

BT Group response to the PSA ICSS consultation

Executive Summary

We are grateful for the opportunity to respond to the PSA ICSS consultation. The consultation is timely as ICSS continue to cause harm and we agree more needs to be done to address the risk to consumers.

We believe that the proposed amendments to the Special Conditions are helpful but do not go far enough: more guidance on interpretation and application of the Special Conditions would provide industry with greater clarity around precisely what compliant advertising would look and incentivise compliant practices.

Moreover, the Special Conditions need to be underpinned by a robust enforcement and compliance regime to ensure that consumers are protected and the industry has certainty around acceptable practices. The PSA should work closely with Ofcom to ensure that regulatory strategies are aligned and consumers protected. Should a stronger enforcement regime fail to materialise or fail to lead to a very swift reduction in harm, Ofcom must re-examine what the appropriate regulatory framework for ICSS is.

ICSS continue to cause harm and more needs to be done to address the risk to consumers, including examining the fitness of the current regulatory framework

It is clear that Information, Connection and Signposting Services (ICSS) continue to cause consumer harm and that the PSA must take action to minimise their adverse effects on consumers. We welcome your consultation and proposals for changing and introducing new ICSS Special Conditions. We agree that new and clearer rules will help reduce the risk to consumers but believe that more needs to be done to tackle the high level of consumer harm many ICSS cause.

Your taxonomy of risk (Annex A in your consultation) details why ICSS can pose a significant risk to consumers. Customers of these services may suffer financial harm and be deceived by passing off or uninformed consent. The risk framework identifies efforts by some ICSS to target potentially vulnerable groups e.g. people seeking information about child or housing benefit. We outline below recent instances of ICSS ads aimed at customers looking to contact the government's Universal Credit and Employment and Support Allowance contact numbers, as well as other examples of harm caused to consumers.

As a communications provider, we see the scale and shape of the problem. Across BT & EE customers are making expensive calls to 09 numbers in an attempt to contact well known companies and government agencies. During April and May we saw 227,000 customers making calls with a value of £2 million to the top five ICSS number ranges alone. 48% of these calls are less than fifteen seconds long, suggesting almost half of the customers call the number, hear the cost of the call is £3.60 and then hang up; however, they are still charged.

BT is also well placed to observe not only how ICSS can cause consumer harm but the extent to which providers comply with the existing PSA Special Conditions. We know from complaints that customers search for numbers from their smart phones and tablets and are misled into calling a more expensive 09 number rather than the free or geographic equivalent. We regularly send examples of ICSS to the PSA that breach existing Special Conditions.

The following case studies represent a small proportion of the customer complaints we receive about ICSS and support Ofcom and the PSA's findings that there is extensive actual and potential harm arising from ICSS, in particular, financial and emotional detriment to consumers. They underline why action is needed to tackle the behaviour of many ICSS providers.¹

Mr W, a BT customer since the 1980s, was charged £182.69 for a 48 minute call via ICSS service to HMRC. He explained that the direct debit was taken from his account and had not realised that any call could cost that much.

Mr S made a call to Apple via ICSS lasting 1 hour and 8 minutes and costing £257.19. His direct debit defaulted and he has complained twice to BT that he was not aware of the cost of the call.

Mr L, a BT customer since the 1980s, was charged £176.50 for a call to Amazon via ICSS that lasted 47 minutes. He did not believe the call could actually cost that much.

Mrs G, a customer of BT since the 1980s, made 11 calls with a total cost £275.44 to the Universal Credit contact number via ICSS. She said she was "very shocked , my husband will go crazy , I did not realise the cost." She had searched for the number online.

Ms R received a charge of £133.32 for a single 35 minutes and 32 seconds call to HMRC via ICSS. Ms R told us that a relative may have made the call and she wouldn't be able to afford it.

We note that the introduction of Special Conditions regimes for some other service types have been effective and have led to a dramatic drop in complaint levels, for example, in online adult and online competition services. However, we are concerned that simply strengthening the Special Conditions, although a welcome step, will be insufficient to prevent or significantly reduce consumer harm. You

¹ These are real customers whose names have been anonymised. BT helps customers spread the cost of the calls if they need extra time to meet the bill

acknowledge at paragraphs 20-21 of your consultation that the number of complaints received by the PSA is likely very small compared to the level of harm that is caused by the services, and that consumers are unlikely to complain. We therefore believe that additional action is required to combat the harm ICSS can cause; our recommendations are set out in the sections below.

