

CSL's response to the PSA's consultation on revising the ICSS special conditions

1. Introduction

- 1.1. This document sets out the response of Caller Support Limited ('CSL') to the PSA's consultation on changes to regulatory framework for information, connection and signposting services that was published on 29 April 2019¹ (the 'consultation').

2. Executive Summary

- 2.1. Information, call connection and signposting services ('ICSS') are services which provide a practical alternative to voice DQ services. The growth of mobile data services has enabled consumers to use innovative services as an alternative to voice DQ services, ensuring that competitive and easy to access services are available.
- 2.2. The ICSS market is clearly a niche market selling to a small user base. The regulation of the services by the PSA is a very small proportion of PSA's overall work. The complaint rates about ICSSs subject to PSA adjudications appear to be in the region of 0.6% of all complaints about PRS.² CSL believes there are good reasons for concluding that the true level of complaints about compliant ICSS providers are very low indeed.³
- 2.3. The PSA's proposals:
 - a) Represent the fifth time that the regulator has sought to 'design out' a solution when effective use of existing powers should have been used to regulate the small number of business that are failing to comply with the existing special conditions.
 - b) Have, to a large extent, been put forward in response to the reported wrongdoing and unacceptable behaviour on the part of a few ICSS providers who are not representative of the ICSS sector as a whole. Crucially, every one of these behaviours is in breach of existing provisions in the PSA Code of Practice ('the Code') and the Special Conditions ('SCs'). Accordingly, proper enforcement of the existing SCs by the PSA would be capable of addressing this bad behaviour by a small number of errant ICSS providers — meaning that amendments to the SCs are unnecessary.

¹ Available at: <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2019/ICSS-consultation/ICSS-Consultation--April-2019.ashx?la=en&hash=76752675C47CF3DAD72E5210A73ED69E14D98D0B>.

² See paragraph 6.33 below.

³ See paragraph 6.32 and 6.33 below.

- c) Are based largely on a consumer survey which appears to be flawed in a number of critical ways. We provide further details of these flaws in paragraphs 6.11 to 6.23 and Annex 1. The survey relies on an extremely small sample and therefore has limited evidential value. Some conclusions were drawn by the research without supporting evidence. In addition, the research appears to have been based on participants being shown only non-compliant marketing offers/landing pages.
 - d) Have failed to take account of the concurrent consultation Ofcom is presently undertaking in relation to the future of telephone numbers which includes an examination of how the NGCS regime is operating. The access and service charge regime imposed by Ofcom in 2015 is fundamental to any failures in consumer understanding of the charging for PRS calls and any associated 'bill shock' or other potential consumer harm.
 - e) Have not allowed sufficient time for the implementation of Ofcom's modification of the PRS Condition in January 2019 to include all ICSS within the regulatory remit of the PSA. It would be prudent for the PSA to allow time for this regulatory extension to properly bed-in before seeking to impose further regulatory extensions.
 - f) Has underestimated the impact the proposals will have on those ICSS providers who are fully compliant with the regulations.
 - g) Highlight PSA's reluctance/failure to take robust enforcement action. [REDACTED]
[REDACTED]
[REDACTED]
 - h) Stem from an incomplete investigation/analysis of the ICSS sector. Despite multiple approaches by CSL (who is a significant provider of ICSS), the PSA has chosen not to inform its investigation by consulting widely with service providers. Consequently, the PSA's analysis on the SCs is lacking this crucial input from the part of industry that is 'at the coalface' operating services.
- 2.4. CSL has a number of detailed concerns with the way in which the PSA has gone about the consultation, including its timing and whether action to reform the ICSS SCs is even needed at all.
- 2.5. In this submission we provide detailed comments on the proposals, together with analysis of the existing regulatory regime which, if implemented to its full strength, is more than sufficient to manage the non-compliant market participants without causing the harm to market that would be most likely if the proposals are implemented.
- 2.6. This submission adopts the following structure:
- a) Section 3 summarises the PSA's proposal
 - b) Section 4 sets out the legal framework
 - c) Section 5 details the CSL business model
 - d) Section 6 sets out CSL's concerns with the PSA's analysis of the ICSS market and the way in which the PSA has approached the consultation

- e) Section 0 sets out CSL's detailed analysis of the PSA's proposals
- f) Section 8 set outs the conclusion.

3. PSA's Proposal

- 3.1. On 29 April 2019, the PSA published the consultation detailing its proposed amendments to the SCs that apply to ICSS providers. These SCs essentially form part of and supplement the regulatory requirements set out in the Code with which ICSS providers must comply.
- 3.2. The justification for the proposals relies heavily on a relatively small market research programme undertaken by Nottingham University and vague, unsubstantiated references to complaints received by the PSA as well as complaints that the PSA believes are being received by end organisations and network providers. We examine the flaws in and insufficiencies of these justifications in detail below.

4. Legal Framework

- 4.1. Under sections 120-121 of the Communications Act 2003 ('CA03'), Ofcom has powers to set regulatory conditions 'for the purpose of regulating the provision, content, promotion and marketing of premium rate services'.⁴ The maintenance of a separate regulatory regime for PRS has been justified by the UK Government on the basis that PRS regulation is a form of content regulation.
- 4.2. Pursuant to section 120(3), Ofcom has set a condition (known in the telecoms industry as 'the PRS Condition') requiring certain categories of persons (i.e. persons at certain levels in the PRS provision chain) to comply with 'directions given in accordance with an approved code by the enforcement authority and for the purposes of enforcing its provisions'. The approved code is the current edition of the PSA Code of Practice. The PSA is effectively the regulator for the PRS industry drawing its power and authority from the CA03 via the PRS Condition that effectively requires the whole of the PRS industry to comply with its directions.
- 4.3. Using the powers conferred on it via the PRS Condition, in July 2015, the PSA⁵ introduced Special Conditions replacing the previous prior permission regime.
- 4.4. Section 121 CA03 requires that the provisions of the Code:
 - a) Are objectively justifiable;
 - b) Do not discriminate against particular persons or a group of persons;
 - c) Are proportionate; and
 - d) Are transparent.
- 4.5. A Memorandum of Understanding ("MoU") between the Ofcom and the PSA underpins the working relationship between these two organisations. The MOU records that '*PSA agrees that, before it makes any relevant decision, PSA will have due regard, in light of the relevant provisions of the 2003 Act described above, to any views expressed by Ofcom*

⁴ CA03 section 120 (10).

⁵ Known in July 2015 as PhonepayPlus.

as part of any consultation between Ofcom and PSA in respect of the matters covered by this MoU⁶.

- 4.6. In carrying out its regulatory responsibilities, the PSA volunteers to adhere to the provisions of the Legislative and Regulatory Reform Act 2006, and endeavours to comply with the HM Government Code of Practice on Consultations.⁷ PSA therefore has regard, in all of its decision making, to the five principles of good regulation: transparency; accountability; proportionality; consistency; targeting.

5. CSL's business model

- 5.1. CSL provides a valued service to the public by providing efficient and convenient information and call connection services. Its business is focused on providing a viable alternative to conventional directory enquiry services, competing ICSS providers, and customers seeking information themselves from the web or traditional printed directories.
- 5.2. In simple terms, CSL's service provides to consumers quick and convenient information that may be otherwise difficult to find. It is a known fact that many large organisations deliberately deprioritise on the web (or, at least, do not focus on promoting) their customer service phone numbers in a bid to reduce the level of customer interactions that they receive by phone. This is principally done as a means of limiting the costs associated with staffing and operating call centres. As part of this, many organisations carefully manage the contact details they publicise in a way that steers consumers towards certain communication types — such as online ticket support and live chat. Receiving communications from customers in this way is typically more cost-effective and convenient for organisations, but this is frequently not the case for customers, who may wish to speak to the organisation by phone. ICSS helps consumers to do just that.
- 5.3. It follows, therefore, that ICSSs are typically unpopular with end organisations, who see the existence of the sector as something that is costing them money by driving a greater volume of customer call to their call centres than they would like. This may go a long way in explaining the reason behind the organisation complaints that have been made about ICSS that the PSA refer to in paragraphs 26 and 28 of the consultation.
- 5.4. Of course, end organisations are free to compete with ICSS providers' search engine listings, or promote their customer service numbers using Google or Bing search tools so they can be more easily found by the public, but organisations typically choose not to. With this in mind, it seems particularly unfair and unreasonable that end organisations should object to the role that the ICSS sector plays, while failing to provide easy-to-find contact information to the public themselves.
- 5.5. The information listings CSL makes available to the public are carefully constructed to allow users to make an informed decision as to whether to use the call connection service, or look for another number (or relevant contact details) elsewhere on the web. Customers who are happy or willing to pay the charge associated with CSL's call connection service can be connected quickly and conveniently to the organisation they

⁶ https://psauthority.org.uk/-/media/Files/PSA/About_us/Publication-scheme/MOUs/MOU--Ofcom-and-Phonepaid-Services-Authority-2018.ashx?la=en&hash=D39EB62D6E36BE8682B4CE87F83803CCD1A94132.

⁷ See paragraph 6.35 below.

were seeking (and receive a free SMS message featuring that organisation’s direct number for future use⁸), while customers who are unwilling to pay for the service can pursue other options.

- 5.6. The Code and SCs are designed to protect customers by specifically ensuring they are given sufficient information about the identity, nature and cost of the ICSS to make that informed decision. CSL believe strongly that that regulatory regime is more than sufficiently robust to provide that protection — provided that it is properly enforced against errant providers who do not take their compliance obligations seriously.

6. CSL’s overarching concerns with the PSA’s analysis of the ICSS market and the way in which the PSA has approached the consultation

- 6.1. CSL has a number of major, overarching concerns with the way in which the PSA has gone about the consultation, including its timing and whether action to reform the ICSS SCs is even needed at all. These concerns are detailed below.

The ICSS SCs are working well, but much better enforcement action is needed by the PSA

- 6.2. CSL believes that the current SCs are working effectively in respect of ICSSs that are trading compliantly and strike a sensible balance between:

- a) protecting consumers and guarding against risks of consumer harm occurring; and
- b) promoting competition and providing an appropriate environment in which ICSSs can thrive to deliver services that customers want.

- 6.3. Rather than making substantive changes to the PSA Code or SCs, greater consumer protection could be achieved by the PSA adopting a more proactive and tougher approach to enforcement. [REDACTED]

- 6.4. [REDACTED]

- 6.5. Failing to enforce robustly the existing Code and SCs is also entirely at odds with both of the PSA’s two mission statements:

- a) ‘To protect consumers from harm in the market, including where necessary through robust enforcement of our Code of Practice’; and

⁸ For details of this CSL feature, see paragraph 7.48 below.

