

**Statement following further
consultation on Special condition
ICSS 11**

05 March 2020

Contents

Executive Summary	2
About the Phone-paid Services Authority	2
Background.....	2
What we have decided	4
Responses to the consultation.....	5
General feedback and PSA consideration.....	6
Responses to the consultation question	7
PSA consideration of responses to the consultation question	9
Next steps.....	10

Executive Summary

About the Phone-paid Services Authority

We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.

Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS). We build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive. We do this by:

- establishing standards for the phone-paid services industry
- verifying and supervising organisations and services operating in the market
- gathering intelligence about the market and individual services
- engaging closely with all stakeholders
- enforcing our Code of Practice
- delivering organisational excellence.

Background

1. Information, Connection and Signposting Services (ICSS) are services that offer call connection to various organisations, or provide information, advice and/or assistance relating to such organisations. ICSS are defined as follows:

“Premium rate services¹, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”

2. On 19 December 2018 Ofcom announced that it had modified the Premium Rate Services Condition (PRS Condition) to include all ICSS within the PSA’s remit, irrespective of the number range or price point the services are operating on². The modification came into force on 16 January 2019. Following this, in early 2019 we began a review of the ICSS Special conditions already in force.

¹ In order to qualify as an ICSS, the service must first meet the statutory definition of a Premium Rate Service set out in s.120(7) of the Communications Act 2003

² [Review of the Premium Rate Services Condition](#); Statement on extending the definition of Controlled Premium Rate Services to include all ICSS. Prior to this announcement ICSS services operating on the 084-number range were not within PSA remit.

3. In April 2019, we published a consultation on proposals for updated Special conditions to apply to all ICSS. We consulted on:
 - whether the new conditions should apply to all ICSS regardless of the number range they operate on (including 084 that had been brought into the definition of ICSS as a result of Ofcom’s review)
 - proposals to improve clarity of information given to consumers about the services in search engine results and on service websites, to make clear the true nature of the services, and that calls made via an ICSS may be more expensive than directly calling the organisation being sought.
4. The consultation closed on 10 June 2019 and the Statement responding to the consultation was published on 9 October 2019³.
5. The Statement set out that we had decided to implement the updated and strengthened Special conditions consulted on (with a revision to ICSS11) in order to protect consumers from the harm and potential harm that may arise from ICSS and the nature of this service type. We also decided that the updated Special conditions should apply to all ICSS regardless of the number range they operate on, including ICSS operating on 084 number ranges. The revised Special conditions came into force on 20 December 2019.
6. However, we decided to re-consult on a variation of the revised Special condition ICSS11. This decision was taken based on detailed feedback from one respondent in their response to our April 2019 consultation that there was an alternative option that should be considered. During the re-consultation for ICSS11, the current ICSS11 remained in force.
7. The proposal consulted on was that providers of per-call tariff ICSS may either state the service charge within the alert upon connection, or send the consumer a free to receive SMS following completion of the call, which would provide both a receipt for the call and also the actual number of the organisation being sought.
8. The proposed text for variation of the revised Special condition ICSS11 that we have just consulted on is as follows:

ICSS11

- (a) Consumers must receive an alert at the start of the call before onward connection stating the following (in any order):

³ [Statement on changes to regulatory framework for Information, Connection & Signposting Services and further consultation on special condition ICSS 11](#)

- (i) the cost of the service per minute and/or per-call followed by the words *"plus your phone company's access charge"*;
- (ii) that the ICSS provider is not [insert the end organisation's name] or that the ICSS provider is [insert ICSS provider name]; and
- (iii) the name of the end-organisation consumers will be connected to or given the option of connecting to.

Caller agreement may be given by pressing a specified key or otherwise responding to the alert, or by remaining on the line to access the service.

(b) Where the service is charged on a per-call basis as an alternative to fulfilling the requirement at paragraph (a) above the consumer may be sent a free to receive SMS in the form of a receipt upon completion of the ICSS call which states how much the call has cost followed by the words *"plus your phone company's access charge"*, and provides the actual phone number of the organisation the consumer is seeking.

