a journey may be acceptable in terms of satisfy SS5 if the consumer has previously indicated a desire to re-authenticate (SS6) using an existing system they have setup outside of the Level 1 or Level 2 provider. In the above example the user has a password system with Google Play, the payment is provided by a Level 1, and the purchase happens within the Level 2's environment. Neither the Level 1 or 2 is responsible for the password system and consent for SS5 could have been obtained months previously. Under the proposed Special Conditions, we would like to see it made clear who (the Level 1, Level 2, or 3rd Party) would need to control the password system that is then able to authorise consent across multiple services if this is to be possible under the new regulations, as currently is allowed on Play Store. If the setting up of a Play Store account to include mobile billing is sufficient for 'Prior to delivering the initial charge of a subscription service' then this should also be specified. We would propose an adjustment to the wording that will clarify what is

	acceptable in terms of the password system to the below: *"(a) Use of a password system, the password being selected and controlled by the consumer"* *- If the password system has previously been setup and authenticated with a 3rd party, Level 1, or Level 2 provider, and as part of this the consumer has consciously opted into re-authentication through the means of SS6 only, then this may continue to be used for future subscription purchases* Such an adjustment would allow companies like The Guardian, and Glu Mobile to retain their current user journey within the Play Store without needing to significantly adjust their model. They would be able to give their users the option to use phone-payments alongside other payment systems which would surely be a positive move for the industry to keep it attractive to the mainstream. Our interpretation of current wording 'Prior to delivering the initial charge of a subscription service' is that the above examples would not comply and the onus would be put onto the Level 1 or 2 to implement a password system for every new subscription. In which case, contrary to the statement at the roundtable, and based on the above, both major app stores would be massively affected by the proposed changes in their current form and phone payments would likely not be an attractive option alongside other payments as it would impact the consumer journey quite significantly. Without this adjustment in wording, and if the Special Conditions are interpreted as the need for entering entire username and password or pin details prior to every/any subscription this is likely to be quite inhibiting for growth of the industry when all other mechanics will likely be accepting a route that goes to SS6 directly.

If you have any supporting imagery for your responses, you can paste them in your responses in the table above or here:

Submit your response

To send your responses to the PSA please email this completed form to consultations@psauthority.org.uk or by post to Mark Collins, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.