- b) 'to further consumers' interests through encouraging competition, innovation and growth in the market.'⁹
- 6.6. Not only have consumers been failed by the PSA's poor enforcement performance, but compliant ICSS providers have also suffered from the unfair advantage gained by their non-compliant competitors, as well the tarnishing effect on the ICSS sector more generally.
- 6.7. It is clear to us, therefore, that higher standards of consumer protection in the ICSS sector can best be achieved by the PSA taking a more proactive and robust stance: instances of the non-compliance should be investigated promptly and diligently, with appropriate action using the PSA's powers taken against non-compliant providers. All of that must occur in a timely fashion. [REDACTED]
[REDACTED]
- 6.8. CSL believe it is important that the PSA considers the role and impact that network and Level 1 operators play in enabling unscrupulous Level 2 operators to operate in a non-compliant way. The level of diligence and responsibility typically demonstrated by network and Level 1 operators can (and should) be questioned in light of the numerous instances of non-compliant ICSS providers who abandon the market and leave PSA fines unpaid.
- 6.9. We believe that the PSA needs to take the lead role in driving up standards of compliance throughout the sector by acting more promptly and taking speedier enforcement action against errant providers than it does currently. Without better enforcement action by the PSA, making tweaks to the SCs will be ineffective and futile. It may also give false comfort to certain stakeholders (such as end organisations) who may be content that the PSA has taken some action, without any proper analysis being conducted as to whether that activity is the right sort, or whether it will deliver the right outcomes to improve consumer welfare. We feel strongly that it is vital that the PSA is self-reflective and examines thoroughly the effectiveness of the role it currently plays, and improvements it can make, in respect of enforcement of the Code and the SCs.
- 6.10. Focusing solely on making amendments to the SCs in the absence a significantly different approach being taken by the PSA in respect of enforcement is not consistent with good regulation. Nor is it consistent with the PSA's statutory duties (as a co-regulatory authority for premium rate services alongside Ofcom), and the PSA's core values and behaviours as set out in the PSA Annual Plan¹⁰ — which include:
- a) Adopting the right touch by being fair, reasonable and proportionate, and ensuring that its actions support good regulatory outcomes;
 - b) Being open and collaborative; and

⁹ As stated in the PSA's annual report for 2017/18, page 5, available at: <https://psauthority.org.uk/about-us/-/media/OCF4DBA8E2684916BE7419EA92D74D0B.ashx>.

¹⁰ See page 1 of 'Consumer behaviour and ICSS: Exploring how consumers respond to Information, Connection and Signposting Services', available at: <http://eprints.nottingham.ac.uk/51375/1/Consumer%20behaviour%20and%20ICSS%20Exploring%20how%20consumers%20respond%20to%20ICSS.pdf>.

- c) Offering value for money by getting it right first time and swiftly delivering effective outcomes.

The PSA relies heavily on the University of Nottingham research for the basis of its proposal to amend the SCs, but aspects of that research are flawed, and the PSA has cherry-picked the conclusions it wishes to act on while ignoring others

- 6.11. The PSA cites frequently in the consultation the research it commissioned from the University of Nottingham which examined aspects of the behaviour of users of ICSS (the 'research'). This research was carried out during the summer of 2017 and published in January 2018.¹¹
- 6.12. CSL has grave concerns over the robustness of the research — including the methodology adopted, the dearth of explanation and data provided about the methodology and safeguards put in place to ensure the research was as reliable as possible, as well as the nature and extent of the conclusions drawn from the findings. In light of these concerns, CSL received legal advice and its lawyers commissioned an independent consultant in market research survey methodologies and practice, Mr David Rogers¹², to analyse the way in which the University of Nottingham went about the research, how they reported their findings and the conclusions that were drawn. A full copy of this report (the 'Rogers' report') is included at Annex 1.
- 6.13. The Rogers' report contains the following headline concerns about the research:
 - a) The research has little evidential value due to the low sample size, the lack of any clarity on how the participants were recruited or interviewed, and its unrepresentative participant profile.
 - b) Given the small number of interviews undertaken, the results could only be viewed as qualitative evidence that at best provides directional guidance on how and why consumers behave when searching for telephone numbers on the internet. The survey results could not be used as statistically reliable evidence.
 - c) However, even the directional guidance is potentially flawed as the research report does not provide the level of detail required to provide assurance that this qualitative work has been undertaken rigorously. The report provides only cursory information about how the research was undertaken — there is nothing about how participants were recruited, and little on how the survey was administered. There is no mention of any testing of the survey instruments before the surveys were undertaken to ensure that the approach and questions asked were fit for purpose. The report does not provide any of the data (e.g. tabulations, hand counts, verbatim analysis) to provide any evidence to support the findings.

¹¹ See page 1 of 'Consumer behaviour and ICSS: Exploring how consumers respond to Information, Connection and Signposting Services', available at: <https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Resources/Consumer-behaviour-and-ICSS-Exploring-how-consumers-respond-to-ICSS.ashx?la=en&hash=ACE521A3348ADED0F7346DA4459CD6FEBE38D316>.

¹² Among other things, David Rogers was formerly managing director of GFK and most recently is the joint author of a number of research papers commissioned by the Competition and Markets Authority.

- d) The limited participant profile information provided indicates that those interviewed cannot be described as representative of consumers who use the internet to look for an organisation's telephone number.
 - e) There reasons for concern over the self-completion approach used to capture responses to the "Why" type questions (e.g. why do consumers decide whether a webpage is a third party ICSS or a webpage operated by a business?) and the way that these responses have been coded and analysed. It is highly likely that the self-completion approach yielded less detailed and precise information than an interviewer-administered approach would have done.
 - f) The research report lacks balance as it tends to use examples selectively, does not consider all the available evidence when making key points, and in some cases draws conclusions that have no supporting evidence.
 - g) The research report loses sight of the fact that a sizeable majority of participants correctly identified the 'direct' link of an organisation on a search page (as opposed to wrongly identifying an ICSS link as the direct link), and a sizeable majority correctly identified whether a webpage was from an ICSS or from the organisation they were trying to contact directly. These are important findings that need to be given much greater prominence in the report to provide balance to the conclusions. a much more rigorous investigation is required to provide an understanding of how and why consumers make the choices they do.
- 6.14. The concerns set out in the Rogers' report call are of such a breadth and depth that they cannot be ignored. Quite simply, the research as it stands cannot safely be used in any way as the rationale behind changes to the ICSS regulatory regime.
- 6.15. As noted in the Rogers' report, of particular concern is the sample size — this being a mere 64 people, with only 20 used for the eye tracking study (discussed further in paragraph 7.63 below). The Rogers' report also calls out the distorted profile of participants used in the research, which is not a demographically representative cross-section of society in the UK. In particular, Rogers says:
- [B]oth surveys have a heavy bias towards those in/having been through higher education with an extra-ordinary bias towards postgraduates (which leads me to think that many participants may have been recruited from those studying at the university). Both surveys are biased towards female participants, the eye-tracking survey particularly so, and the average age profile for both surveys is considerably younger than the UK average (of adults aged 16+).*
- 6.16. Such a small and unrepresentative sample size cannot possibly allow meaningful and sound conclusions to be drawn, nor is it consistent with good practice for focus group activity. The imposition or extension of any regulation should also be evidence-based to ensure that the regulatory solution is targeted at a demonstrable need and tailored to fit the precise circumstances. It follows, therefore, that any regulation which takes part of its basis from a very small and flawed piece of consumer research activity, is built on very dubious foundations.

- 6.17. As noted in the Roger's report, the research report is not precisely clear on which adverts promotions and landing pages were shown to the survey participants, but it is implicit that participants were shown those captured in small screenshots included in the research report.¹³ Critically, these adverts, promotions and landing pages were not fully compliant with the Code and SCs. Had the researchers asked the same questions of the participants in relation to compliant adverts, promotions and landing pages, the answers and feedback received is almost certain to have been different. It follows, therefore, that the results obtained from research are necessarily distorted and form an unsound basis from which to draw conclusions.
- 6.18. To better understand some of the shortcomings in the research, and in the interests of transparency, CSL believes that the brief the PSA issued to the University to Nottingham when commissioning the research should be made publicly available.
- 6.19. Additionally, the PSA has erred in interpreting the PSA results and has relied inappropriately on it as a basis for amending the special conditions. In particular, the message from the eye tracking study appears to have been inflated through the PSA's proposals: it cannot be a sensible finding that the average website user only considers properly content in the top left-hand corner of a webpage, and it is therefore not appropriate for the PSA to adopt the view that important page content must be moved to the top left-hand corner. The flaws in the eye tracking study are considered further in paragraph 7.63 below.
- 6.20. It is also clear that the PSA has cherry-picked the conclusions from the research that it wishes to act on while ignoring others. It is interesting to note that the headline finding from the research was:

The regulatory regime adopted by the PSA is in general appropriate. The ICSS Special Conditions provide a suitable regulatory regime for ICSS. In particular, the prohibition of imitative marketing by the ICSS Special Conditions is a useful tool in ensuring that the consumer is not misled into using call connection services when they wish to utilise direct connection.¹⁴

- 6.21. Other findings from the research emphasise the need for greater user information to be provided to users to help them make informed choices when searching for information on the web and deciding whether to call a particular number featured on a webpage. For example, the research states:
- a) 'Top tips for consumers should be produced and disseminated'¹⁵;
 - b) That 'thought should be given to how consumers are educated that aesthetic factors, such as the graphics or the layout of the website, are not necessarily a determinative factor in deciding whether a phone number is affiliated with an organisation'¹⁶; and

¹³ See, for example, figures 1, 3, 4, 6 and 9 in the research report.

¹⁴ See recommendation 1, page 20 of the research.

¹⁵ See recommendation 6, page 20 of the research.

¹⁶ See page 14 of the research.

- c) That ‘consumers do not appear to be aware of the different types of premium rate phone numbers, or do not appear to be aware of how [the] price of a phone call may vary depending on the number’.¹⁷
- 6.22. The research repeatedly underlines the importance of user education as a means of managing the risk of consumer harm: ‘special conditions require text that appears on the search results page makes clear that the result is for a call connection service, rather than a direct contact number. Consumer education about the meaning of such text should be considered’.¹⁸ Crucially, however, in the consultation, the PSA make no mention of, and appear to have given no thought to, the role that user education could and should play in helping potential customers of ICSS make more informed choices. This strikes us as a significant oversight in the PSA’s analysis and something that must be addressed.
- 6.23. In light of the inherent flaws in the research and the inconsistencies shown by the PSA where it acted on some recommendations while ignoring others, CSL strongly believes that the consumer research exercise should be undertaken again but with these issues addressed. As it stands, proceeding with amendments to regulation based partly on the findings of this research cannot be considered to be safe or consistent with good practice. Any resultant regulation change therefore remains vulnerable to legal challenge.

The starting point is wrong and premature: the PSA’s approach is incompatible with Ofcom’s approach to regulation and the PSA have launched straight into a consultation on substantive changes to the SCs without first understanding the scale and nature of the problem or given sufficient thought to designing a regulatory solution in response

- 6.24. A mix of elements is required in any effective regulatory solution and the PSA appears to have adopted a blinkered approach that considers modification of the SCs to be the only way forward. Such a stance is clearly flawed and is unsustainable. It also demonstrates the PSA’s clear bias towards repeated interventions with regulatory amendments, when, what is really needed, is effective and timely enforcement. This approach to regulation taken by the PSA is squarely at odds with that taken by its co-regulator, Ofcom.
- 6.25. In any event, the PSA has not acted in a way that is consistent with the Ofcom consultation principles. As a co-regulatory agency responsible for PRS, CSL believes that the PSA should adhere to the Ofcom consultation principles in all of the consultative activity that the PSA carries out. Paragraph one of Ofcom’s consultation principles¹⁹ provide that:

Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

¹⁷ See page 18 of the research.