For example: *"Thank you for using XXXX call connection service, you have been charged £X.XXp plus your phone company's access charge. The direct contact number for XXXX is 0800 XXX XXX freephone / local rate"*

What we have decided

9. Following completion of the ICSS11 re-consultation, the PSA has decided to retain Special condition ICSS11 in the revised form set out in our Statement published in October 2019, which followed our consultation in April 2019⁴. This form maintained the existing ICSS11 but required addition of the words *"followed by the words "plus your phone company's access charge"*. Therefore, ICSS11 will remain as follows:

ICSS 11 Consumers must receive an alert at the start of the call before onward connection stating the following (in any order):

- (i) The price per minute followed by the words *"plus your phone company's access charge"*;
- (ii) that the ICSS provider is not [insert the end organisation's name] or that the ICSS provider is [insert ICSS provider name]; and
- (iii) the name of the end-organisation consumers will be connected to or given the option of connecting to.

⁴ PSA has also made a minor change to make clear that Special condition ICSS11 is imposed under Annex 2, Paragraph 1.1(k) rather than Paragraph 1.1(n).

Caller agreement may be given by pressing a specified key or otherwise responding to the alert, or by remaining on the line to access the service

10. The decision to retain ICSS11 in the form set out in our Statement ('the Revised ICSS11') was based on full consideration of the responses received to the re-consultation. Overall:
- the majority of respondents to the re-consultation did not support the proposal
 - limited evidence was provided to support the argument that pricing upon connection for per-call tariff ICSS is useful in preventing unnecessary repeat calls
 - potential implementation issues were raised, for example, where the consumer is calling from a withheld number.
11. Furthermore, we announced in January this year that we are undertaking a comprehensive review of our regulatory approach and we expect to introduce a new Code of Practice in 2021⁵. This review will provide an opportunity to consider the effectiveness of the Special conditions and whether any further revisions, additions or regulatory approaches are required regarding ICSS.
12. Responses we received to the re-consultation on ICSS11, and our analysis of them, is set out in more detail in the next section.

Responses to the consultation

13. We received nine responses to the consultation from a range of stakeholders including one government department, several industry representatives (including two trade associations), consumer representatives, and individuals. We asked a single consultation question:

Do you agree with the proposal to offer ICSS which operate with a per-call tariff an alternative to pricing within the alert upon connection, in the form of a free to receive SMS receipt which states the cost and the actual contact number of the organisation the consumer is seeking? If not, why not?

14. The responses we received provided both general feedback (i.e. not specific to the question we had asked) as well as input relating specifically to the consultation question. This input and our consideration of it, is outlined below.

⁵ [PSA published Terms of Reference for the review of its Code of Practice](#)

General feedback and PSA consideration

15. Many respondents took the opportunity to reiterate concerns they raised during the first consultation. Specifically, concerns around consumer awareness and understanding of access charges and the potential for 'bill shock' as a result of access charges being applied. The PSA can confirm that phone company access charges are not within our remit and were therefore not in scope of the review or re-consultation.
16. We note that Ofcom announced, in its statement following review of the PRS Condition published 19 December 2018⁶, that it will continue to monitor access charges, with a view to considering whether regulatory intervention may be needed in the future. Since then, Ofcom has announced in its Proposed Plan of Work 2020/21⁷ that it plans to review the pricing of access charges for non-geographic calls (including 084, 087, 09 and 118 numbers) alongside the ongoing Future of Numbering Policy Review.
17. Some respondents also reiterated their concerns about pricing information being contained within the alert upon connection for per-call tariff ICSS. They suggested that it is counterproductive or futile to state the cost upon connection to the ICSS where the full-service charge is applied immediately, as the consumer will already have been charged the service charge at this point. These respondents were of the view that the alert upon connection may confuse consumers leading them to believe that they will not be charged if they hang up and disconnect the call upon hearing the alert before receiving the service.
18. Other respondents, including a Network operator and a consumer interest group, also suggested that a free pre-call announcement containing pricing information would be the most effective way to inform consumers of the cost, and would give those who did not intend to call an ICSS the opportunity to hang up without being charged.
19. We recognise that providing pricing information within the alert upon connection for per-call tariff ICSS means that this information is being provided after the service charge has been applied. We also recognise that it is possible that such an announcement may lead consumers to hang up believing that they have not yet been charged, and that hanging up the call at this point would only prevent further phone company access charges being applied.
20. One respondent provided a general response, expressing concerns about consumer harm and risk of harm caused by ICSS and suggested amendments to the way they are regulated, such as imposing a maximum price cap and requiring a free pre-call announcement containing pricing at the start of an ICSS call.

