

Donegal,
Ireland
1 July 2020

Pre-Paid Services Authority,
40 Bank St,
Canary Wharf,
London E14 5NR,
United Kingdom

Sent By Email: consultations@psauthority.org.uk

RE: Developing the next PSA Code of Practice Discussion Document (27 February 2020)

Dear Sir / Madam,

I am pleased to have the opportunity to participate in the discussion process and engage with the Phone Paid Services Authority ("PSA").

I fully support a discussion process that involves reviewing regulation and best practice and which engages all stakeholders. I am not part of an organisational grouping or lobbyist. My sole purpose for engagement is that it is an important topic for all consumers, including those most vulnerable in society.

Additionally, the discussion is important process to ensure the United Kingdom provides the right incentive for businesses to operate responsibly, with the right deterrent for those that seek to enter the market to exploit consumers or who do not safeguard the rights of consumers.

Enclosed is my responses to the questions posed the Discussion Document.

Should you have any questions or require further clarification, I am happy to discuss this matter in more detail.

Yours sincerely



Annex A: Questions in this document Background

Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.

Agreed. I welcome public consultation on this matter. It is imperative that consumers views are taken on board as part of developing the Code of Practice for Phone Paid Services. I would be advocating for stronger safeguarding of consumers against unfair practices by Premium Rates Services (“PRS”). The strengthening of enforceable rules around the protection of vulnerable consumers should be at the forefront of all discussions.

Q2 Is there anything else we should be considering? Market context

It has been ten years since a review of this nature has occurred with a significant change in market and consumer expectations in that time. Given the change of pace in the industry, the PSA should reflect on its approach to revising its Code of Practice on a timelier basis. Guidelines and Special Conditions are largely ignored by PRS firms.

With respect to PRSs, the PSA needs to be adaptable to the services being offered and the ability of these PRS to operate within the market. PRS operating through short code numbers offered by Mobile Network Operators (“MNO”) can be difficult for consumers, not least vulnerable consumers, to contact and conduct dialogue with.

Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?

Agreed. Firstly, I welcome the measures that came into effect in November 2019 to align phone-paid subscription more closely to what they are used to in adjacent payment markets. However, I would also like to see the PSA Special Conditions and Guidelines becoming enforceable with administrative sanction action being made available as remedy.

Opportunities within the market continue to be beneficial for phone payments with ease of access in the movement of payments and this is welcoming. However, on the contrary, with every opportunity, a new or existing threat emerges. Online forums and social media discussions pages continue to raise questions around the level of malicious premium service providers in the industry, with the majority of single services acting in non-compliance with Guidelines. The industry needs to stamp this practice out and aim for a progressive authorisation process for PRSs.

Q4 Do you have any evidence of the market to share with us that you think would support our assessment?

Firstly, I wish to welcome the Consumer Panel established at the end of 2018 to provide advice and challenge on aspects of our work, from a consumer perspective. This is a start which can be widely developed upon.

I would like to see MNOs act in a similar manner to payment service providers as a dispute mechanism. Under Payment Service Directive, complaints are raised to the payment service provider where a complaint arises between a customer and agent acting under the umbrella of the payment service provider. Certainly, the Code of Practice should envisage utilising this approach. Currently consumers would normally contact their MNO, who then informs them of details for the Payment Intermediary who in turn instructs mobile users to contact the PRS firms. Establishing a mechanism for consumer confidence and accountability in the industry could only be viewed as being added value for the ethical PRS firms.

In addition, there are some worthwhile areas contained within the second Payment Services Directive (“PSD2”) which could strengthen the mobile payments industry.