¹⁸ See page 10 of the research.

¹⁹ Ofcom’s consultation principles, dated July 2010, available at: <https://www.ofcom.org.uk/consultations-and-statements/how-will-ofcom-consult>.

- 6.26. We are not aware that the PSA has done either of these things. Holding informal discussions with a cross section of stakeholders would have allowed the PSA to better inform itself as to the scope and nature of any perceived problem with current ICSS regulations and the PSA could have usefully tested its thinking with industry in advance of publishing the consultation. Had the PSA done these things, CSL believes it is likely that the scope and nature of any proposed regulation changes would have been very different to what the PSA has proposed in the consultation. CSL is not a member of the Industry Liaison Panel and has no knowledge as to any informal talks PSA may have had with the industry. Given that CSL is an established and compliant provider of ICSS in the UK, it would have been sensible for the PSA to engage with CSL in informal discussions in advance of producing its consultation proposals.
- 6.27. Moreover, Ofcom emphasises the need for thoroughgoing analysis and robust impact assessments concerning the effect that regulation changes will have. Not regulating, or not extending the scope or particulars of regulation, should always be recognised as an option. Specifically, Ofcom say in their 2015 consultation on better policy making²⁰:

The decisions which Ofcom makes can impose significant costs on our stakeholders and it is important for us to think very carefully before adding to the burden of regulation. One of our key regulatory principles is that we have a bias against intervention. This means that a high hurdle must be overcome before we regulate. If intervention is justified, we aim to choose the least intrusive means of achieving our objectives, recognising the potential for regulation to reduce competition. These guidelines explain how Impact Assessments will be used to help us apply these principles in a transparent and justifiable way.

"The option of not intervening...should always be seriously considered. Sometimes the fact that a market is working imperfectly is used to justify taking action. But no market ever works perfectly, while the effects of...regulation and its unintended consequences, may be worse than the effects of the imperfect market"

Better Regulation Task Force (September 2003)

- 6.28. The approach taken by the PSA in considering amendments to the SCs flies in the face of Ofcom's approach to regulation. The PSA has underestimated the impact that its proposals will have on those ICSS providers who are fully compliant with the current regulations. The new proposals are an unnecessarily intrusive means of regulation and will reduce effective competition and consumer choice. It is not fair, reasonable or proportionate to add to the burden of regulation when the more practical solution of utilising the existing regulations to their full extent would be more appropriate and justifiable. The PSA should follow the principles established by Ofcom for making

²⁰ See paragraph 1.1 of Ofcom's consultation on better policy making, dated 21 July 2005, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0029/45596/condoc.pdf.

decisions on the level of regulatory intervention that is properly required in a given set of circumstances.

- 6.29. Another major concern that CSL has on the approach taken by the PSA in the consultation is that the scope of the ‘problem’ is unknown: the PSA has not been sufficiently specific as to the complaint levels associated with ICSS that it has received, or the true levels of consumer dissatisfaction that are occurring. The PSA refers vaguely to continued receipt of complaints about ICSS providers from users and end organisations²¹ without diving deeper into the detail. Moreover, at paragraph 20 of the consultation, the PSA say:

*Although the PSA continues to receive complaints about ICSS, the numbers are relatively small in comparison to the amount of complaints that we **understand** are received by organisations to which ICSS connect, and complaints made by consumers to their phone networks.*

(emphasis added)

- 6.30. Nowhere in the consultation does the PSA specify the level of complaints it receives or that are made to end organisations. Without this sort of detail, it is impossible for the PSA (or any other person) to make an informed judgement as to the scale of the problem — far less to design a regulatory solution to address that problem.
- 6.31. CSL suspects that complaint levels seen in the perspective of the total number of calls made to ICSSs may be negligible, but that well known end organisations have complained repeatedly and vociferously to the PSA in respect of a small number of cases and thereby generated ‘noise’ to which the PSA feels compelled to respond.²² The effect that ICSS have on driving a greater volume of customer calls to end organisations than those organisations would like may go a considerable way in explaining why these complaints are being made to the PSA.²³ The imprecise language used, and the untroubled approach that the PSA appears to have adopted when it speaks about the complaint levels it ‘understands’ are received by third parties, adds weight to this.
- 6.32. Although the PSA has not published any complaints data on compliant ICSS services, CSL believes that the true scale of ICSS complaints is likely to be very small in light of the PRS complaints data published by the PSA in its operational report.²⁴ Paragraph 3.3.6 provides the following table showing complaints data for 09 numbers across the last four years — and is set out below.

²¹ See paragraph 4 of the consultation.

²² See paragraphs 26 and 28 of the consultation.

²³ See paragraphs 5.2 and 5.3 above.

²⁴ PSA Operational Report – 2018/19, quarter 2, available at: <https://psauthority.org.uk/about-us/-/media/187E19467BAF42AFA0B9CEDFB9C52740.ashx>

3.3.6 Complaints by payment mechanism per Financial Year to date

	2015		2016		2017		2018	
PSMS	11,619	66.2%	13,656	72.3%	2,803	38.6%	9	0.1%
Operator billing	4,946	28.2%	4,509	23.9%	4,080	56.1%	8,917	97.3%
09	755	4.3%	364	1.9%	332	4.6%	208	2.3%
Non-premium rate	181	1.0%	79	0.4%	23	0.3%		
Other	51	0.3%	267	1.4%	30	0.4%	28	0.3%
Sum:	17,552		18,875		7,268		9,162	

6.33. Given that ICSS forms only one of many PRS subsets that use 09 numbers, the complaints attributable to ICSS seem likely to be very low indeed. This is bolstered by the fact the PSA reported there were 98 complaints about the four non-compliant services that were subject to an adjudication.²⁵ 98 complaints expressed as a percentage of the overall complaints about PRS in 2017-18 (that the PSA reported in its annual report²⁶) gives a figure of around 0.6%. Such a rate for complaints cannot be considered high whatever the assessment criteria and we suggest that this rate compares favourably with that for other services.

6.34. CSL suggests that to better understand the scale of the complaints problem, detailed enquiries should be made with well known end organisations and the leading network operators as to the level of complaints they are receiving that are directly attributable to ICSS. Without a clearer understanding of the scale of any problem, any regulatory response cannot be said to be built on a sound footing and may be vulnerable to legal challenge.

The consultation overstates the problem by focusing on blatantly non-compliant ICSS providers, which is not representative of the ICSS sector as a whole.

6.35. All of the examples of ICSS providers that the PSA cite in Annex C to the consultation are blatantly non-compliant with the Code and could reasonably be described as unscrupulous. By focusing solely on this type of ICSS provider, the PSA risks presenting a distorted impression to stakeholders. CSL believes it is important for the PSA to present an accurate picture of the sector and the true diversity of ICSS providers that operate within it. There are many providers which operate responsibly and in full compliance with the PSA Code. It is not fair and reasonable for the PSA to describe only non-compliant activity and present it as though that represents the vast majority of all activity occurring in the sector. This is also not compatible with the Government’s regulatory principles (with which the PSA has volunteered to comply²⁷) which requires, among other things, for

²⁵ See paragraph 32, first bullet, of the consultation.

²⁶ See page 8 of the PSA’s annual report for 2017/18, available at: <https://psauthority.org.uk/about-us/-/media/OCF4DBA8E2684916BE7419EA92D74D0B.ashx>

²⁷ See paragraph 16 of the PSA’s 2018 Governance Statement, available at: <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/About-us/About-us/PSA-Governance-statement-26-Sep-2018.ashx?la=en&hash=66BE5F6AA05E0C586EEFCC03543B9230F918BAFD>.

consultations to be informative by providing sufficient information to 'ensure that those consulted understand the issues and can give informed responses'.²⁸

- 6.36. If the PSA adopted a more balanced approach as CSL suggests in paragraph 6.35 above, it would reveal a more accurate picture of the ICSS landscape and would allow for a more informed judgement to be made as to what regulatory solution (if any) is needed. Seen in this new light, it may well be that many of the substantive changes to the Code that the PSA suggests in the consultation are unnecessary or could be better achieved in other ways.

The PSA's assumption that many ICSS consumers are dissatisfied but do not complain is without sound basis and is unsafe

- 6.37. At paragraph 21 of the consultation, the PSA say:

The consumer research conducted by Jigsaw suggested that many consumers are unlikely to complain for the following reasons:

- *Consumers typically don't know who to complain to and may not realise they have used an ICSS;*
- *Consumers believe that it will be too much hassle to complain; and*
- *Consumers may feel foolish for calling the ICSS.*

- 6.38. Elsewhere in the consultation, the PSA repeatedly cite the existence of complaints as evidence that amendments are needed to the SCs. Here, however, the PSA are apparently citing an absence of complaints as a reason for why the regulations require amendment. These two stances are paradoxical and make for a foundation for regulation that is unsustainable.

- 6.39. It is not clear why the PSA has chosen to focus on, in relation to ICSS, the amorphous and unknown factor of consumers who are dissatisfied with their service but did not complain, when that factor may apply equally to other PRS which generate higher complaint volumes than ICSSs.

- 6.40. In any event, CSL believes that several of these arguments are fallacious. The Jigsaw research that the PSA relies on is historic and does not reflect changes in technology use or social mores that have occurred since it was carried out. In the modern world, consumers are encouraged and are conditioned to complain if they are unhappy with a product or service. There is nothing to suggest that the same does not hold true in respect of ICSS. In the last few years, and since the 2013 Jigsaw research was carried out, there has been an ongoing revolution in the way in which, and the frequency with which, consumers complain and stand up for their rights — particularly through the use of social media and embracing the full spectrum of communications options available. If the PSA intend to rely on the argument that many consumers do not complain, it is only fair and reasonable that the PSA takes steps to update itself about the validity of these arguments. Failing to do so would be unsafe.

²⁸ See point C of the Government's 2018 regulatory principles, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1.pdf.

6.41. At paragraph 30 of the consultation, the PSA states:

The amount of complaints and referrals the PSA receives from these organisations also implies that many complaints about ICSS are unreported to us by consumers.

6.42. As we set out in paragraphs 6.30 to 6.34, it is not safe for the PSA to proceed on the basis of an assumption or rely on an implication from other data. Such behaviour is not compatible with good regulatory practice or is capable of discharging the PSA's statutory duties — and may leave any resultant decision vulnerable to legal challenge.

6.43. In the interests of transparency and proportionality, CSL believes that the PSA must publish the relevant complaint figures for **compliant ICSS**, along with the corresponding figures for other PRS sub-sectors. That would allow all stakeholders to assess and comment meaningfully on the true extent of complaints concerning ICSS and therefore whether a case exists for making regulatory amendments. It would not be appropriate for the PSA to proceed without taking this step.

The NGCS regime is fundamentally flawed and is the main source of any customer confusion on call charges and the cause of 'bill shock'

6.44. The NGCS (Non-Geographic Calls Services) regime was imposed by Ofcom in 2015 and was designed to provide callers with more transparency as to the cost of the call and who receives the money. Sadly, that transparency has not materialised and very few phone users have a clear idea when they make a non-geographic as to the costs they will be charged by their phone provider for doing so. Among other things, the NGCS regime requires call charges for non-geographic numbers to be split into a service charge (paid to the service provider) and an access charge (paid to the caller's originating communications provider).

