

Response to PSA Consultation on Business Plan and Budget for 2022/23

This document should be regarded as an individual response, although it draws on information I have received through the Phone-paid Services Consumer Group(PSCG)

I first commented on the annual consultation in 2018 after being personally affected by a phone-payment “auto-subscription” scam. At that time, PSA did not seem to recognise that there was a problem.

At that time, the networks’ “Payforit” scheme was subject to wholesale abuse and was resulting in huge numbers of consumer complaints. At that time I set up the payforitsucks.co.uk website to provide advice and assistance to consumers affected by unlawful third party charges. I subsequently formed the Phone-paid Services Consumer Group to give consumers a voice.

After the 2018 consultation, PSA belatedly added a review of subscription services to their Business Plan for 2018/19.

However, it wasn’t until November 2019 that Special Conditions designed to prevent auto-subscription scams were put in place. At around the same time, the networks abandoned their Payforit scheme.

These Special Conditions have largely eradicated the scams which I have been campaigning to stop. Complaints to the Phone-paid Services Consumer Group are now very rare and almost always relate to subscriptions commenced prior to the November 2019 Special Conditions.

There continue to be fundamental issues with third party phone payments which leave the system vulnerable to fraud.

PSA often compare phone payment with other (FCA regulated) payment mechanisms like Paypal. Such comparisons are misleading. Phone payment lacks the fraud protection and dispute resolution procedures of regulated payment mechanisms. The only mechanism usually available to consumers wishing to dispute a transaction is the Small Claims procedure. The payment processors (the networks) refuse to get involved. This wouldn’t be allowed in a properly regulated system.

Charges can be made to consumers’ phone accounts without any verification checks. In a reputable payment system this would not be possible. It is true that PSA now requires PIN verification of subscriptions, but these are checked

retrospectively if and when PSA pursues a complaint. In other payment mechanisms, the verification is completed by the payment processor at the time of the transaction. We have seen several cases where large numbers of consumers were charged without consent, even after the introduction of the new Special Conditions. If transactions were being properly verified by the payment processor, this would not have been possible. The current situation where somebody who knows your phone number can help themselves to your money is not acceptable. It isn't possible for a company to debit my credit card simply by knowing its number. It shouldn't be possible for a company to debit my phone account simply by knowing my phone number.

Despite these issues, the measures taken by PSA have been very effective at reducing the incidence of fraudulent charges. The new Code 15 represents a further improvement in consumer protection

I do not anticipate responding to further PSA consultations, as I consider that I have achieved what I set out to do. Sadly, many of the companies involved in the abuse of the phone payment mechanism continue to operate, but not in the UK. Trustpilot reviews suggest that these companies are now operating in other European countries, and seeking similar vulnerabilities in other payment mechanisms.

Q1 – Do our plans for 2022/23 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

I recognise that there are legislative restrictions on what PSA can do. An opportunity has been missed with Phone-payment. The telecoms exemption from PSD2 enables networks to operate a payments service without following the rules that apply to other FCA regulated payment services. However, it also severely restricts the size and type of transaction which can be processed. Phone payment will forever be a niche payment system unless it chooses to accept FCA regulation.

While Code 15 maintains the very effective measures introduced in the past two years, I regret that the opportunity has not been taken to put an end to ongoing fraud, by requiring PIN verification of existing subscriptions. I'm sure that PSA are continuing to see complaints from consumers who have been unknowingly paying for subscriptions for a number of years. A requirement for a one-off reverification of subscriptions initiated prior to November 2019 could bring an abrupt end to such complaints. Otherwise it is likely that there will be a trickle of complaints for several more years. PSCG have seen several such complaints

where charges were being taken for “services” provided through websites which appear to have long since ceased to exist!

Q2 – Do you have any comments on the proposed budget for 2022/23? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon.

No

Q3 – Do you have any comments on the proposed levy for 2022/23?

Given that they now generate the most work for PSA (and cause the most consumer harm) I'd like to see a higher rate of levy for ICSS services. I can see no legitimate purpose for such services, which derive most of their income by tricking consumers in to paying extortionate amounts, for calls which should be free or low cost. The industry lacks a “polluter pays” policy which would help encourage compliance and punish “sharp practices”.

Q4 – What is your view on the estimated size of the market for 2022/23?

The estimates provided in the plan seem reasonable.

Q5 – Do you have any other comments on the Business Plan and Budget for 2022/23?

Last year PSCG identified a number of improvements that could be made to improve the consumer section of the PSA website. These were:

- Extending the information on the Service Checker to include details of the Level 1 provider (with a suggestion to contact them if a consumer is uncertain who is responsible for the charge they have received).
- Ensuring that the Service Checker is always up to date with the Registration database, thus ensuring that details are publicly available within days of a new service starting.
- A page explaining how Phone-paid services work, including the roles of the Service provider, the Level 1 provider and the MNO.
- A page giving advice to consumers on their legal rights where the service provider fails to engage with them or fails to evidence the purported contract under which the charges were taken. By omission, the current website leads some consumers to believe they have no means of redress and this is not true.

- Publishing details of refund arrangements agreed with service providers outside of a formal Tribunal hearing.

Most of these have not yet received attention.

The information provided to consumers remains inadequate. Most consumers don't understand how phone-paid services work. The website needs to simplify the advice given. Remember that most consumers will not be interested in PSA investigations and tribunals. The advice provided fails to tell consumers what to do if a service provider is uncontactable or fails to satisfactorily resolve their complaint. They just want their issue resolved. The key points should be:

- PSA do not help consumers. They welcome reports from consumers, but don't resolve disputes.
- Charges are made by service providers, and they should always be the first port of call when seeking a resolution or a refund.
- Charges are routed through a payment intermediary, and when you are unable to resolve an issue with the service provider it is worth advising them of the issue and seeing whether they are willing to help.
- If the service provider and/or the payment aggregator are unable to resolve your dispute you can use the Small Claims procedure to seek a refund of charges which you believe to be unlawful. Pursuing a refund through Moneyclaim online usually gets the service provider to engage with consumers more effectively than complaining to PSA.

I'd like to see PSA making more effort to understand the needs of consumers. While recognising that they are unable to help consumers themselves, that is not an excuse for providing incomplete or misleading advice. It should be remembered that service providers, payment aggregators and networks all refer consumers to PSA when they have a problem, and often tell them that PSA will "help them get a refund". PSA need to correct this misunderstanding on their website – or there will continue to be many disappointed consumers.

In the longer term, I believe that despite Phone-payment not being subject to FCA regulation, there needs to be a formal, mandatory, dispute resolution procedure to which consumers can turn. Whilst PSA cannot provide or impose such a mechanism, they are in a position to encourage it. Such a dispute resolution system would do much to improve trust in Phone-paid services.