⁶ [Ofcom Statement following review of the premium rate services condition](#)

⁷ [Ofcom consultation plan of work 2020/21](#)

21. Price capping and introducing requirements for free pre-call announcements were not in scope of this re-consultation and is not something the PSA will be considering at this time. While we do recognise the benefits of having a free pre-call announcement (as stated in our previous Statement⁸), this Network capability is not ubiquitous and therefore we think it would be disproportionate to require such an announcement at this time. However, we may revisit this option if and when the technology to so introduce free pre-call announcements becomes widely available.
22. One respondent asked for clarification regarding ICSS11 and ICSS7 and whether Special condition ICSS11 applied to all ICSS regardless of the type. We can confirm that Special condition ICSS11 does apply to all ICSS regardless of type.
23. Under ICSS7, if the ICSS provides the consumer with the number they are seeking and gives them the option of connecting to that number directly, then the consumer must be informed of the cost they would incur for being connected. The provider must also include the statement *"plus your phone company's access charge"*.
24. For ICSS which provide the contact number of the organisation being sought, and offer onward connection, ICSS7 also applies.
25. To be clear ICSS11 requires an alert at the start of every ICSS call, whereas ICSS7⁹ requires a further alert before onward connection, where the consumer has already been provided the number they are seeking. If an ICSS does not provide the number being sought before onward connection, then ICSS7 would not apply.

Responses to the consultation question

26. Most respondents did not agree with the proposal for a variation of the Revised ICSS11, for ICSS which charge on a per-call basis. Some respondents expressed the view that pricing information upon completion of an ICSS call is less prominent than pricing information at the start of an ICSS call. These respondents described pricing information in SMS receipt form as retrospective and that this would reduce pricing prominence overall, particularly as an SMS receipt may be unexpected and therefore missed by the consumer or regarded as spam.
27. Two respondents, an industry trade association and a government department, raised concerns regarding data protection regulation and whether consumer consent would be required for them to lawfully receive an SMS following completion of an ICSS call. These respondents expressed concern that sending the consumer an SMS following a voice call would be unexpected, intrusive and may negatively impact the consumer. One of these respondents also raised concerns about whether consumer contact numbers could be

⁸ Paragraph 97 PSA [Statement on changes to regulatory framework for ICSS](#)

⁹ The format of this kind of ICSS is similar to a directory enquiry service.

stored securely and how this would be achieved, as well as how providers would secure consumer consent to receive the SMS.

28. Several respondents questioned the effectiveness of the proposed variation for calls made from a landline and where the number the consumer is calling from (also known as 'calling line identifier' or 'caller ID') is withheld. These respondents:

- suggested that receiving an SMS alert to a landline number may be unexpected
- expressed the view that it wouldn't be possible to send an SMS to a consumer where the number the consumer is calling from is withheld, unless the consumer is asked to provide their number before the ICSS call is made
- thought that consumers may be reluctant to provide their number, and that withheld numbers would make the service mechanic more complex
- noted that the proposal could be costly for providers.

29. One respondent appeared to have misunderstood the intention behind the proposal for a variation of the Revised ICSS11. This respondent thought that the proposed variation would allow per-call tariff ICSS to operate without any alert upon connection. We would like to confirm that this understanding is incorrect and that the proposed variation of ICSS11 only related to the inclusion of the service charge pricing information within the alert for per-call tariff ICSS. Providers of per-call tariff ICSS would in any case still be required to state that the phone company's access charge applies and who the ICSS provider is, or that they are not the organisation being sought, and the name of the organisation they are connecting to.

30. Of the respondents who agreed or agreed in part with the proposal, two did not agree with the proposed wording of the receipt SMS and suggested alternatives. One suggested that the proposed receipt SMS should make it clear that the service charge has already been applied. Another suggested that only the name of the organisation the ICSS connected to, the direct contact number for that organisation, and the opening hours should be required. They proposed this on the grounds that the consumer would already be aware of the cost from viewing the promotional material.