6.45. Despite the laudable intentions behind its introduction, a particular problem with the NGCS regime is poor price awareness among customers in respect of the relevant access charge. This can result in customers incurring significant and unexpected call charges for ICSS, the details of which cannot be included in ICSS providers' landing pages or other promotional material because the access charges are set by a caller's communications provider and can vary considerably across different providers, call packages and tariffs.

6.46. CSL believes the issue of high charges accruing from use of ICSS and the subsequent 'bill shock' that customers can experience is largely attributable to the NGCS regime and customers' poor awareness of the access charge that will apply. We have voiced our concerns on the NGCS regime to the PSA and Ofcom on numerous occasions over the past few years.

6.47. CSL experiences very low rates of customer complaints.²⁹ Of the very few charge-related complaints that CSL does receive, almost all were due solely to the access charges imposed by the caller's originating communications provider which accrued as the call elapsed. While CSL's service charge for calls to its drop charge tariff are charged at £6 irrespective of the call's duration, many network providers are charging consumers an access charge of up to 55p per minute. On lengthy calls to customer service departments

²⁹ For the past 12 months, the percentage of complaints CSL receives versus the number of calls made is



of end organisations, for example, the cumulative effect of these access charges is significant.

6.48. CSL’s complaints data for the past 12 months shows the following:

Total rate of complaints expressed against the number of calls made to CSL’s ICSS service	██████████	
Under 5 minutes (total call duration)	██████████ of complaints received	██████████ (expressed as a percentage of total calls made to CSL’s ICSS service)
Over 5 minutes (total call duration)	██████████ of complaints received	██████████ (expressed as a percentage of total calls made to CSL’s ICSS service)

6.49. As shown in the table above, ██████████ of complaints that CSL received related to calls that lasted longer than five minutes . Given that CSL uses a £6.00 drop charge tariff structure, it is necessarily the case that the vast majority of complaints concerned calls where there was substantial access charge (i.e. one that was over £2.75 — that is, five minutes at 55ppm). This provides clear evidence that the bulk of complaints about price relate to the access charge charged by network operators and not the service charge charged by ICSS providers who do not charge based on the time taken on a call.

6.50. As access charges are firmly outside of the control of ICSS providers, changes are needed to the NGCS regime itself to address any associated consumer harm that is currently occurring. Changes to the SCs cannot deliver the required effect.

6.51. We note that Ofcom is currently consulting on the future of telephone numbers which includes an examination as to how the NGCS regime is operating.³⁰ It is entirely conceivable that potential reforms to the NGCS regime may result from that consultation activity. We suggest it would be sensible if the PSA waited for the publication of Ofcom’s conclusions from this consultation before proceeding with any plans for measures which are intended to address consumer harm associated with bill shock. Amendments to the NGCS regime would be much more effective than any amendment the PSA could make to the SCs and would allow for the problem associated with access charges to be addressed at its source.

³⁰ The future of telephone numbers: first consultation, published by Ofcom on 11 April 2019, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0022/144373/future-of-telephone-numbers.pdf.

7. The proposed changes

SC1

- 7.1. SC1 is focused on prohibiting web-based promotions that use internet marketing or search engine optimisation ('SEO') techniques (such as metadescriptions or metatags) which mislead a consumer into believing (a) that the service is the actual service (or end organisation) the consumer is seeking; or (b) that the advice or information provided is not already available from a public or commercial organisation (unless this is genuinely the case). To this end, ICSS providers must include in search engine results for web-based promotions content that makes the nature of the service clear. The current SC1 includes the following language on this point:

[Providers must include words] such as "Premium rate connection service" or "Call connection service" within the result displayed for a Type 1 ICSS; and for example "Premium rate assistance service" or "Information assistance service" for a Type 2 ICSS. Such a phrase must be positioned to ensure it is clearly on-screen when the consumer views the search engine results.

- 7.2. The PSA states that SC1 'does not assist' in preventing consumer harm arising from organic search results (i.e. general search engine results as distinct from paid-for adverts) or in map-based results (appearing as part of services such as Google Maps).³¹ This is because the scope of SC1 does not extend to organic search results or map-based results. CSL acknowledges that closing this lacuna may be sensible, provided that it is supported by proper, prompt and robust enforcement by the PSA.
- 7.3. However, the PSA's proposal for revising SC1 goes further than merely extending the current requirements to organic and map-based search results. Instead, it appears to require the name of the ICSS provider to be included in any web-based promotion by virtue of the following language:

For example, the promotion or search result should say "premium rate connection service operated by XXX Ltd" or "Call connection service operated by XXX Ltd" for Type 1 ICSS, and "Information assistance service operated by XXX Ltd" for Type 2 ICSS.

- 7.4. Although the proposed SC1 makes it clear that alternative wording is permissible, the PSA does not justify or explain why the name of the ICSS provider must be included in the advert. We can only assume, therefore, that this change is not in direct response to a demonstrated need or defect in the current wording, but is an arbitrary decision by the PSA to extend the breadth of the provision for unspecified reasons.
- 7.5. We believe that the existing requirement of including the words 'call connection service' is perfectly clear and understandable and provides 'an accurate description of the true nature of the service'.³² The most important fact to be conveyed in the listing is that it is a listing for an ICSS provider; including the provider's name in the listing is irrelevant and otiose. If a customer clicks on a search engine advert and visits an ICSS landing page, the

³¹ See paragraph 57, 58 and 59 of the consultation.

³² See paragraph 57 of the consultation.

- PSA Code imposes a number of other strict requirements in respect of the content and structure of that page that are designed to leave the customer in no doubt that it is operated by a ICSS provider and not the end organisation sought. In light of this, requiring additional content to be included in the search engine results for landing pages is unnecessary and inappropriate.
- 7.6. Requiring this additional material is also unhelpful and will have an adverse impact on ICSS providers (and their potential customers) for the following reasons:
- a) Character limit restrictions: Google, Bing and other search engines impose strict character limitations in respect of their listings (paid, organic and map-based). As a result, ICSS providers are restricted in the content they can include in adverts. Including the word 'operated by' and the ICSS provider's name reduces the space for other important content of the listing;
 - b) Brand names: most ICSS providers will operate their services using a large number of brands and will not trade under the name of the operating company. It is unclear from the PSA's proposed wording whether including the trading name would be compliant for the purposes of this condition. Including the operating company name is likely to be confusing to customers if they click through and see very different branding on the landing page. Such a result has the potential to increase consumer confusion, not reduce it; and
 - c) Search engine policy issues: using more than one brand name in the content of search engine results may significantly impact the ICSS provider's compliance with search engine advertising policies. This may result in the listings being deprioritised or prohibited by the search engine. This would have massive ramifications for the ICSS provider's business — such that their business may cease to be viable.
- 7.7. In each case, we do not believe the PSA has considered these important points in its analysis when devising the proposed wording for SC1. In any event, CSL believes it is not for the PSA to attempt to impose the format of search engine listings in this way — particularly in the absence of a real and demonstrable problem with the format required under the current SCs.
- 7.8. CSL also believes that the PSA has overlooked in its proposals the fact that the priority for search results is that they are relevant to the search term entered by the user — and the **identity** of the organisation behind a search result is less important. The PSA should not simply assume that the end organisation's own listing will be 'more relevant' to the user or that it should be prioritised in search listings. The ICSS sector serves to provide consumers which choice as to how they search for, and get in touch with, end organisations they are seeking. As well as providing a useful service which competes (and compares favourably) with DQ providers, the existence of ICSSs has served to incentivise end organisations to better promote their contact details. In these ways, the existence of ICSS helps to ensure that consumers can easily contact popular end organisations that they may have otherwise struggled to get in touch with.
- 7.9. With the above points in mind, we suggest that if any change at all is needed to SC1, the PSA's confines its scope to including organic and map-based results and that it does not

proceed with the requirement of including the ICSS provider's name in the search engine result.

SC2

- 7.10. SC2 is concerned with ensuring that customers are not misled by any aspect of the website address used by an ICSS provider. The current version of SC2 states:

Services must not promote using websites with addresses which mislead a consumer into believing the website is associated with the organisation they are seeking.

- 7.11. In the consultation, the PSA state that some ICSS providers are using URLs containing words, letters and phrases which may have the potential to mislead consumers into believing the website is associated with the end organisation being sought. The PSA further state that: 'URLs include the internet path or protocol and subdomains which are not fully captured under wording of the existing ICSS2.'

- 7.12. Accordingly, the PSA have proposed to modify SC2 so that it reads as follows:

Services must not promote using URLs which mislead the consumer into believing the ICSS website is associated with the organisation they are seeking. This means the full URL as displayed to the user in the browser address bar. This includes (but is not limited to) the domain name, any subdomain and the internet protocol or path.

- 7.13. We believe that the existing version of SC2 is superior and better-tailored to catch the sort of harm that the PSA appears to have in mind than the revised version the PSA has proposed. The main reason for this is as follows.

- 7.14. Much of the harm associated with misleading URLs are associated with 'false' URLs which appear in search engine results and paid adverts only, and are different to the 'real' URL for the relevant landing page the customer would be directed to if they clicked on the listing or advert. For example, if a customer was seeking the end organisation 'endorg', the result or advert might feature the URL www.endorgnumber.com, although the URL for the actual page might be something different and something potentially compliant. A customer might see www.endorgnumber.com on the listing or advert and click it believing the website is operated by or on behalf of the end organisation sought. Crucially, use of www.endorgnumber.com on the listing/advert would arguably not be caught by the scope of the proposed SC2 as it would not form part of the 'full URL as displayed to the user in the browser address bar'. Instead, it operates only as a false URL in the listing/advert that is displayed on the relevant results page but never appears in the customer's browser address bar. By contrast, this sort of activity would be caught by the wording of the current SC2.

- 7.15. Instead of the PSA's proposal, it may be helpful to make it clear that, while any URL's compliance with SC2 must be taken objectively and in the round, there is generally a greater likelihood of customer confusion associated with use of the end organisation's name as part of the second level domain (e.g. www.endorgnumber.com), rather than any suffix following the top level domain (e.g. www.ICSSbrandname.com/end-org-customer-services). Indeed, there are many reasons for arguing that that use of the end organisation's name in the URL suffix in this way is inherently and logically required — not least for differentiating between the landing pages for different end organisations

and for SEO purposes. Provided the ICSS provider's service and operations are compliant with all aspects of the Code, we do not believe that use of www.ICSSbrandname.com/end-org-customer-services is in any way confusing for customers and, consequently, that it should not constitute any compliance concerns in respect of SC2.

- 7.16. Over the last few months, [REDACTED]
[REDACTED]
[REDACTED] As noted above, we believe that improvements in the compliance of the sector and to the standard of consumer welfare more generally can only be achieved with more robust and prompt enforcement action taken on the part of the PSA.

