

Developing the next PSA Code of Practice

Discussion Document

TELECOM2 LTD RESPONSE

About Telecom2

Telecom2 are a voice network carrier with offices in London and Spain. Through the group of companies our focus is to be at the forefront of technology, specialising in VoIP B2B and call centre solutions. T2 also specialise in micro payments across mobile, card services and age verification.

Telecom2 has a broad spectrum of clients including a number of Contact Centres, Print media companies, TV companies and a Premiership Football club.

We also still have some of the traditional clients on 09 PRS running Adult, Psychic and Competition services.

We welcome this opportunity to contribute prior to the formal consultation exercise. Our comments are based on internal knowledge and discussions with clients

Background

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

The proposed assessment framework is a good starting point, although it is very high level.

There is an emphasis on digital payments and rightly so given the increase in the size of the market but voice still forms a significant proportion of the market and it is important that any changes do not make it more difficult to provide or access voice services.

The increasing participation in the market by larger players is welcome but true innovation is usually delivered by the small to medium players and it is essential that in catering for the larger players and their services no barriers to the entry into the market of smaller players and their ongoing participation in the market are created.

The aims and objectives of the review are again very high level and more granularity is needed on how they will be met. We note the objectives include:

“the PSA gathers and understands the views of a full range of interested stakeholders“

The consumer panel could be considered to represent a group of stakeholders but the make up of the panel is atypical of consumers and falls a long way short of the full range of people who would use phone paid services.

Q2 Is there anything else we should be considering?

The overall approach is very broad and seems to capture everything of significance within the UK but we feel that there is a need to look at regulation in other countries, to identify best practice in protecting consumers.

Reducing the size of the code also needs to be considered. The 14th Code with all the guides and special conditions is very difficult to navigate, service providers are rarely confident that they have found everything they need to be aware of, this deters innovation and the entry of new players into the market.

No mention is made of the fact that not all consumer issues are genuine, some are consumers seeking to obtain refunds when they aren't due.

There also needs to be an element of consumer education. Comments on forums clearly illustrate that many consumers have little or no idea how phone paid services are provided and often make claims that are technically impossible

Market context

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

The assessment is largely a statement of facts derived from research but much of this research is dated or compiled from a very limited sample that doesn't truly represent consumers. Some of the research isn't really appropriate to the context of the code. For example, the inclusion of TFL figures to support the use of contactless payments. TFL imposed this on bus passengers and penalised consumers of train and tube services in the form of higher fares for using cash. Contactless wasn't a free choice and didn't necessarily represent a consumer's preference, in fact it disadvantaged some consumers.

There are some statements that require clarification. For example:

83. This data is illustrative of the overall decline that we have seen in fixed-line services, and the significant growth in mobile-based services which now dominate the communications market.

Very few, if any, services have been targeted at fixed line users, voice services are available and more frequently accessed from mobile phones also, it is wrong to label 09 services as landline services

The imbalance between household PCs and mobile phones mentioned in para 84 is to be expected and is not in itself significant. Individual PCs will often be shared by many people in a household.. Mobile phones however tend to be personally owned and used items.

PSD2/PSR2 is mentioned in the context of requiring more secure authentication of payments but what isn't mentioned is the limiting effect of the caps on spending imposed by PSD2/PSR2. At the moment these aren't enforced by all phone service providers but should this happen then opportunities for continued market growth will be hampered and many

services will either be severely restricted in their scope or not viable at all. If a small payments licence isn't in place consumers may be harmed by having to redial in order for calls to stay within the cap.

Other regulation, such as OFCOM price caps has had the effect of driving down revenue

Also impacting but not shown is the gradual switch from 087 and 084, and to a lesser extent 09, to 03 and Geo following on from the implementation of EU Consumer Rights Directive in 2014

Again we would point out that while large blue chip brands will provide revenue smaller providers must not be deterred from entering and staying in the market, it is the smaller providers that provide niche services and are truly innovative, less risk averse. Smaller players are more responsive to consumer needs and caring for their consumers. If they are regulated out of the market or deterred from entering it by regulation there will be a decrease in competition, consumer choice will be limited, there will be less services and prices will increase.

There is little mention of new technology. RCS for example, holds much promise. Some customers are concerned about pricing but the response rate is said to be much better.

We aren't convinced that the growth in Operator billing is consumer driven, we feel that the main driver for this is the Operators themselves reducing the options for other payment methods.

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

Our experience is that revenue from voice on all number ranges is not what it was but some services can only be provided by voice products, be they accessed from mobile or fixed lines. There will therefore always be a market for voice products but it may become more specialised.

