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Which?, 2 Marylebone Road, London, NW1 4DF  
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## Phone-paid Services Authority: Consultation on regulatory framework for Phone-paid Subscriptions

### Summary

- Which? is concerned about the consumer harm in the phone-paid subscriptions market
- Which? supports the PSA in revising the regulatory approach and creating new special conditions for phone-paid subscriptions
- We agree that double opt-in should be required for consumers to sign-up to a phone-paid subscription. While SMS authentication is not ideal, we are content with it remaining on the list of options for phone-paid service providers to fulfil this requirement. Authentication apps should be added to the list as they are more secure than SMS
- The special conditions should be extended to cover conditions on price transparency (total costs per billing period or total monthly costs), contract length and termination conditions
- The special conditions should be extended to include conditions on auto-renewal, in line with CMA guidance in this area:
  - In addition to a clear opt-in, there should be a clear and prominent option without auto-renewal in most markets
  - Customers must be sufficiently informed about the renewal and any price changes through appropriate notifications in good time
- The new regulatory framework should give consumers the right to cancel a phone-paid subscription through contacting either the service provider or their mobile phone operator
- The PSA should consider the merits of requiring consumers to actively enable phone-paid subscriptions on their mobile phones by having default settings which block premium content or charges to a phone bill. This would be an additional layer to the double 'opt-in' but would need consumer testing before introduction to guard against unintended consequences



## About Which?

Which? is the largest independent consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an apolitical, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to tackle consumer detriment by making individuals as powerful as the organisations they have to deal with in their daily lives. Which? empowers consumers to make informed decisions and campaigns to make people's lives fairer, simpler and safer.

**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 and proportionate response? If not, please set out your alternative approach and the supporting evidence.**

Which? is concerned about the consumer harm in the phone-paid subscriptions market. We have received consumer complaints about the issue and we aware that consumers can be signed-up to subscriptions they don't want due to malware, scamming the consumer. We have publicly raised the issue in October 2018.<sup>1</sup>

*"Recently fallen victim. Have iPhone on 3 monthly contract. Month or so ago received text saying I'd subscribed to 'Learn French' for £9 a week & to cancel, send STOP to a short number. Knowing this was a scam, & suspecting short number would be premium rate, deleted text. More texts were received & deleted & barred number. Noticed unexpectedly high direct debit from 3 & found 4 charges of £9 on bill for Payfort. I've certainly never knowingly subscribed to 'Learn French' nor seen any confirmation screen nor accepted any t&cs. After long & fraught conversation with 3 customer services they agreed to refund charges on next bill as good will gesture so I'm out of pocket meantime." Complaint received by Which?*

The phone-paid subscriptions market is a potential growth area in future particularly as more mainstream providers enter the market. However, the PSA's own research highlights the risk of consumer harm in this area. We support the efforts by the PSA to ensure that consumers are protected.

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<sup>1</sup> [Which? Conversation, Are there charges you don't recognise on your mobile phone bill, October 2018](#)



**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?**

We support the proposal to require all phone-paid subscriptions to meet the conditions set out in the special conditions. The existing regulatory requirements have created a two-tier market which is open to abuse as only those services which charge £4.50 a week or more currently need to follow set regulatory requirements.

We consider the PSA's proposed approach would create a level-playing field for all providers who wish to offer subscription services via a mobile phone contract. This has the potential to improve consumer protection and raise standards in the market.

**Q4. Do you agree with our analysis using the risk taxonomy (outlined from paragraph 249 of this document) 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.**

We agree that the proposals represent a proportionate approach to the risk of consumer harm although we believe they should be extended to include rules on price transparency and auto-renewals.

*Point of purchase*

We agree with the proposals in SS3 and SS4 which align with the findings of the consumer research published by the PSA. The proposals should be extended to include clear standards on transparency of costs (total costs per billing period or total monthly costs), contract duration and termination conditions.

*Consent to charge*

We agree with the need for a double-opt-in to ensure that consumers know they are about to sign-up to a phone-paid subscription. We agree that friction in this instance will be beneficial as it provides an opportunity for the consumer to pause and make a considered purchase.

The proposed special conditions set out the technology options for providing double-opt-in. We recommend adding authentication apps to the list of options as these are generally more secure than SMS authentication. Whilst SMS authentication is not ideal, we agree it is preferable to no authentication for phone-paid services so we are content with it remaining on the list of options. The regulator will need to ensure that the list of acceptable double-opt-in technology options is kept up to date with technological developments.



The PSA should also consider the merits of requiring consumers to actively enable phone-paid subscriptions on their mobile phones. For example, mobile phone operators could turn-off premium content or charges to bill by default so that consumers are required to actively enable such services. This would require further consumer testing to guard against unintended consequences (for example a reduction in charity donations).

### *Receipts*

We agree with the principle that customers should receive a receipt and confirmation that they have signed-up to a subscription. This receipt should also provide them with clear information on how to cancel the subscription.

In principle having a receipt sent to a consumer every time they incur a subscription is sensible. However, there might be merit in further consumer testing on this point. As reported in the PSA's research, customers can ignore text messages, and if they sign-up to several subscription services this may create a level of text messages that consumers are not comfortable with. There could be merit in giving customers the option to opt-out from receiving receipts after an initial period of the subscription.

**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.**

### **Auto-renewal**

As part of its loyalty penalty work, the CMA has developed a set of principles around renewals and contracts<sup>2</sup>:

- People must be able to exit a contract at least as easily as they enter it
- Auto-renewal should generally be an 'opt-in' basis upfront and include a clear and prominent option without auto-renewal in most markets
- Customers must be sufficiently informed about the renewal and any price changes through appropriate notifications in good time

The PSA should apply these principles to its proposed special conditions where subscriptions renew automatically. It is already proposing to require a double-opt-in at the point of purchase which we support. The rules should also ensure that customers are clearly informed about the length of the contract, when the subscription is being renewed, any price increases (with sufficient notice) and how to cancel the subscription.

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<sup>2</sup> [Competition and Market Authority, Tackling the loyalty penalty, December 2018](#)