SC3

- 7.17. SC3 essentially requires that, where it is factually the case, that the ICSS operator makes it clear that the information (and contact number) they are providing by means of their service may be available for free or at a lower cost from the relevant end organisation. A clear statement to this effect must feature prominently on the ICSS provider's promotion — typically a landing page.
- 7.18. The PSA are proposing two main changes to SC3:
- First, the relevant statement must be featured above the PRS number displayed on the promotion. Currently, the only requirement is for this statement to be clear and featured prominently and proximately to the PRS number; and
 - Second, the ICSS provider must use more strident language by saying the information is available for free or at a lower cost — i.e. it cannot be expressed in a less definite way through use of the word 'may'. At present, use of the word 'may' is permitted.
- 7.19. As to point a), provided the statement is prominent and proximate to the PRS number, it is debatable whether the message is any clearer if it is positioned above the PRS number instead of under it. We believe that the current wording is entirely sufficient to deliver the outcome desired by the PSA: that customers are clearly informed before they make a purchase as to whether the relevant information may be available for less elsewhere. Put simply, the PSA's proposed amendment on SC2 is unnecessary and unwarranted.
- 7.20. The landing pages operated by ICSS providers are, of course, all different in their content, layout and structure. The location of the PRS number will also differ in each case. We do not believe it is helpful or necessary for the PSA to specify exactly where this information is located — provided always that it is clear, prominent and proximate. The current wording allows for some flexibility in precisely where the relevant information is displayed and that approach is perfectly adequate in guarding against the risk of consumer harm. It is not appropriate for the PSA to needlessly restrict the scope of design choices that would otherwise be open to an ICSS provider when creating their landing pages. In short, we believe the PSA are attempting to solve a 'problem' that does not exist.

- 7.21. As to point b), we believe that the current wording which permits the use of the word 'may' is vastly superior to the PSA's proposal — which we believe is unworkable, disproportionate and unfair. We believe it is entirely appropriate and clear for an ICSS provider to say that the information available elsewhere **may** cost less than using the ICSS; doing so identifies the **possibility** of a lower cost, leaving the customer free to click the link and visit the end organisation's website to decide which number s/he would rather call. It is not appropriate, nor reflective of good regulatory practice, for the PSA to impose an absolute requirement on ICSS providers which is based on a presumption as to which option a caller would prefer to use. There may be many factors at play which feature in a caller's decision as to which option to take — and may include that caller's financial position, the extent to which they prize the convenience of finding a number quickly over continued searching, and the likely length of the call. These are factors that will vary from caller to call and case to case and cannot be prejudged by the PSA.
- 7.22. Conversely, requiring it to be expressed as a positive statement is not helpful and imposes a perverse and very burdensome obligation on ICSS providers.
- 7.23. First, it requires that the ICSS provider verifies that the end organisation's listed number **definitely** costs less than calling number provided by the ICSS provider (it cannot safely assume it is the case). Assessing the relevant charge is complicated significantly by the unknown aspect of the access charge that would be charged by the customer's originating communications provider.
- 7.24. Second, it requires the ICSS provider to constantly monitor the information each end organisation makes available for a lower cost and ensure that it remains lower than the ICSS's cost. The situation may change, for example, if the end organisation switches their phone number and the termination rate associated with their new number is different to that for their previous number. If the ICSS provider fails carry out this ongoing monitor activity, it may inadvertently mislead the consumer by saying the information is available from the end organisation at a lower cost when it is in fact not. Imposing such burdensome verification requirements on ICSS providers is patently unworkable.
- 7.25. In any event, where the ICSS provider uses a drop charge tariff, it would be impossible for the provider to know whether the cost of a notional call using the end organisation's direct number would be cheaper than using the ICSS provider's PRS number; the ultimate cost is entirely dependent on the length of the call. Where drop charge tariffs are used in the provision of ICSS, the ICSS provider is simply not able to state definitively (as the PSA's proposed wording appears to require) whether it would cost less. For this reason, we reiterate our view that the PSA's proposed wording on this point is unworkable.
- 7.26. Retaining use of the word 'may', thereby alerting the customer to the possibility of a lower cost option being available, is entirely sensible and appropriate and would operate well to guard against the risk of relevant consumer harm. Accordingly, we urge the PSA to reconsider its thinking on revising SC3 and suggest that the current wording is retained.

SC4 and SC5

- 7.27. SCs 4 and 5 require that the promotions operated by ICSS providers are distinct from the end organisation and that ICSS providers must not use in their promotions descriptions,

colour or typefaces which are, or may be perceived to be, imitative of the end organisation.

- 7.28. The PSA propose to merge SCs 4 and 5 as they deal with very similar subject matter. We have no objections to this. Moreover, the PSA propose to tighten up the language used in the revised SC4 with the aim of making it clearer that the following must not be used in ICSS promotions: official logos and marks, logos, marks and other aspects that imitate or may be perceived to imitate the end organisation.
- 7.29. If the PSA takes this opportunity to revise the content of SC4, we believe there are important potential improvements that should be made to the wording. Our suggested amendments to the wording are shown in red below:

Promotions must not use descriptions, colour, typeface or logos or marks which, when considered as a whole, imitate, or may be reasonably perceived to imitate the organisation the consumer is seeking, nor should any official logos or marks of those organisations be used. Any legitimate and straightforward use of an organisation name featured in the standard typeface used by the promotion solely for the purpose of specifying the organisation in question shall not constitute a breach of this Special Condition 4. ICSS providers including in their Promotions must not imply that the information being provided to the consumer is unique to an ICSS when the same information is available from the relevant organisation.

- 7.30. The reasons for our suggested amendments are as follows:
- a) 'when considered as a whole': this is intended to help ensure that the condition operates fairly and as intended. For example, use of the ICSS provider's own branding colour which, if the same as a particular end organisation's colours, should not amount to a breach of SC4. Assessments on imitation must be objective and taken in the round. The wording we have proposed takes account of that.
 - b) 'reasonably': this is intended to apply an objective standard to the application of the condition so that it operates fairly and sensibly. Any perception of imitation must be reasonable. It would not be right and proper, nor consistent with good regulation, if the wording of the condition were sympathetic to an individual's sensibilities or perceptions that are not reasonable.
 - c) 'any legitimate and straightforward use of an organisation name featured in the standard typeface used by the promotion solely for the purpose of specifying the organisation in question shall not constitute a breach of this Special Condition 4': this is intended to make it clear that straightforward use of a mark through the act of listing an organisation name in ordinary text used elsewhere on the page does not constitute a breach of SC4 (as names themselves can constitute marks and attract intellectual property rights protection separately from particular graphical expressions of them).
- 7.31. If the PSA proceeds with its proposal to amend SC4, we urge the PSA to take full account of the points made above.

SC6

- 7.32. We acknowledge that the PSA proposes to make no change to this condition, and we believe this decision is sensible.

SC7

- 7.33. SC7 is concerned with ICSS providers who provide onward connection to end organisations, informing their customers of the cost of onward connection before that cost is incurred by the relevant customer. SC7 currently provides:

Where the consumer has been provided with the number they are seeking, and then has the option of being connected to it directly, they must be informed clearly of the cost per minute of doing so and be given the opportunity to refuse.

- 7.34. It is clear from the wording of the current SC7 that its scope is confined to per minute tariff situations and that it has no application where the service charge element for an ICSS is incurred by means of a drop charge tariff. This is logical and makes sound sense; by its very nature, a drop charge is incurred by the customer when the call first connects and instead of accruing on a per minute basis. A drop charge tariff can offer customers good value for money — particularly during lengthy calls to customer service departments of end organisations, where a portion of such a call may be taken up with the customer being placed on hold or in a ‘queue’ waiting for a customer service representative to become available. It also offers customers clarity and certainty of pricing (at least so far as the service charge is concerned; due to the nature of the NGCS regime imposed by Ofcom, significant access charges can be incurred by customers, but this is entirely independent of, and has nothing to do with, the ICSS provider).
- 7.35. The fact a drop charge tariff is charged the moment the call first connects is not the decision or responsibility of an ICSS provider; it is dictated solely by network operators who all treat drop charges in the same way. CSL has explored previously with network operators the feasibility of amending the charging mechanism for drop charge tariffs whereby there is period before any termination charge is incurred — allowing, for example, the opportunity for a price notification message to be played to the caller.
- 7.36. The network operators we spoke to would not entertain making such a change. We were informed it would be a most uneconomic venture and would cost many hundreds of thousands of pounds for network operators to implement. Additionally, to give proper effect to it, all UK network operators would need to accommodate the change. In light of this, it seemed clear to us that, absent a regulatory change imposed by Ofcom, it would not be feasible for the charging mechanism for drop charge tariffs to be amended.
- 7.37. To reiterate, as matters stand, a caller will incur the entire service charge element by means of the drop charge when the call first connects and that service charge will not increase as the call duration elapses. It follows, therefore, that it is not technically possible for the ICSS provider (or anybody else) to separate the charge associated with the information provision aspect of the call and the charge for any onward connection if the customer elects to be connected in that way.
- 7.38. The PSA propose to amend SC7 such that it will apply to ICSS calls charged by means of a drop charge tariff. Specifically, at paragraph 71 of the consultation the PSA say:

[T]he PSA proposes to make a minor amendment to the pricing requirement so that it includes ICSS which use drop charge tariffs and clarifies that the cost and opportunity to refuse should be given before a charge for the connection is incurred.

7.39. The proposed SC7 runs as follows:

Where the consumer has been provided with the number they are seeking and has the option of being connected to it directly, they must be clearly informed of the cost of doing so and be given the opportunity to refuse before incurring any charge for that direct connection.

7.40. This ignores entirely the reality of the charging situation for drop charge tariffs in the UK. It is disappointing that the PSA appears to have failed wholly to engage with the relevant technical issues; if it had done so, it would have realised that the proposed SC7 demanded from ICSS providers something that was not technically possible to achieve (or certainly something that was not within their gift). The surprisingly glib approach the PSA has taken on this point is difficult to understand; it describes the amendment as ‘minor’, while it is anything but that. Contrary to the assertion made by the PSA in the impact assessment in respect of the proposed changes to SC7, the technical realities associated with call charge mean that giving effect to the new SC7 is by no means confined to ‘[requiring] some ICSS providers to update their IVR messages’.

7.41. In our view, the PSA’s analysis of its proposal should have identified the technical limitations and it could (and should) have explored this further with industry prior to setting out its proposal in the consultation. A failure to carry out sufficient analysis which takes account of the relevant technical realities cannot be considered to be consistent with good regulation.

7.42. Given the realities of the drop charge tariff mechanism that is in place, it is futile and nonsensical to require an ICSS provider using a drop charge tariff to inform the caller of the call charge **after** the cost has been incurred. If the PSA pursue their proposal for SC7, the only information that could be included on an audio announcement at the start of the call would be confirmation of the price **already** incurred at the start of the call and an explanation that the service charge aspect of the call will not increase as the call duration increases, but the access charge element will. This may have unintended consequences. This message may be confusing to customers (many of whom will not understand the nature of the NGCS regime) and who may consequently terminate the call before they derive the full value of the service that they may have otherwise held on to obtain. This outcome would undermine the aim of the PSA in seeking to amend this condition.

7.43. We maintain that the most sensible and useful point at which callers should be notified of drop charges is at the promotion stage **before** the call has been placed. Existing provisions in the PSA Code expressly demand that ICSS providers do this as part of their promotions.