Consumer expectations and experience

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

Again, we feel that the research doesn't really support much of what is said in the discussion document, simply because of the age of the research and the limited sample size, which means that it doesn't truly represent the current situation. Plus as with the TFL example, it doesn't always represent consumers wishes but reflects a position they have been forced into and a number of consumers would revert to the previous position if it were possible.

Another issue associated with contactless is the high incidence of fraud, leading to caps on transaction values, this will limit the size of the market.

Much of the research is qualitative and so not a sound basis for making decisions. There also appears to be some bias in the research, given the number of complaints compared to the

number of transactions there should be a much higher level of satisfaction with services expressed.

In this context, the consumer panel may contribute knowledge but the panel does not in any way represent consumers, it should be larger with a much greater spread of types of people that truly represents the demographics of consumers.

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

It would be useful to have more perspective on complaints, how many were genuine and how many a result of buyer's remorse or even outright fraud. We know from viewing forums that some consumers have a strange idea of how the industry works and sometimes an unjustified sense of entitlement.

Mention is made of other regulators, it would be useful to see how they assess and deal with wrong doing and complaints. The process leading up to a purchase is often longer and more complex but it would still provide some insight into potential changes for our industry

More information on PSA's experience with complaints would have been helpful, possibly some categorisation and setting them against the numbers of transactions to estimate the actual sizes of the issues and judge how much effort should be put into regulating for them. It would be wrong to damage an entire sector because of an insignificant level of complaints, many of which could be spurious.

Likely future trends

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

Much of the assessment is based on the increase in payments to Blue Chip Companies. We have concerns about this. This increase is driven by the companies, not consumers, and at any time they could find a payment method that suits them better, or is less restricted by regulation, and pull out of the market. Regulation based around these companies could seriously damage the interests of smaller companies with a consequent detrimental effect on services and prices and so on consumers.

It would also be useful to assess the impact of recent regulatory changes, of which there have been many, to see if they have been effective. If so, there would be no need for change but if not then they need to be re-examined as part of the work on the 15th code

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?

One concern is that clearly emerging new technology, such as RCS, doesn't appear to have been taken account of. Whilst the impact of developing new technology isn't certain

Another issue that could impact on the market is the access charges being raised by some consumer's network providers. These are unregulated and increasing. Awareness of these was low when first introduced but as more consumers suffer "Bill Shock", particularly as the access charge is often greater than the advertised service charge and isn't refunded, consumers could be driven into other forms of payment.

There seems to be no significant mention of known upcoming technology. RCS is expected to be a major form of payment in the near future, nor is there any mention of potential conflicts with other regulation, such as we have seen with Society Lotteries.

Assessment framework

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

As a framework this seems to be OK but we would like the assessment to go deeper with individual proposed actions assessed to see if they are practical or even possible. We would like to see these assessments published at the time they are taken, rather than at the end stage, so that industry and consumers have the chance to comment on them and for improvements to be made before the actions are set in stone.

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

As previously mentioned, foreseeable future technology and alternative payment methods don't seem to have been taken into account. These could have a major impact if standards are too prescriptive.

There isn't any mention of dealing with fraudulent claims for refunds by consumers, this does happen and is likely to increase.

Not changing the 14th code, either in part or all of it, doesn't appear to have been considered.

There is a clear emphasis on Carrier Billing in the document but the current dominance of Carrier Billing is subject to the large Blue Chip providers not finding a way of acquiring payment that is more attractive to them.

There is also the probability that moving the UK to an all IP network, as per BT's and OFCOM's stated intentions, will bring about a resurgence in voice as the new technology makes it easier to innovate and to deliver services at costs that are more attractive to consumers. This would also encourage overseas companies to provide services to the UK.

Initial thinking

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.

The current code is too open to interpretation so while we would welcome more clarity around the requirements of the code we aren't sure that standards, which would necessarily have to be prescriptive, are the answer. Outcomes based regulation provides flexibility which would be absent from standards.

Standards with their fixed rules could also be unable to cope with new technology or changes to payment methods, Outcomes based regulation should have no difficulty in that area.

Standards could also take more resource and cost more to monitor and enforce than outcomes, causing an increase in the PSA Levy and an increase in operating costs for L1s and L2s, making some valued services no longer viable.

The greater powers and higher levels of supervision sought by PSA may deter new entrants to the market and cause existing companies to leave the market due the financial and resource cost of compliance.

It is difficult to comment further without more detail on the standards but we would like the opportunity to see and comment on the data and thinking behind setting the standards before they are finalised.

Potential Code 15 options

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?