- Expectation that the payment service network or processor has controls in place to ensure that the payment has been authorised and/or unambiguous consent provided by the account holder before payment is transferred. (. i.e. apply strong customer authentication)
- PRS firms should be able to clearly demonstrate that it is obvious that the individual has consented, and what they have consented to. This should be more than a confirmation that they have read terms and conditions there must be a clear signal that they agree. If there is room for doubt, it is not valid consent. In this regard, transactions are considered to be authorised only if the mobile users has given clear consent to execute the transaction.
- Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider. In the absence of consent, a payment transaction shall be considered to be unauthorised.
- MNO should agree with the mobile user spending limits for PRS transactions executed through specific premium mobile numbers, with the MNO providing the payer with the option to adjust these limits up to the maximum agreed limit.
- MNO should provide mobile users with the option to receive alerts on initiated and/or failed attempts to initiate transactions, enabling them to detect fraudulent or malicious use of their account.
- MNO should provide mobile users with assistance on all questions, requests for support and notifications of anomalies or issues regarding security matters related to mobile payment services. Users should be appropriately informed about how such assistance can be obtained.

Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

Agreed. However, I note within the consultation that *“it is quite possible for a consumer to provide unintentional consent to an online competition or adult service. In relation to subscription-based competition and adult services, the research suggested that consumers can, and do, remain unaware that such consent has been given”*.

Similar to the financial services industry, issues of transparency and disclosures requirements have increased for firms to ensure that consumers are appropriately informed to the consent being given. Consent by MNO must be clear and unambiguous, and consumers consent not exploited by various online methods. The safeguarding of the consumer must be a key focus of revised Code of Practice.

All too often, the initiation of payments remains a major issue within the industry and must be addressed. From my own experience, PRS firms deem that the customer “must have consented” as opposed to some form of fraud or cybercrime technique being inflicted on the consumer. With the ever-increasing click bait and security flaws across mobile devices, consumers are left vulnerable to financial penalties.

In addition, it is evident from social media platforms, a number of consumers have voiced their mobile number were scrapped from advertising platforms such as “DoneDeal”.

Q6 Do you have any other evidence in this area that we need to consider?

The PSA should examine online social media forums such as Reddit forums. Online searches would present the PSA with the levels of disgruntled mobile users within the industry. Sadly, vulnerable

persons may not even been aware that they have been subject to a scam or fraudulent transaction thus complaints statistics within the industry representing a portion of those affected.

Media platforms and experienced investigative journalists over the years, from the Guardian, the Independent and The Mirror newspapers have all attempted to expose the murky world of unethical PRSs without resolve. This only damages the reputation of the industry on a whole, reflecting poorly on legitimate PRSs.

Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.

I would generally agree with the statement that the industry growth will come from “blue chip” companies. Albeit, should the ability for some firms to commit scams or fraudulent behaviour within mobile payments is allowed to prevail, poorly governed firms may no longer wish to become “payment institutions” under PSD2, but become PRS firms in an unregulated environment given it more ability to manipulate consumers.

With the uncertainty that remains around Brexit and the ongoing COVID pandemic, a sharp focus must be on weeding out financial criminals who seek to exploit MNOs, PRSs in order to obtain personal data from mobile users, and reward themselves with financial gain. Protection of the consumer from a loss of data and processing of payment from non-consent must be at the forefront of the PSA. The focus of cybercrime continues to be the main focus for the Financial Conduct Authority around payments, so the PSA must have a continued focus.

Q8 Are there are market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?

The mobile has an opportunity to develop on its existing capabilities and be utilised safely and securely by all consumers. We have all seen the rise of FinTechs within the payment space, and the dynamic “sandbox” approach taken by the Financial Conduct Authority. The mobile payments industry can also benefit with a system that is effective at reducing harm to the consumer. From my own experience, it is not good enough that a PRS firm can send an unsolicited SMS message to a user phone and place an onus on the mobile user to respond by either “STOP” or contacting its MNO to block. Additional controls to safeguard the consumer must be implement.

Ultimately, I see an industry where it will be compared to PSD2. Consumers want what PSD2 offers. PSD2 provides lower costs and higher security for consumers that affords merchants greater flexibility to differentiate customer experiences, including payments. Ultimately PSD2 builds on giving consumers more choice around how they manage their payments.

Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree

As set out in the theme of my discussion, I would advocate for safeguarding on consumers interests and therefore agree that your objective should be to protect the interests of consumers.

Compliance cannot be achieved solely by rules and regulations. An element of culture, being seen and doing the right thing is vital to the protection of consumers. Transparency and accountability amount PRS and MNOs are required to ensure the safeguarding of consumer payments.

Most notably is the high level of statistics arising from complaints by consumers. A revised or new Code of Practice is an opportunity by the PSA to ensure that it can have meaningful enforcement powers against malicious bad actor PRS firms. In addition, a register of persons operating these

businesses should be maintained, so to prevent “jumping off one ship, and onto another” in terms of operating numerous subscription service firms.

Q10 Are there are factors we have not taken account which we should?

Indeed, my own experience is the nature of firms operating in different jurisdictions. The PSA requires an examination of how it operates and regulates such entities, whether “passporting” similar to financial regulation is one possible solution to this problem.

Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree. Potential Code 15 options

I would agree that the regulatory approach needs to change.

MNO must take the brunt of the any regulatory change. It is no longer sufficient for the consumer to be arguing non-consent. In an era where personal data becomes more valuable, MNO must begin taking responsibility for evidencing consent prior to premium service charges being initiated through their network.

Sound governance practices should be implemented to ensure a culture of accountability and transparent with the tone from the top set by the senior management.

Some of the underlying concerns rest with the MNO including why no action is taken where suspected fraudulent activity occurs over networks, lack of controls in place to prevent third parties abuse and lack of safeguarding for those customers considered vulnerable. In addition, the revenue generated are gained by the MNO with, to my knowledge, no funds repaid to customers subjected to fraudulent transactions or fraud.

Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?

Code 14 approach is no longer sufficient from a regulatory perspective. The PSA should be supervising the process of ensuring senior management within firms are fit and proper, in the first instance. Preventing individuals who pose a risk to the industry from undertaking a role and identifying persons with historical abuses.

I would welcome more qualifying requirements to enter the market, including the consideration set out by the PSA including:

- "fit and proper" tests on individuals
- financial viability checks/bonds
- checks on technical and other necessary capabilities
- probationary period before full acceptance into market
- authorisation of relevant firms and services
- requirements to provide more comprehensive organisational and service information, including regular compliance auditing.

In addition, as outlined throughout this response, the PSA should ensure sound governance principles within firms and engage a “comply or explain” basis for firms to implement to ensure the barrier to entry for firms looking to operate in any perceived “wild wild west” industry.

Q13 What are your views with regards to developing appropriate ‘Pre-purchase standards?’

The PSA seem to be aware of the issues facing consumers in this section. In any purchase of goods or services, consent to purchase should be clear and unambiguous. The practice of claiming consent was via advertising banners etc should not be sufficient. MNO and PRS firms should have clear consent which can be provided to the mobile users at request. As you are aware, the majority of complaints arising is from consumers with no knowledge of where consent was gained.

MNOs must agree with the mobile user spending limits for transactions executed through specific premium mobile numbers, with the MNO providing the mobile user with the option to adjust these limits up to the maximum agreed limit. Additionally, reverse opt-in services timelines would assist in addressing issues for the protection of vulnerable consumers.

Q14 What are your views with regards to developing appropriate ‘Purchase standards?’

I agree with all your proposals to increase the technical protections. As I have outlined previously, I would be an advocate for strong customer authentication. Albeit the FCA regulates for PSD2, there is a case to be made for a number of the provisions within the Directive that could be worked into mobile services.

Q15 What are your views with regards to developing appropriate ‘Post-purchase standards?’

Those consumers most vulnerable still to this day probably have not realised that they have been the victim of PRS related scams. Others fall victim and perhaps “let it go”, while the remainder, witness a fall in their pre-paid credit levels or mobile bill is higher than expected. Albeit, these consumers all would be categorised as being unduly part of unauthorised payment transactions.