7.44. CSL has good reason to believe that these information provision requirements of the Code are operating effectively and that customers are well-informed as to the charge they can expect to pay. The very few customer complaints that CSL receive on pricing almost invariably relate to the access charge imposed by the customer’s network

- operator — as discussed earlier at paragraphs 6.47 to 6.49.³³ We also outlined our concerns on the NGCS regime more generally at paragraphs 6.44 to 6.51.
- 7.45. We also have concerns with the possible discriminatory effect that may operate against ICSS providers who use drop charge tariffs, but which would not be suffered by DQ providers. DQ service providers are not required to state the charge for their service by means of an audio announcement. Although we recognise that the PSA has historically treated DQ services and ICSS differently because of perceived differences between the nature of those services, those justifications have become increasingly tenuous and less relevant over time. We believe that the relevant differences between DQ services and ICSS are negligible (and not relevant to the common issues of consumer protection) and that the same regulatory regime should apply to both.
- 7.46. Even if it were legally sustainable for DQ services and ICSS to be treated differently in some respects, there is no objectively justifiable reason for requiring one, but not the other, to specify its charges on the audio announcement at the start of the call. We consider that the content of our landing pages conveys our charges much more clearly than the typical promotional materials of many DQ providers. We believe that continuing to treat such similar services in a dissimilar way is inconsistent, discriminatory, inherently disproportionate and is, moreover, distorting the market by having an anti-competitive effect.
- 7.47. That position, we feel, is inconsistent with the requirements under European Law — specifically Article 8(2)(b) of the Framework Directive (2002/21/EC) which imposes on National Regulatory Authorities an obligation to promote competition in the electronic communications sector. We also believe that that position is inconsistent with section 121 Communications Act 2003, which essentially requires that the Provisions of the Code:
- a) Are objectively justifiable;
 - b) Do not discriminate against particular persons or a group of persons;
 - c) Are proportionate; and
 - d) Are transparent.
- 7.48. In addition to including clear and prominent information on our landing pages to inform our customers of our service cost in advance of their being charged, in March 2018 we introduced proactively a consumer protection measure which provides our customers, by means of a free SMS text message, the direct number for the end organisation they were seeking. This allows them to use this direct number for future calls (or in the event they were disconnected before purpose of the call had been fulfilled). CSL's implementation of this service goes beyond the requirements of the Code and demonstrates CSL's commitment to improving customer services and promoting consumer welfare in the ICSS sector.
- 7.49. CSL believes that the SMS function has been very successful in providing customers with the information they are seeking on the customer's first use of the service — even if they need to get in touch with the end organisation again. This is evidenced by the low ratio of

³³ CSL has examples of these customer interactions and the substance of these customers' complaints. CSL is happy to share these with the PSA on a confidential basis.

complaints from repeat callers: only [REDACTED] of complaints received by CSL expressed against the number of calls made, are from repeat callers (that is [REDACTED] of the [REDACTED]).³⁴ Quite clearly, the effect of the SMS function has been to reduce the number of repeat calls CSL receives to its service.

- 7.50. For all of the reasons set out above, we feel strongly that there are sufficient and appropriate safeguards in place to manage the risk of consumer harm and that SC7 should be retained in its current form.

SC8, SC9 and SC10

- 7.51. These relate to the processing of personal data in connection with an ICSS. CSL's service does not involve the processing of any personal data and CSL consequently has no views on the substance of the PSA's proposed changes in respect of these conditions.

SC11

- 7.52. SC11 sets out the information that ICSS providers must provide to customers by means of an audio announcement before any onward connection to the end organisation. The PSA's main proposal to revise SC11 is to extend its scope so that the requirement to notify the caller of the call cost also extends to calls charged on a drop charge tariff. It is clear from the wording of the current SC11 that it only applies to calls charged on a per minute basis.

- 7.53. Specifically, the PSA propose to update SC11 so that it runs as follows:

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

- (i) the cost of the service per minute and/or per call including the statement "plus your phone company's access charge";*

[...]

- 7.54. For the numerous reasons set out in response to the SC7 proposals in paragraphs 7.33 to 7.50 above, CSL believes that it is futile to require an ICSS using a drop charge tariff to inform the customer of the call cost after that cost has been incurred. CSL wishes to reiterate all of the relevant points made above (SC7) in its response to the PSA's proposal in respect of SC11.

- 7.55. The PSA justify their decision to extend the scope of ICSS11 to drop charge calls on the following basis:

The PSA's assessment of this condition is that it is a useful tool in preventing consumer harm particularly where the consumer has not seen pricing and other key information in the promotional material, or they chose to redial without revisiting a promotion.³⁵

³⁴ This is the rate of complaints expressed against the number of calls made to CSL's ICSS service as set out in the table at paragraph 6.48

³⁵ See paragraph 74 of the consultation.

Although the risk of financial detriment is somewhat reduced where an ICSS service charge is charged only per call and not charged per minute, the risk of consumers redialling without full knowledge of the cost of doing so remains.³⁶

- 7.56. The PSA's analysis on this point is flawed given the reality of the way in which drop tariffs are charged to customers (i.e. immediately on the call's initial connection). The risk of customer confusion or financial detriment occurring in situations where customers redial the PRS number without reviewing again the relevant promotional material cannot be addressed in any meaningful way by a cost reminder given after that cost has been incurred. If this is the perceived problem that the PSA wish to tackle, it must be addressed in a different way. A much more effective solution would be a measure such as the direct number SMS notification feature that CSL implemented voluntarily as described in paragraph 7.48 above. As noted in paragraph 7.49, the effect of the SMS function has been very effective in reducing repeat calls to the CSL service.
- 7.57. For the above reasons, we believe that the content of SC11 should remain as it is today.

SC13

- 7.58. SC13 requires that ICSS providers must register their services within 48 hours of making the service accessible to the public. The rationale behind this condition appears focused on achieving a good level of transparency as to the identity of the provider operating a particular service. CSL fully support the aim and rationale of this condition.
- 7.59. In the consultation, the PSA propose to simplify the wording while increasing the breadth of the registration requirements such that they also apply to domain names operated by ICSS providers.³⁷ However, the amended text for the new SC13 (which will be SC12 under the revised numbering) appears fraught with problems and appears to us to be a significant retrograde step on the current wording. The revised text runs as follows:

ICSS providers must register their services within 48 hours of making the service accessible to the public, and in doing so make clear such services are ICSS when declaring that the service(s) are subject to Special conditions. This should include all numbers, all web domains associated with the service and who the service is connecting to.

- 7.60. Our concerns are as follows:
- a) The revised wording does not take proper and necessary account of how ICSS providers use different brands and advertising campaigns. Many providers, including CSL, operate under one operating company but trade using a large number of customer-facing brands. It is unclear from the PSA's revised wording for SC12 whether it will be permissible for an ICSS provider to register all of its numbers and domain names to the operating company or whether each number and domain must be assigned to the relevant brand. Assigning each to a particular brand is not feasible and would be ruinously time-consuming and expensive; CSL, like the vast majority of ICSS providers, obtains periodically in bulk the PRS numbers and domains it proposes to use for a given period. CSL then allocates each number and domain name to a

³⁶ See paragraph 75 of the consultation.

³⁷ See paragraphs 77 to 79 inclusive.

particular brand at a later date as dictated by its business needs and objectives. It is simply not possible for CSL to register at the point it obtains each number and domain the name of the particular brand or advertising campaign with which it will eventually be used. As a result, we believe the process that appears to be envisaged by the PSA's wording for the new SC12 to be unrealistic and unworkable.

- b) The phrase 'make clear such services are ICSS when declaring that the service(s) are subject to Special conditions' is fundamentally unclear. We would urge the PSA to look again at this text to improve its clarity.
- c) The phrase 'who the service is connecting to' is fundamentally unclear. It is uncertain whether this is intended to mean the identity of the ICSS provider or the end organisation. We assume that it is the latter — as we believe it would be unfeasible and unrealistic to expect an ICSS provider to record this level of information for each number and domain name it operates. Our assumption is reinforced by the fact that not all ICSSs will offer a connection service, as some may provide information/signposting services only. However, the fact that the meaning is not clear from the face of the words used does not bode well and is not consistent with good regulatory drafting.

7.61. For the above reasons, CSL urges the PSA to retain the wording of SC12 (currently SC13) in its current form and believes this provision is sufficient to give effect to the aim behind this condition specified in paragraph 7.58 above. Failing that, CSL feels strongly that the PSA should revisit its proposed wording for SC12 to address the points raised above.

New special condition (to be new SC5)

7.62. The PSA has proposed creating a new special condition which runs as follows:

Promotional webpages containing the call to action must display an accurate description of the true nature of the service, cost of the call per minute and/or per call, and provider name prominently in the top left corner of the page; e.g. "call connection service, calls cost £X.XXp per minute or £X.XXp plus your phone companies access charge, operated by XXX Ltd"

7.63. This new requirement appears to be focused on reflecting the findings from the 2018 University of Nottingham research that the PSA commissioned into user behaviour of ICSS (specifically the finding that users typically consider the information located at the top left section of a website). We have outlined above at paragraphs 6.11 to 6.22 inclusive our concerns as to the robustness and validity of the research carried out by the University of Nottingham and we repeat those concerns here.

7.64. However, we have particular concerns about the research in the context of the PSA's proposal for SC5 — which can be summarised as follows:

- a) First, we note that the 'eye tracking' research activity conducted by the University of Nottingham was limited to a mere 20 subjects. Such a sample size is far too small for meaningful and sound conclusions to be drawn, nor is it consistent with good practice for focus group activity. Moreover, 75% of the eye tracking study's subjects were female. This cannot be regarded as a fair and meaningful cross section of

society or of ICSS users. The Rogers' report notes the following on the nature of the eye-tracking experiment:

[T]he illustrative heat map (Figure 9 on page 16) appears to be an extreme example of one participant who only looked at a tiny part of the webpage. Yet this is described as a "typical pattern" in the summary conclusion under the heat map. In my view the report would be better balanced if it provided a range of heat map examples to illustrate the results. It would also have been helpful to provide heat-map illustrations of when disclaimers, URLs and telephone numbers were looked at, to see whether specific designs were more likely to encourage consumers to read specific items.

- b) Second, the research relevant to SC5 was centred around where on a landing page a user first focused their eyes and, in that sense, occurred in abstract. The PSA appear to have taken the limited findings of the research on this point and sought to find a 'problem' to solve. In short, the PSA's proposal for a new SC5 is not a targeted response to an identified problem — particularly given that there are detailed provisions in the Code and existing special conditions which are directed at the same objective to ensure users are well informed. The fact some users may look at the top left-hand corner of a webpage does not mean that users look only at that location, nor that very clear information displayed in other regions of the screen is not considered by the user. It may also not be the most suitable location for detailed information to be placed. In the majority of cases, a website's branding appears in the top left-hand corner of the page and users are accustomed to looking at that section of the page first. (This makes sense for English speaking users who are conditioned to read from left to right and top to bottom.) If the branding elements on a webpage were removed from the top left corner, or obfuscated with other or additional elements, a user may quickly disregard the content at the top left or not look there at all.
- 7.65. Aside from its concerns on the research, CSL has other reasons for believing that PSA's proposal for a new SC5 are not well thought through.
- 7.66. First, it is not at all clear how this requirement is intended by the PSA to co-exist with other, similar requirements on ICSS providers — in particular paragraph 2.2.7 of the Code (which requires information as to the cost of a service to be presented prominently and proximately to the PRS number).
- 7.67. One interpretation is that the information required by these separate provisions must appear separately (i.e. that one instance of the information could not satisfy both requirements). This is not a sensible solution. If the PSA intends for this information to be duplicated, it has the potential to unfairly discriminate against ICSS providers whose call to action is contained within a webpage; ICSS providers whose call to action is expressed by a different medium would not be under this additional burden. We note that the 'eye tracking' research did not consider ICSS promotions in any other medium. Requiring duplication of the information is also nonsensical in view of the typical structure of an ICSS landing page; the PRS number (and therefore the information required under paragraph 2.2.7) tend to be located very near the top of the page and therefore in very close proximity to the top left-hand area. In our view, the requirements of paragraph

2.2.7 of the Code are more than sufficient to address the risk of consumer harm of the type the PSA appears to have in mind.