We really need to see more detail of what the checks consist of and how they will be managed.

We recognise that there is a need to prevent bad actors entering the market but are concerned that some of the measures to identify fit and proper persons proposed might deter or even prevent genuine providers with new services from entering the market. A sole trader cannot possibly have the history, organisation or financial support that even a small company might have. This doesn't mean that they are going to provide a poor service or breach the code.

It ought to be possible to have a system whereby the smaller a provider is the less checks are required but the more monitoring is carried out until they have proved themselves. Equally with Bonds, small providers just starting out may not have the cash available but this shouldn't prevent them from entering the market if they have a viable product. Bonds could even be considered anti competitive if they were seen to favour large providers

The checks have to be proportionate. Comparison with other regulators is a good thing but in most cases the degree of harm that can be caused in other areas is considerably more than can be caused by a phone paid service and the same level of checks wouldn't be appropriate..

There is also the question of who would carry out the checks. L1s currently carry out DDRAC as per the 14th code but to go much further would require powers and knowledge that L1s don't have.

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

We don't believe that additional pre purchase information will add any value to the consumer's decision making. The information that is currently provided is more than adequate to inform them. The problem is that many consumers don't read the information they have and adding to it will make that even more likely.

Greater clarity from the PSA over placement would be welcome provided it was set after proper full research and consultation with industry as to its practicality. There is a very wide choice of devices that consumers can use to see promotions, with a corresponding variety of screen formats, this would have to be allowed for.

One comment about responsibility for other parties in the value chain wasn't clear. Each party will carry out DDRAC on the next party down the chain but they cannot be held responsible for other party's actions. While there will be contractual requirements to comply with regulation there is no actual control over the actions of other parties and it would be unfair and a deterrent to staying in the market were that to happen.

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

We are unhappy with the inclusion and enforcement of technical issues.

We do not feel that PSA currently has qualified resource to design and implement technical standards and hiring in qualified people is going to cause a large increase in budget for very little effect. Where technology has to meet certain criteria these are already covered off in the payforit and PCIDSS rules, PSMS and Voice have to meet other technical standards or they won't work.

Customer Authentication is also covered, in particular by PSD2 and we don't feel that further regulation is required except, possibly, where subscription services or other recurring purchases are involved.

Comparison with other payment mechanics isn't appropriate. If the purchase and payment path is made more difficult, it will detract from the very features that consumers appreciate, convenience and the ability to impulse buy and will not be in their best interests. Not all L1 and L2 platforms are able to implement other payment mechanics.

Exemptions would be helpful, especially as a recognition of low levels of contacts or complaints but they would have to be carefully managed to ensure that they remain an incentive

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

Our first thought on this were that one of the biggest issues with post purchase lies with the consumer's phone service providers who aren't regulated by PSA. The customer service call centres of the major phone service providers are all too ready to simply say that a call to a genuine compliant service is a scam and to contact the PSA. Until this behaviour is amended complaint levels will be high.

Another issue is the forums people use, claims are made that are technically impossible, these need responding to and rebutting, PSA is best placed to do this along with consumer education, because they are a consumer protection body independent of of L1s and L2s

We were very unhappy with compulsory no quibble refunds to bank accounts or phone bills
We don't believe such a policy is sensible and not always technically feasible.

Once word gets round that if you complain there will be an automatic refund the number of fraudulent complains will increase and people will make purchases or use services safe in the knowledge that if they later change their mind or, for example, don't win a competition they've entered, or suffer buyer's remorse, they can have their money back. It's not just the financial cost, a lot of resource is taken up with investigating if the calls actually took place, that isn't always the case, and the alleged issue so that corrective action can be taken if needed. As to how to pay refunds, we offer a number of different payment methods, not everyone has a bank account, but don't have the ability to have refunds placed on a consumer's phone account.

We would be concerned if any complaints to us reached the stage where ADR was necessary but agree there might be a place for it and it deserves investigation.

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

The most important ways of making the investigations and enforcement procedures would be to speed them up and communicate more, particularly where the perceived breaches are minor.

Requests for Information have very tight deadlines but once the information has been submitted there is no further communication until the warning notice if such is issued and this can take months. Requests for updates are often met with holding replies. In the meantime, the L1 and L2 are effectively in limbo, they have no idea if an investigation is in progress or has been ceased. The L1 has no idea if they should be taking action and what action to take.

There is an indication that PSA are looking at taking action against the whole of the value chain. This is only appropriate where there has been a clear significant failure within the chain. L1s perform due diligence prior to contracting with a provider and will normally include compliance with regulation in their contract but other than this they have no control over the actions of providers They cannot be held responsible for failures outside their control and remit, this would be yet another barrier to entry into the market.