Finally, we believe that it is worth posing the question of whether regulation by the PSA can successfully tackle the harm ICSS can cause. We argue below that a stronger enforcement regime is required but should that fail to materialise or have the desired effect, Ofcom must re-examine the appropriate regulatory framework for ICSS. We note that your consultation acknowledges that ICSS may not have any value to the customer – and we agree that the value to the customer of many ICSS is hard to discern, if it exists at all. The fact that almost half of recent calls to ICSS lasted less than fifteen seconds strongly indicates that a very significant proportion of customers derive no value from the service at all, even before the cost itself is taken into account.

When balancing this questionable legitimacy as a service against the clear evidence of harm in this sector, we believe that unless there is a very swift reduction in harm then Ofcom should investigate the industry and consider whether ICSS should be subject to strict price caps or outlawed altogether on more costly number ranges like 09. Key questions to answer would include: obtaining an in depth understanding of the value ICSS customers feel the services provide; where ‘value add’ services, for example call recording, are being promoted, how many customers actually use them; and what is the cost to ICSS providers of ‘value add services’ compared to the cost passed on to the customer?

[The proposed amendments to the Special Conditions are welcome but do not provide the clarity needed to ensure ICSS providers remain compliant](#)

We support the proposed changes to the ICSS Special Conditions to expand their scope, close loopholes and better target them at specific areas of harm. However, given the visual nature of the way ICSS search results and display ads can mislead customers – via the use of certain colours, font sizes and positioning of text – the Special Conditions alone can only ever provide a limited degree of clarity about what compliant marketing will look like.

We believe that supplementing the Special Conditions with additional guidance would provide industry with greater clarity around what compliant practices would look like and would allow those ICSS providers who do intend to act in good faith towards their customers to have greater certainty around what marketing approaches are likely to be acceptable. This could be achieved by issuing comprehensive, non-binding guidance containing notes on the interpretation of each Special Condition, examples of compliant approaches to search results and ads, and even templates showing acceptable use of fonts, colour, text positioning etc.

Given the actual and potential harm identified in this sector, we believe there you should also consider introducing more far reaching Special Conditions, for example, an obligation to inform customers of the costs to them at specific regular intervals during the call.

The Special Conditions need to be underpinned by a robust enforcement and compliance regime to ensure that consumers are protected and the industry has certainty around acceptable practices

We welcome the increased enforcement action the PSA has taken against ICSS over the past two years but, as noted above, the number of complaints to the PSA is likely a small proportion of the total number of customers harmed and misled by ICSS and many customers are unaware who to complain to.

Enforcing the Special Conditions is key to protecting consumers and preventing behaviours that are likely to cause harm. The PSA currently only appears to take enforcement action against the most blatant examples of Special Condition breaches. Given that the number of complaints directly to PSA likely underestimates the size of the issue, it is very likely that there are numerous instances of consumer harm caused by less obvious breaches.

The consultation does not specify whether you intend to increase enforcement and it is not clear whether the monitoring work you refer to results in enforcement action against ICSS providers. The new Special Conditions will only be effective if the complaints you receive are consistently and robustly enforced and consumers are aware of the PSA's role as regulator. You should also consider how industry could help build an effective compliance and enforcement regime.

Industry compliance

To encourage ongoing industry compliance and disincentivise non-compliant behaviour among ICSS providers, you should consider extending the due diligence obligations within the PRS industry. Currently 3.3.1 of the PSA Code requires the parties in the PRS value-chain to be accountable for elements of compliance by asking them to carry out due diligence prior to contracting with another party to provide a PRS. However, this obligation should be extended to include a requirement for ongoing risk assessment of ICSS, including an understanding of a service's history of compliance with the PSA Code, and the implementation of control mechanisms to monitor and act on that risk assessment.