- 7.68. Second, the PSA does not appear to have given sufficient thought to how the information required by the proposed SC5 would render and be visible on a typical ICSS landing page displayed on a smartphone. The vast majority of customers using ICSSs will do so using a mobile device and will therefore see the mobile version of the landing page. The typical structure and layout of a mobile landing page is naturally very different to a desktop one that can be viewed on a much larger screen. Put simply, including the relevant information in the top left-hand corner would result in a layout that is too cluttered and text that is too small to be viewed easily by a customer using the ICSS on a smartphone. That would defeat the PSA's apparent rationale behind the imposition of SC5.
- 7.69. Such a problem is not easily solved; if the provider adjusted the layout and other page contents to be more legible, it is likely to result in the branding, PRS number and key other information being pushed further down the screen. This may require the user to scroll down the page before that content became visible. Such an outcome would undermine rationale behind other provisions of the Code and special conditions and would be ICSS providers' compliance with those provisions very difficult to achieve. Aside from this, it seems disproportionate and inappropriate to require a cumbersome 'health warning' to occupy significant screen space when there are already comprehensive information requirements under the Code and special conditions which are more than sufficient to ensure that customers are clearly informed that:
- a) The service is operated by an ICSS and is not (and is not affiliated with) the end organisation. This is reinforced by the ICSS's branding that will invariably feature prominently on the landing page; and
 - b) The costs associated with use of the service.
- 7.70. In any event, the description of 'top left corner' is ambiguous and may result in an inconsistent interpretation and applicable of the condition. This has the potential to operate unfairly and allow scope for less scrupulous ICSS providers to engage in competitive game-playing or fanciful interpretations of the 'top left corner'.
- 7.71. To our knowledge, no other regulatory body has sought to impose such a prescriptive requirement on the layout of promotions and we believe it is completely unwarranted for ICSS landing pages.
- 7.72. In summary, the reasoning is inadequate, the approach is highly prescriptive and it could result in unintended negative consequences. If the thinking has merit, it should be tested thoroughly with the regulated community and other agencies, and looked at in relation to the network billed services that account for the 99% of the 15,000 complaints annually.

8. Conclusions

- 8.1. The PSA's proposals are unwarranted. The perceived harm can be addressed by the PSA increasing the use of its existing powers. Those powers are more than adequate to regulate ICSS to ensure consumer protection and confidence in the services, preventing bill shock and increasing customer awareness of the costs they will incur. The PSA must

- embrace a more active and robust approach to enforcement and take prompt and effective action against the small number of ICSS providers who are clearly acting in a way that is not compliant with the Code and SCs.
- 8.2. The PSA's proposals are not consistent with good regulation. Among other things, the proposals are incompatible with Ofcom's approach to regulation.
 - 8.3. The findings of the research by the University of Nottingham are not sufficiently safe to form part of the rationale for extending the scope of ICSS regulation. Further consumer research which addresses the shortcomings with the University of Nottingham research is required.
 - 8.4. To the extent that any customer confusion about ICSS call pricing or bill shock does exist, it is caused predominantly by the access charge element under the fundamentally flawed NGCS regime, or by the promotions/landing pages of errant ICSS providers who are clearly non-compliant with the current ICSS regulations. Changes to the ICSS SCs cannot address the shortcomings with the NGCS regime and therefore cannot address this source of the problem. To the extent that it is non-compliant providers who contribute to confusion around ICSS call pricing or bill shock, this should be addressed by the PSA's more efficient and robust enforcement of the existing SCs — as noted in paragraph 8.1 and elsewhere in the is document.
 - 8.5. The PSA should await the outcome of the Ofcom review on numbering which involves, among other things, a re-examination of the NGCS regime.
 - 8.6. The PSA should consult more widely with industry experts by being more open and collaborative with all interested parties rather than taking views only from those stakeholders who complain about the services.
 - 8.7. CSL as always is happy to discuss with the PSA and other stakeholders.

Annex 1 — a report by David Rogers on the University of Nottingham research

David Rodgers

Independent consultant in market research survey methodologies and practice



Exploring how consumers respond to Information, Connection and Signposting Services (ICSS)

A report prepared for:

Towerhouse LLP

Draft: 1

Date: 4 June, 2019

Exploring how consumers respond to Information, Connection and Signposting Services (ICSS)

- An Independent Review -

Executive Summary

1. This paper provides an independent review of the Consumer Behaviour and ICSS survey undertaken by The University of Nottingham on behalf of the Phone-paid Services Authority (PSA). In doing so I have reviewed the research report downloaded from the PSA website.
2. In my view the research has little evidential value due to the low sample size, the lack of any clarity on how the participants were recruited or interviewed, and its unrepresentative participant profile.
3. Given the small number of interviews undertaken the results could only be viewed as qualitative evidence that at best provides directional guidance on how and why consumers behave when searching for telephone numbers on the internet. The survey results could not be used as statistically reliable evidence.
4. However, from what I have read in the report I have concerns that even the directional guidance is potentially flawed as the research report does not provide the level of detail required to provide assurance that this qualitative work has been undertaken rigorously. The report provides only cursory information about how the research was undertaken – there is nothing about how participants were recruited, and little on how the survey was administered. There is no mention of any testing of the survey instruments before the surveys were undertaken to ensure that the approach and questions asked were fit for purpose. The report does not provide any of the data (e.g. tabulations, hand counts, verbatim analysis) to provide any evidence to support the findings.
5. The limited participant profile information provided indicates that those interviewed cannot be described as representative of consumers who use the internet to look for an organisation's telephone number.

6. I also have concerns about the self-completion approach used to capture responses to the “Why” type questions (e.g. why do consumers decide whether a webpage is a third party ICSS or a webpage operated by a business?) and the way that these responses have been coded and analysed. In my view it is highly likely that the self-completion approach yielded less detailed and precise information than an interviewer-administered approach would have done.
7. Setting aside these methodological flaws and looking just at the research findings, I believe the report lacks balance as it tends to use examples selectively, does not consider all the available evidence when making key points, and in some cases draws conclusions that have no supporting evidence.
8. I also think the report loses sight of the fact that a sizeable majority of participants correctly identified the ‘direct’ link of an organisation on a search page (as opposed to wrongly identifying an ICSS link as the direct link), and a sizeable majority correctly identified whether a webpage was from an ICSS or from the organisation they were trying to contact directly. These are important findings that need to be given much greater prominence in the report to provide balance to the conclusions. In my view the research does not provide much insight on the reasons why the majority of participants can correctly identify webpages/links but the minority cannot, and a much more rigorous investigation is required to provide an understanding of how and why consumers make the choices they do.

Background

9. This paper provides an independent review of the Consumer Behaviour and ICSS survey undertaken by The University of Nottingham on behalf of the Phone-paid Services Authority (PSA). In doing so I have reviewed the research report downloaded from the PSA website and the Jigsaw report referenced in the PSA consultation document.
10. The introduction to the report states that the research was conducted in summer 2017, using eye-tracking and online survey methods to consider: first, how consumers respond to search results containing ICSS and; second, how consumers respond to ICSS websites. The specific purpose of the research as stated in the introduction section, was to investigate: 1) how consumers respond to search results setting out a variety of phone numbers for a particular business and; 2) how and why consumers decide whether a webpage is a third party ICSS or whether it is a web operated by a business they wish to contact and; 3) where do consumers look on webpages, and how does this affect their ability to identify whether a webpage is a third party ICSS or whether it is a webpage operated by a business who they wish to contact?

Methodology Review

11. The objectives set for this project are reasonably clear and the use of the eye-tracking technology provides an interesting diagnostic tool as part of the research.
12. However, there is very little information about the methods used to conduct the survey: no information on how participants were recruited for the survey; no information about how the surveys were conducted and what stimulus material was used in the survey and how this was controlled; no copies of the questionnaires used.
13. The sample size for the project is low: the eye-tracking study involved 20 participants and the online survey 47 participants. Given the small number of interviews undertaken the results could only be viewed at best as qualitative directional guidance on how and why consumers behave when searching for telephone numbers on the internet. The survey results could not be used as statistically reliable evidence.
14. However, I have concerns that even the directional guidance provided in the report is potentially flawed as the research report does not provide the level of detail required to provide assurance that this qualitative work has been undertaken rigorously. The basic methodology details are missing. Research findings are described in the report with no reference to whether these came from the eye-tracking or online survey. There is no information about base sizes where results are presented in % form - and given the low base sizes any percentages should be treated with extreme caution as there is little statistical reliability to the %s so presented. The report does not provide any of the data (e.g. tabulations, hand counts, verbatim analysis) that I would wish to see to determine whether the research findings are valid or not.
15. The cursory information provided in Appendix A on the survey methodology raises major concerns about the participant profile. The previous Jigsaw research referenced in the PSA consultation paper indicated that the profile of those using search engines to look for telephone numbers and those using ICSS services is broadly aligned with the general population. Looking at the participant profile shown on page 24 of the University of Nottingham report, there are major imbalances compared against the UK population profile. In particular, both surveys have a heavy bias towards those in/having been through higher education with an extra-ordinary bias towards postgraduates (which leads me to think that many participants may have been recruited from those studying at the university). Both surveys are biased towards female participants, the eye-tracking survey

particularly so, and the average age profile for both surveys is considerably younger than the UK average (of adults aged 16+).

16. The research purports to describe the views and behaviours of consumers - indeed it uses the phrase 'average consumers' on several occasions (e.g. the first line on page 17 states that "the research sought to test average consumers"). However, those interviewed in the surveys are not demographically representative of consumers, a fact that undermines the evidential value of the research.
17. Furthermore, there is no mention in the report of any testing of the survey instruments before the surveys were undertaken to ensure that the approach and questions asked were fit for purpose. Typically for a regulatory survey of this importance I would expect to see some piloting and/or cognitive testing of the approach and questionnaires to ensure that participants understood the tasks they were being asked to do, and that they understood the language used in the questionnaires, and that all participants interpreted the meaning of the questions and any response categories in the same way. The lack of any method testing again raises doubts about the rigour of the research.
18. I also have concerns about the way that responses from the "Why" type questions have been collected (for example, why do consumers decide whether a webpage is a third party ICSS or a webpage operated by a business?). It appears that a self-completion methodology was used to capture this information (certainly the online survey is self-completion, it is not clear how this information was captured in the eye-tracking experiment). The problem with any kind of self-completion approach for capturing "Why" type information is that it allows no probing or prompting of responses to ensure that all reasons have been elicited and explained fully. Given that this was such an important part of the investigation (and has driven many of the conclusions in the report) I would have expected a professional interviewer-administered approach to have been used instead.