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?

This is a very one sided look at achieving better outcomes and upholding the reputation of the market.

Deterrents have their place but better results are obtained by educating and encouraging good behaviour.

Education of consumers and consumer rights bodies is essential. A lot of the bad publicity the market has suffered from has been where consumers have made false claims, albeit

often in good faith. Sometimes they are technically impossible, sometimes they don't reflect what actually took place. Certain sectors of the media gain audiences by sensationalising these false claims and some simply repeat them without checking the facts. Forums in particular are very bad for this. PSA are well placed to rebut these claims and educate consumers and consumer rights bodies because they are themselves an independent consumer rights body and regulator.

Preventing "bad actors" from entering the market would also be useful here but L1s need information from PSA to assist them in deciding whether to contract with potential providers. PSA also needs to check the credentials of providers registering with PSA.

It could be a requirement that a new provider commits to contracting with a monitoring company for, say, a year but the cost of this would have to be considered.

We need more detail on potential further sanctions before we can comment on them but we would question whether the current huge fines sometimes imposed by PSA are a deterrent to non compliance or a deterrent to entering the market.

A provider entering the market with the intention of breaching the code to make money will simply make as much as they can until they are caught and then cease operations and not pay the fine. They might even start up again with another name. A genuine provider is going to look at the fines and question what it will cost if they accidentally breach the code which is at times ambiguous and open to differing interpretations.

Comparing the sanctions available to PSA with those available to other regulators need to be done with a sense of proportion. The level of harm caused in other regulated sectors can be greatly in excess of the harm that can be caused by phone paid services, the sanctions available to such regulators would not be appropriate to phone Paid Services.

We have serious concerns about the proposal to extend liability to other parties in the value chain. As previously stated, the level of control L1s and Networks have over providers is limited at best and it would be unreasonable for them to be penalised when they weren't themselves at fault.

We note the suggestion that PSA has a consumer refunds function for adjudicated refunds. How would this be funded? The collection rate for fines is low. Consumer's Phone Service Providers and L1s may have some withheld funds that could be used but these are unlikely to cover the cost of all calls to be refunded. There could be a case for access charges to be refunded or used to fund PSA refunds..

Other general Code considerations

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?

There needs to be some research into how other regulators in the UK are funded and how Overseas equivalents of PSA are funded.

The levy is already high and the anticipated doubling is causing a lot of concern in the market. Some services do not produce sufficient revenue for the providers to absorb this increase. This will harm the consumer as some prices will have to increase and some services will be lost as providers leave the market.

The recent budget proposals recognise that the collection rate for fines is low but the effect of special conditions should have been to reduce the level of contacts and so reduce PSA's workload. The implication here is that Special Conditions aren't working, if this is the case then they need to be reviewed or even replaced.

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.

The current categories of defined providers needs expanding to cater for the different roles in providing services, from the consumer's phone service provider to the actual service provider. As things stand, a service provider is the party that would be subject to sanctions but the issue may be outside the control of the service provider, it might, for example, be the fault of an affiliate marketer or a platform provider. A compliance company could give improper advice. It remains important however that if an issue is outside the control of a party then they should not be subject to sanctions.

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

Our view is that an outcomes based code is still the best way of regulating services but the current code has evolved to the point where it lacks clarity in some areas and it is difficult to navigate, with the code, guidance and special conditions it's easy to miss a requirement. Sometimes it's impossible to comply, for example simple advice services are lumped in with ICSS and a lot of the special conditions aren't appropriate.

We would also like to see the various parts of the code, guidance and special conditions evaluated to see if they are working or even if they have damaged the market.

The status of the guidance needs clarifying. It is stated to be guidance but if not followed, or is perceived to have not been followed, then it may be used against a provider who is being investigated.

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.

Until we have more detail of the changes it is difficult to comment. We do have a concern that some of the fit person checks might not be appropriate to the potential level of harm from misuse of phone paid services.

PSA will need greatly increased revenue if they are to properly support the new standards and powers. We know that the levy is set to double. Is this in anticipation of the new code being implemented or will the cost of the new code be supplemental to that?

Our biggest concern once changes have been decided is the implementation timescales, if these are too short then compliance will be bodged. We would prefer to see the approach

taken by the ICO over the implementation of GDPR, where it was accepted that the timescales for implementation were short but provided a company could be seen to be working towards implementation at a speed appropriate to the resources of the company there were no penalties for non compliance, guidance was freely given and the guidance wasn't caveated.