31. This respondent also suggested that stating the cost in a follow-up SMS would be confusing and may lead the consumer to believe that the SMS was in fact chargeable and cause them to complain. This respondent also stated that the number of characters in the proposed SMS receipt would mean that the provider would be charged for sending two text messages to the consumer, effectively doubling the providers costs for offering a free-to-receive service.

PSA consideration of responses to the consultation question

32. The PSA would like to remind respondents that the Code of Practice requires pricing information in the course of any promotion of a phone-paid service to be included before any purchase is made. This information must be prominent, clearly legible, visible and proximate to the premium rate number, shortcode or other means of access to the service¹⁰. Special condition ICSS5 also specifically requires pricing information for ICSS, including the statement *"plus your phone company's access charge"*, along with the name of the provider and accurate description of the service to be displayed prominently and in close proximity to the call to action.
33. It remains essential for ICSS to include the cost of the call per minute and the statement *"plus your phone company's access charge"* within the alert upon connection as this warns the consumer of the ongoing per-minute charges and enables them to make an informed decision about the length of the call.
34. We acknowledge the concerns raised regarding data protection and consumer consent in relation to receiving an SMS following completion of an ICSS call. We recommend that where an ICSS provider wishes (of its own volition) to send a free-to-receive SMS receipt containing the name and contact details of the organisation the service is connecting to, providers should satisfy themselves that any data protection and privacy laws are complied with¹¹. Where such receipts are permissible in law, we would recommend that the promotional material makes clear that an SMS receipt will be received upon completion of the call to avoid potential consumer confusion.
35. We understand from various industry members that it would not be possible to send an SMS receipt to a withheld phone number following completion of an ICSS call. In this circumstance the option of either placing the per-call service charge on the alert upon connection or sending an SMS receipt does not work, as the ICSS provider would be unable to determine whether a number is withheld or not before the call is made. We also recognise the concerns raised regarding landlines receiving SMS. Where an SMS is sent to a landline number the message is read out over an automated call, and there is a chance that this could be confusing for the consumer and may be considered as a nuisance call, particularly as pre-recorded nuisance calls are a prevalent issue.
36. Based on all of the input received, we have decided to retain the Revised ICSS11. There was a lack of support for the proposal for a variation to the Revised ICSS11 from the majority of respondents who represented a wide range of stakeholders (industry, consumers and a government department). In addition, there was a lack of evidence

¹⁰ This is required by paragraph 2.27 of the PSA Code of Practice.

¹¹ Providers who do this are encouraged to contact the ICO to seek advice on data protection and privacy.

provided by, and an inconsistency of views from, the minority who supported the proposal.

37. We accept that introducing the proposed variation to the Revised ICSS11 would create implementation issues for providers. The proposal would require providers of per-call tariff ICSS to either state the cost within the alert upon connection or send an SMS receipt containing the cost and other details after the call ends. In our view, the 'either, or' variation does not work for consumers who have dialled an ICSS from a withheld number. This is because it would not be possible to send an SMS to a withheld number and providers are unable to determine whether a number is withheld before the call is made.
38. Although many respondents stated that the cost of calling all ICSS should be present within the alert upon connection, we do not believe there is enough evidence to support the inclusion of the service charge for per-call tariff ICSS. The main argument for its inclusion from respondents was that upfront pricing information is more prominent than pricing information after the charge has been incurred. With per-call tariff ICSS, the service charge is incurred immediately upon connection to an ICSS, therefore stating this charge within the alert is also retrospective. In addition, given that the risk of financial detriment is somewhat reduced where the service charge is per call rather than per minute, we believe it would be disproportionate at this time to require per-call costs to be stated within the alert upon connection.

Next steps

39. The current Special conditions for ICSS have been in force since 20 December 2019 including the Revised ICSS11. As no changes are being introduced to these conditions following the re-consultation of ICSS11, no implementation period is required. ICSS providers should continue to comply with the current Special conditions for ICSS which are published on our website [here](#).
40. We will continue to monitor the effectiveness of the Special conditions for ICSS and address any remaining issues or new concerns as part the comprehensive review of our regulatory approach.