More effective enforcement mechanisms

At present, the PSA seems to take enforcement action only against the most egregious breaches. A simpler way of determining when a breach occurs could be achieved by reversing the burden of proof; such an approach would create a binary decision as to whether a service is compliant, allowing the PSA to take enforcement action more easily.

For example, in your taxonomy of risk you outline why ICSS can cause harm via uninformed consent and outline how you tackle this issue through requirements to be clear about price, what search results return and how key information which describes the true nature of the service is presented. This necessarily means that determining whether a breach has occurred requires investigation and a determination by your Tribunal. To overcome this, you should require ICSS to demonstrate that they

have obtained consent from customers to accept the full charge before connecting the call – any ICSS unable to demonstrate that they have that consent should be automatically in breach and fined accordingly, with greater sanctions employed for persistent misuse.

Consumer awareness & industry cooperation

Your final statement should make clear how you plan to increase consumer awareness of your regulatory role and as the body to whom complaints should be addressed. Given the central role of communications providers in dealing with customer complaints, you should consider how a cross-industry approach to the provision of information about the PSA could help increase awareness.

You should also consider how industry could assist with providing evidence of harm to evidence enforcement action. Communications providers like BT have a wealth of insight into the activities of ICSS and via a standing information request, for example, we could provide a great deal of insight on how services impact consumers.

The PSA should work closely with Ofcom to ensure that regulatory strategies are aligned and consumers protected

- The PSA have proposed to extend the scope of the Special Conditions to apply to all number ranges, with specific reference to the 084 and 087 number ranges. We strongly support the PSA’s decision to extend the scope of the Special Conditions.
- Ofcom are considering the future and possible removal of the 084 and 087 number ranges in its recent Numbering consultation. Any removal of the number ranges is likely to take some time and will not resolve issues as ICSS are likely to migrate to alternative number ranges, namely the 09 range with the potential for even higher charges.
- The PSA should align its approach to Ofcom’s numbering and voice proposals and ensure that any proposed changes to their scope aligns with Ofcom’s future plans.

Responses to questions

	Consultation Questions	BT initial response
Q1	Do you agree with revised wording of ICSS1 as being outcome based and inclusion of the reference to the appearance of organic search engine results including map-based results? If not, why not? Please provide evidence to support your reasons.	Yes.
Q2	Do you agree with the proposed amended wording of ICSS2? If not, why not? Please provide evidence which supports your reasoning.	Yes.
Q3	Do you agree with the proposal to require the specific information listed in ICSS3 to be above the call to action? If not, why not? Please provide any evidence you might have which supports your answer.	Yes.

Q4	Do you agree with the proposal to combine ICSS4 and ICSS5 as both conditions are relevant to the same issue and potential for harm?	Yes.
Q5	Do you agree that the amended condition should prohibit the use of official logos and marks, as well as imitative logos, marks and other promotional aspects?	Yes.
Q6	Do you agree that the pricing information requirement in this condition should cover those ICSS which have drop charge tariffs? Do you also agree with the clarification as to the cost and opportunity to refuse being given before a charge is incurred? If not, why not?	ICSS7: yes, we agree.
Q7	Do you agree with the proposal to retain ICSS8, ICSS9 and ICSS10 and the amendments made to ensure consistency with the GDPR and DPA 2018? If no, please provide reasons to support your answer.	Yes. However, it would be helpful to have more clarity around how these conditions will be enforced. Does the PSA plan to work with the ICO to determine whether ICSS are GDPR compliant? What role will the ICO play in enforcing against these conditions?
Q8	Do you agree that alerts at the start of an ICSS call should clearly state the cost of using the service regardless of the call tariff type? If not, why not?	Yes.
Q9	Do you agree with the assessment of current condition ICSS12 and the proposal to remove it? If not, please provide reasons to support your answer.	Yes.
Q10	Do you agree with the modification of this condition and the requirement to register all web domains on the PSA service checker? If not, why not.	ICSS 12: yes, we agree.
Q11	Do you agree that the proposed additional condition (the new ICSS5), will help to prevent consumers from calling ICSS when they do not intend to? If no, please provide evidence to support your answer.	Yes.
Q12	Do you agree with the proposal to apply the proposed Special Conditions to all ICSS regardless of the number range they operate on? If not, why not.	Yes.