Review of Survey Findings

19. I have concerns about the interpretation of some of the research findings in the report.
20. **The search-page - Being at the top of a search-page matters.** The report says that “The eye-tracking undertaken shows that people primarily look at the top of a search page, even when this is not where the searched for company’s links appears, as in Figure 3”. Figure 3 is described in the report as a “typical result” (page 7 paragraph 1). The report also states that “Here the person focused almost entirely on the first result on the page, which was ultimately selected – but was not the actual company’s webpage” (banner conclusion under Figure 3). From a simple read of this text the reader might reasonably conclude that the typical consumer focuses almost entirely on just the first result of a search web page. However, this is clearly inconsistent with the finding that half of all participants correctly identified a search result as being affiliated to the organisation they wished to contact *if the company’s link appeared seventh i.e. at the bottom of the results from a search page* (my italics, source: Figure 2 on page 6). If half of all participants correctly identified the last link as the ‘direct’ one, at least half of all participants must have looked at the last search result on the page if they selected it, and by implication a sizeable majority must have looked at most if not all of the other search results (if as stated in the report participants were more likely to look at results towards the top of the page).
21. This selective use of evidence to make a point in my view provides an unbalanced view of consumer behaviours. It is too simplistic and misleading to say that the typical consumer looks almost entirely at the first result of a webpage.
22. **Consumer behaviour on reaching the ‘selected’ webpage - Accuracy in attributing webpages.** The report presents the %s who correctly identified whether the webpage they saw belonged to the searched for company or a third-party call connection service (page 12). The report does not indicate which third-party webpages were shown to participants, and in which order, and therefore we do not know whether the examples shown were a fair representation of different ICSS webpages and whether there were any order effects. It is difficult therefore to draw any firm conclusions from the report as to whether incorrect identification is a problem for consumers or not. However, putting those concerns to one side, a key finding from the surveys is that a sizeable majority correctly identified whether a webpage was from the organisation or a third-party call connection service. Yet this finding is given little prominence in either the detailed text (on page 12) or the conclusions

(on page 18). Again, a more balanced presentation of the results is required to provide a rounded view of consumer behaviours.

23. **Consumer behaviour on reaching the ‘selected’ webpage – What do consumers look at when asked to determine whether to use the phone number?** The report describes reasons why participants selected the phone number or not (page 13), after participants had been asked to telephone the organisation directly. It is not clear which data source is being used for these results - whether it is just the online survey or both the eye-tracking and online surveys (we know it must include the online survey as participant 37 is described in the footnote on page 13) – nor is it clear how this information was captured in the self-completion format. From the last bullet point where we see a couple verbatim comments it appears that the question was asked in an open-ended fashion (e.g. Why did you WRITE IN) and then coded at the analysis stage. I have assumed this to be the case. However, self-completion surveys are not best suited to capturing response to “Why” type questions - as there is no facility for probing of responses to ensure that all reasons have been mentioned and no opportunity for clarification to ensure that reasons have been described with precision. Any open-ended “Why” type question is typically answered much less fully in a self-completion survey compared with an interviewer-administered approach, as respondents can be reluctant to type in lots of text. In my opinion a much better approach to capturing reasons for attribution would have been to have a properly trained interviewer ask the appropriate questions and probe responses accordingly.
24. Without any prompting of responses, it is dangerous to conclude that participants did not consider an aspect when making a choice. With an interviewer administered approach we often see that aspects are mentioned only after prompting (e.g. what else made you think that?) Yet the report draws many conclusions about what consumers did not do or consider when making a choice from the self-completion verbatim responses. For example, on page 17 (last sentence) the report states that “consumers did not see or act upon statements that the call connection service was not affiliated with the organisation” and on page 18 (bullet point 6) that “most consumers do not look at the code prefix (08; 09 etc.) of the phone number in order to identify whether the website is operated by a third party.

25. Looking at the pie chart results in Figure 7, I do not see any percentages, base description or sample size, therefore the chart is not that informative and does not show the extent of multi-coding. It would be useful therefore to see the actual %s. I would also like to see how the verbatim analysis was carried out, what listings were used to generate the over-codes, how these over-codes were identified, and which verbatim comments were assigned to each code. Coding can be a complex and time-consuming task particularly on projects with small sample sizes and where there is a wide range of potential responses. For example, how were the two verbatim comments cited in the last bullet point of page 13 assigned? The report implies that these were both coded to 'Graphics and Layout' but in my view they are describing different aspects which are not usefully aggregated under one 'Graphics and layout' code, as it obscures important differences in response. I cite this by way of example of how coding can provide a too simplistic view of responses if not carried out professionally.
26. The report provides just a few very brief verbatim comments to support its findings (it is not clear whether these are extracts from or the whole verbatim comment). It would have been more helpful if a full list of the verbatim comments had been provided with the report.
27. **Consumer behaviour on reaching the 'selected' webpage – When people correctly identify third-party webpages, what do they think allows them to do so?** This is another section (page 14) which reports on findings from 'Why' type questions and therefore the same observations apply as above.
28. There is an attempt to examine response from those who correctly identified third-party webpages in this section. However, it is not very insightful as a sizeable majority of participants did correctly identify third-party webpages (page 12) and therefore the results (by definition) are not going to be that dissimilar to the total. The important analysis that is missing is the comparison between those who correctly identified third-party webpages and those who did not. However, the sample sizes of these sub-groups in the surveys would have been far too small to provide any meaningful analysis at this level.

- 29. Consumer behaviour on reaching the ‘selected’ webpage – Where do consumers look on ICSS webpages?** The results in this section of the report (pages 15 and 16) appear to be taken from the eye-tracking survey, but it is difficult to put these findings into any kind of context as there is no mention of which webpages were shown to participants. It is not possible therefore to know whether the design of the webpages shown, or the order in which they were shown in the experiment influenced the results or not. However, the key finding is that “consumers tested in the eye-tracking experiment tended to look at the left-hand side of the top third of the landing page of the site”, and that “the disclaimers and main numbers were not looked at”. Whilst I have no reason to doubt this overall finding from the small number of interviews carried out in the eye-tracking experiment, the illustrative heat map (Figure 9 on page 16) appears to be an extreme example of one participant who only looked at a tiny part of the webpage. Yet this is described as a “typical pattern” in the summary conclusion under the heat map. In my view the report would be better balanced if it provided a range of heat map examples to illustrate the results. It would also have been helpful to provide heat-map illustrations of when disclaimers, URLs and telephone numbers were looked at, to see whether specific designs were more likely to encourage consumers to read specific items.
- 30. Consumer behaviour on reaching the ‘selected’ webpage – Demographic Factors.** The survey sample sizes are far too small to provide statistically reliable results even at the total sample level. Any attempt therefore to discern patterns and draw inferences about consumer behaviour among sub-groups is fundamentally flawed in my view. I would therefore attach no evidential weight to the comments about those participants who described themselves as less technologically literate as this will be based on just a few survey participants.

Review of Survey Conclusions

- 31.** The conclusions section needs to be more balanced in my view, and in some places is not supported by survey evidence.
- 32.** Bullet point one – whilst some participants may have believed they were directly contacting an organisation when in fact the contact was being made through a third-party call connection service, a reasonable interpretation of the results would have put this in the context of the fact that a sizeable majority of participants correctly identified the ‘direct’ link of an organisation on a search page (as opposed to wrongly identifying an ICSS link as the direct link), and a sizeable majority correctly identified whether a webpage was from an ICSS or from the organisation they were trying to contact directly.
- 33.** Bullet point two – there appears to be some evidence to support the finding that search results have more salience when they appear towards the top of a search page, but this finding should be balanced by the finding that the majority of participants correctly identified the ‘direct’ link of an organisation on a search page regardless of where it was located on the page.
- 34.** Bullet points three, four and five – in my view caution is required when interpreting the survey results on reasons for correct and non-correct attribution of the source (ICSS or ‘direct’ organisation). The data source appears to be self-completion verbatims which may not fully describe reasons for choice. Absent a list of verbatim comments, I can see little evidence in the report that ‘slickness’ is part of the consumer vocabulary and in my view further detailed investigation is required to explore this more fully. In particular, further investigation is required to see whether there are any common physical characteristics of incorrectly attributed webpages and whether there are any consistent themes in the verbatim comments from those incorrectly attributing a webpage to a ‘direct’ organisation (compared with those who correctly identified the webpage source)? Neither of these lines of enquiry have been followed in the analysis as far as I can see from the report.
- 35.** Bullet point six – there is no evidence presented in the report that I can see to support the stated conclusions on: awareness of different types of premium numbers; awareness of different regulatory regimes; belief that regulation services should be applied to all ICS services; consumers taking similar decisions whether they are offered by Premium Rate Services or by charged services.

36. Bullet point seven – there is no evidence in the report from which to draw any conclusions on the impact of the device used. There is no data in the accuracy in attributing webpages or the % correctly identifying the correct ‘direct’ link on a search-page by device used, for example. This conclusion is just stated without any supporting evidence. However, it is very odd that according to the report there was no significant effect attributable to the device that the consumer is using to find a customer service number, and yet in the same paragraph the report goes on to say that layouts may differ between devices and therefore consumers visiting websites in mobile layout will have less information on which to make decisions (and by implication make wrong decisions). My observation is if those using mobile devices have less information and therefore are more likely to make incorrect decisions, why did this not show through in the results? Conclusions in a report must be based on survey evidence not speculation.
37. Bullet point eight – the number of participants with a ‘low level of technological literacy’ is far too small to draw any reliable conclusions, and therefore it is just speculation to say that the vulnerability of technologically illiterate consumers might be a factor in consumers making incorrect choices. Much larger populations are required to draw any reliable conclusions from the survey about any sub-groups.

Overall Summary and Conclusions

38. The research has little evidential value in my view due to the low sample size, the lack of any clarity on how the participants were recruited or interviewed, and its unrepresentative participant profile. Given the small number of interviews undertaken the results could only be viewed at best as qualitative work that provides directional guidance on how and why consumers behave when searching for telephone numbers on the internet. However, I have serious concerns that even the directional guidance provided in the report is potentially flawed as the research report does not provide the level of detail required to provide assurance that this qualitative work has been undertaken rigorously.
39. Looking at the conclusions and recommendations in the research, the report loses sight of the fact that a sizeable majority of participants correctly identified the 'direct' link of an organisation on a search page (as opposed to wrongly identifying an ICSS link as the direct link), and a sizeable majority correctly identified whether a webpage was from an ICSS or from the organisation they were trying to contact directly. Much more detailed investigation is required in my view to understand why the minority cannot correctly identify whilst the majority can correctly identify the difference between an ICSS webpage/link and a 'direct' organisation webpage/link.
40. This would require a much larger survey properly undertaken with an appropriate recruitment of a representative sample of consumers looking at a broad range of webpages (including both code compliant and non-compliant ICSS webpages), preferably conducted via an interviewer-administered questionnaire or topic guide to allow for detailed probing of responses. Results would need to be analysed in detail looking at differences between those who can correctly identify webpages/links and those who cannot, with all the evidence provided in the report to support the findings.