In the case of an unauthorised transaction, the MNOs should refund the mobile user the amount of the unauthorised transaction immediately, and in any event no later than by the end of the following business day, after noting or being notified of the transaction, except where the MNO has reasonable grounds for suspecting fraud and communicates those grounds to regulator in writing.

Where applicable, the MNO shall restore the debited mobile users account to the state in which it would have been had the unauthorised transaction not taken place. This shall ensure that the credit value date for the mobile users account shall be no later than the date the amount had been debited.

In addition, the practice of refunds being placed within a “Paypal account” and/or a request for further personal information (. i.e. bank account details) should cease and be addressed with appropriate depositary mechanism via the MNO. All refunds should be the whole amount and transaction fees should not be taken from the principle amount.

Q16 What are your views with regards to how we can make our investigations and enforcement procedures more effective?

The PSA must set forth its supervisory and enforcement priorities to strike a balance between covering a range of issues across the sector and focus on specific areas it considers high on its agenda within firms including governance, consumer and compliance issues on which intrusive supervision or enforcement action may be expected.

I do note that investigations can be time consuming, lengthy in conducting and resource constraint. More importantly, it is imperative they are conducted correctly to ensure if criminal proceedings result thereafter, evidence is admissible. Therefore, I would advocating the process to consumers and ensuring they are kept update to date on investigations. Similar to some policing models, ongoing

communication with timelines should be considered (. i.e. updating the victim 30 days after the initial complaint, and so on). That being said, the power to suspend PRS whether initial discovery of a serious breach of the Code of Practice should be considered.

The PSA must consider all the methods of disposal available to it similar to other regulatory authorities. This may vary from supervision warning, action including redress schemes, early settlement discounts, monetary penalties, suspension, and revocation of licenses.

Q17 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?

In any system, the public must have confidence to trust the regulator to be fair, act ethically and in the best interests of the consumer. Therefore, the public must have confidence that its regulator is acting to stamp out unethical behaviours in the market. In this paper, the words “accountability”, “transparency” and “culture” are echoed. The regulator must take the same approach, giving confidence to the consumer that their complaint or issue matters.

All employees within the sector must be encouraged to “speak-up” where practices are witnessed that are either illegal or moral bankrupt. This is driven from the culture within the organisation, who should enable and encourage their employees to “blow the whistle” on said practices.

In addition, where PRS firms are found to have blatantly flawed the rules, a redress scheme operated with the MNO to identify all consumers affect, with improved process for universal refunds.

Q18 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?

Given that the PSA is principally funded by a levy on the value of services provided, collected by network operators, I do not have an issue. Increased sanctions and agree early settlements for firms found to be in breach of the Code is an alternative way of ensuring sufficient funding.

Q19 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.

I would disagree. Where aspects of the service have been ultimately outsourced (. i.e. customer care), responsibility for breach of the Code should rest with the authorised provider. Service providers are all too keen to portion blame to third parties. Direct accountability is required.

Q20 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.

No, the existing regulatory framework is not fit for purpose. The current regulatory framework does not fully safeguard consumers, including those most vulnerable. The Code of Practice and guidance thereafter should be fully enforceable with administrative sanctions imposed on firms found to be in non-compliance. In addition, press releases for those subject to sanctions should be published in media outlets to discourage others from acting in non-compliance. I would also advocate for the following measures:

- **Reporting** - PSA ensure that PRS firms provide, at least on an annual basis, statistical data on fraud relating to different payment services offered

- **Information consumers on rights** – PSA produce a user-friendly electronic leaflet, listing in a clear and easily comprehensible manner, the rights of consumers.

Q21 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact.

Regulation is necessary to provide consumers with the confidence necessary to make transactions safely and securely. In turn, the economy benefits when consumers are protected.

The risk posed to firms of legal or regulatory sanctions, material financial loss, or loss to reputation that it may suffer as a result of its failure to comply with laws, regulations, codes of conduct, regulatory guidance and expectations should be sufficient to weed out the bad actors and allow reputable meaningful firms to flourish.

END