

Consultation on the regulatory framework for phone-paid subscriptions

ADDITIONAL COMMENTS



1. Regarding bringing things into line with other payment industries, should this not also include regulatory process? For example, the Financial Ombudsman will not deal with consumers until they have attempted to resolve the issue with the consumer first.
2. Our industry desperately needs coherence between the regulators and the networks. It is no use at all the PSA offering flexibility and understanding within its regulation if it will just be contradicted or overruled by individual network codes. I continue to wonder why the PSA allow this to continue, they are our regulators and they should be making the rules which the industry follows, including the networks. At the very least there should be consistency. Businesses should not be in the position where they are covered by two sets of rules for the same thing, by two or more regulating parties in the same part of an industry.
3. There is a very real and deeply concerning risk that with additional PSA regulation, separate network regulations and separate PayForIt regulation, the Phone-paid Services industry will become more unattractive for companies. Situations are already occurring where it is just too complicated, too much hassle, too high risk and too expensive to adopt mobile payments as a viable offering to customers.
4. Impulse purchasing. All the people that buy Mars bars are not made up solely of people who entered a shop looking for chocolate. Most of them are impulse purchases and they make up large part of the market. Regulation should not extend to the point where impulse purchases are practically excluded from the market; however regulation *should* extend to the point where important information is not being hidden from the consumer. This is a balance I do not think the PSA have achieved in the proposed rule changes. Constantly striving for friction in payment flow erodes the impulse-buy segment.
5. If the PSA is seen to be consistently supporting consumer's demands for refunds / complaints etc. in the face of compelling evidence that the consumer consented to clearly stated charges, or in some cases where the consumer even admits to opting in - it is likely industry will quickly lose trust in the PSA. In my experience, consumers will fabricate anything to try their luck and get their money back, anything at all, even on occasions when presented with irrefutable evidence face to face. There needs to be understanding of this in that whilst we must protect consumers, they also must bear responsibility for their own actions.

6. Throughout the consultation, “enforcement” seems to be confused with “regulation” i.e. in many sections, the PSA uses examples where better *enforcement* is needed, but cites regulatory changes (Special Conditions) as the solution instead. I wanted to highlight this as it became obvious in many cases the PSA was using, for example, better enforcement of current regulation would do the trick.
7. Several places in the consultation refer to the need to change the rules to increase consumer trust and confidence however, elsewhere it is stated that consumer trust and confidence are already rising (by quite a bit) under the current system. So consumer trust is already rising thus a heavy handed approach to regulatory changes would be inappropriate and disproportionate, reaping more negative side effects than benefits by proportion.
8. Regarding data, relative figures should be used that compare “complaint” volumes to various industry metrics and determine the proportions accordingly. Also drilling down much deeper. If the PSA is going to make statements and rule changes on segments of the industry then detailed data should be provided for breakdown and interpretation. This is important for industry trust and transparency. There is a very obvious lack of multivariate data analyses in the Consultation.
9. Measurement of success of the rule changes. By what metrics is the success of the rule changes going to be measured? This is important for industry transparency and given the push back on this consultation so far, it is only right that the PSA provide the KPI’s on which they will assess the success of their rule changes. What is the PSAs’ intention in the event of out and out flop? I feel this is important, there needs to be clear measures of “success” and “failure” for industry, and PSA, to fully understand the impact of action taken.
10. The Consultation mentions a lot regarding “minimum intervention” which in some examples contradicts the suggested blanket approach to Special Conditions. “Minimum intervention” on a high risk service is different to “minimum intervention” on a low risk service which, by the PSAs’ statements, pose little consumer harm risk.
11. For exactly the same reasons that the PSA wants to isolate a service type to apply special conditions to, they should scale those special conditions across services within those types. It is terribly hypocritical to implement Special Conditions to a service type, citing the main reason as consumer harm, only then to ignore the widely varying amount of harm posed by the different services within that type. Particularly when the PSA themselves have stated in the Consultation that it is only a small number of services within that type that generate large volumes of complaints/harm.
12. I welcome the addition of MO to the opt in stages as per The Addendum. It is a solid, verifiable way of proving consumer consent to charge.
13. The scalability of application of the Special Conditions is key. I do not see any reason why a “low risk” service cannot work solely off an MO as consent to charge so long as it can be proven that the consumer has seen the costs and full details of the service prior to making their decision.

14. There is a difference between “consumer complaints” and “consumer harm”. They need to be defined by the PSA and applied in a consistent manner across the board. A “complaint” doesn’t mean “harm” has occurred, and “harm” may not generate many “complaints”.
15. If the PSA are indeed saying that complaints = harm, then every complaint should result in an investigation and a fine or whatnot. Should this not be happening, then the PSA under its own definitions is failing to protect consumers from harm by not taking action on every “complaint”.
16. Alternatively, the PSA could acknowledge that “complaints” do *not* equal “harm”, define them properly and then revisit the consultation again with a more accurate set of data. Comparing actual consumer harm statistics broken down and compared across service type, price, etc. This would give a crystal clear view of exactly what is causing the biggest issue (relatively) and an easily scalable categorisation of what constitutes “high risk” services.
17. It appears that this consultation has conflated crucial factors in order to justify their position to impose Special Conditions. I would like to reiterate, I am not against regulation evolving with the times to protect consumers and allowing our industry to grow. I am against regulatory evolution based on wobbly data comparisons or incomplete data sets; inconsistent statements of reasons or intentions; and blanket approaches that will adversely affect the market, as has been demonstrated in years gone by.
18. It is disappointing there doesn’t seem to be any consideration for low cost services that are only £1 or £2 per month? Such heavy regulation for low cost services is total overkill compared to other industries / payment methods. Example, eBay buying a TV = two click. Amazon pantry automatic subscription opt in, two click subscription, pre ticked. The PSA state in the consultation that they recognise some services generate almost no “complaints” whatsoever, surely they should be encouraged rather than blanketed with regulatory changes designed to kill off certain high risk services.
19. I think mobile payments is the only industry of its kind where the merchant is often immediately to blame for monies taken from the consumer. This doesn’t happen in any other industry. Example: if a consumer reports monies having been withdrawn from their bank account without their knowledge, the industry will not automatically assume the merchant has in some way ripped off the customer. This approach has been damaging to legitimate merchants and only serves to worsen the industry reputation with the public.
20. In summary, I am of the strong belief that should the proposed rule changes be applied as they currently are outlined in the latest Consultation (and Addendum) without any changes, our industry will face another year of decline.
21. Lastly but worth mentioning, the word spacing is way too tight in the consultation document. This has made it quite hard work given the amount of text.
Example:
~~Unprecedented phone paidsubscription services. Misleading disclosure, the Jigsaw research and the evidence gathered through the Call for inputs,~~