

Consultation on a new PSA Code of Practice (Code 15)

UKCTA Response to the PSA

July 2021

Introduction to UKCTA

1. UKCTA is a trade association promoting the interests of fixed-line telecommunications companies competing against BT, as well as each other, in the residential and business markets. We advocate regulatory outcomes designed to serve consumer interests, particularly through competition, to Ofcom and the Government. Details of the membership of UKCTA can be found at www.ukcta.org.uk.

Response to the PSA's consultation on its new Code of Practice (15th edition)

2. UKCTA welcomes the opportunity to respond to the PSA's consultation on the fifteenth edition of its Code of Practice ("the Consultation"). The primary focus of this submission is on UKCTA's concern about the continued failure of regulation to address the significant consumer harm caused by Information, Connection and Signposting Services ("ICSS"), and on ensuring that the Consultation does not become another missed opportunity for the PSA to protect consumers from ICSS once and for all. UKCTA considers that the PSA's proposals do not go far enough and will allow significant consumer harm to persist. The only way to effectively protect consumers from the harm caused by high ICSS call charges is to prohibit the use of premium rate numbers for ICSS.
3. In addition, UKCTA is concerned that the supervisory proposal to introduce "thematic" reviews is disproportionate absent the introduction of checks and balances similar to those set out in s.137 of the Communications Act 2003 which sets the boundaries of Ofcom's information gathering powers. We call on the PSA to align its code in this regard and to make the triggers that would lead to a thematic review transparent. Currently, whether intended or not, there is a presumption of 'access all areas' including to operator systems and platforms that have no direct involvement in PRS. This is not appropriate.
4. As discussed in UKCTA's response to the PSA's 'Discussion Document on developing the next PSA Code of Practice',¹ the industry has long been concerned that the existing regulatory framework is inadequate and fails to protect consumers from the significant harm caused by ICSS (and this has become even more evident during the COVID-19 pandemic).
5. In its 'Consultation on a new PSA Code of Practice (Code 15)',² the PSA acknowledges that ICSS continue to cause significant consumer harm. This is demonstrated by the fact that (whilst complaints for other phone-paid services have been falling) the PSA continues to see a "consistent" level of consumer complaints for voice-based services "and, in

¹ Available at <http://www.ukcta.org.uk/response-to-the-psas-discussion-document-on-developing-the-next-psa-code-of-practice/>.

² Available at <https://psaauthority.org.uk/research-and-consultations/consultations/2021/april/consultation-on-our-new-code-of-practice-code-15>.

particular, ICSS".³ Elsewhere in that document, the PSA notes a relative increase in the number of consumer complaints about ICSS:

*"Complaints for ICSS are also **disproportionately high**. While ICSS typically represent around 3.5-4% of the market, they account for approximately 13% of the complaints we received in 2020/21 – this is **up** from about 5% of total complaints in 2019/20."*⁴

6. According to one UKCTA member's analysis of their recent call data, in May 2021, total spend by consumers calling just seven ICSS '09' number ranges amounted to circa. £161,000. This equates to approximately £1.9m per annum. If those customers had dialled the official numbers for the Government agencies (i.e. HMRC, Tax Credit, DVLA, Trading Standards) or retail organisations/utility providers, the calls would have cost the consumers £6,000. This means that over £1.8m per annum of unnecessary consumer charges have been incurred as a result of ICSS using '09' numbers. It should be noted that these figures represent just one provider. If the figures were extrapolated to account for the customers of other communications providers' fixed and mobile services, the total cost of consumer harm will be multiples higher.
7. The same UKCTA member identified that of the 11,607 customers who called ICSS numbers in May 2021, 141 customers were charged over £100 each for these calls. Two customers who made multiple calls to the same ICSS number on the same day (one had made 15, the other 14), were each charged £500 for their calls, charged at a rate of £3.60 per minute. These customers were making repeated calls lasting just over 11 minutes. This suggests that the calls were being terminated by the ICSS provider to comply with the caps implemented by Payment Services Directive 2, resulting in the customers having to re-join the call queue and explain the reason for calling to another agent. This practice significantly inflated the cost to the customer and the revenue to the ICSS provider. In the event that the PSA implements a pre-call announcement (which is not free to the customer), customers will once again have to listen to and pay for that announcement.
8. Analysis of calling patterns to ICSS numbers also indicates a difference in behaviour for customers calling from a mobile phone versus customers calling from a fixed line. Callers from mobile phones made shorter calls which could be due to the use of 'Click to Call' options on ICSS sites when accessed via a mobile. It is likely that customers calling from mobile phones are searching on a browser for the organisation they are trying to contact and then hit the 'Click to Call' button without fully understanding the cost implications, but then hang up when made aware of the actual costs via the pre-connection announcement. By this time, however, the customer will already have incurred charges in listening to the announcement.

³ Paragraph 199, PSA Consultation.

⁴ Page 55, PSA Consultation.

9. The message which the above data illustrates is undeniable – consumers are bearing unjustified costs as a result of the PSA continuing to allow ICSS to operate using ‘09’ numbers.
10. Notably, customer complaints about ICSS remain “*disproportionately high*” despite previous attempts by Ofcom and the PSA to address concerns through updated special conditions on ICSS:

“ICSS remains an area of focus and concern despite the introduction of updated special conditions on ICSS in December 2019, which included more prescription in terms of regulating ICSS. Our experience since the introduction of the new ICSS special condition is that complaint levels have remained disproportionately high despite reductions in other areas.”⁵

11. It is therefore clear that the existing regulatory framework for ICSS is continuing to fail consumers. As the regulator of premium rate services, the responsibility lies with the PSA to ensure that more is done to protect consumers.
12. The PSA suggests that a number of proposed changes under the new Code of Practice, including new ‘point of purchase’ and transparency Requirements,⁶ will address the consumer harm caused by ICSS:
 - a) In relation to the proposed new ‘point of purchase’ Requirement, “[t]he ICSS complaints we receive demonstrate that consumers are very often completely unaware that they have purchased a service,”⁷ and extending the ‘point of purchase’ requirements to all phone-paid services “*should ensure that consumers are fully aware when they are entering a purchasing environment and their expectations are met.*”⁸
 - b) In relation to the proposed new transparency Requirement, “[t]he most common reason for complaints is that the charges are unexpected or unsolicited. We believe that the proposed new transparency Requirements will address the continuing consumer harm associated to all service types.”⁹
13. UKCTA disagrees that these proposed changes will be sufficient to protect consumers from the significant harm caused by ICSS, and we are dismayed with the lack of urgency with which the PSA appears to be responding to such harm.
14. The PSA says it is “*not proposing, at this stage, to go further and require a free pre-call announcement for ICSS which states the full cost before any charge is incurred. In light of*

⁵ Paragraph 215, PSA Consultation.

⁶ Pages 51 and 55, PSA Consultation.

⁷ Paragraph 199, PSA Consultation.

⁸ *Id.*

⁹ Page 55, PSA Consultation.

*feedback received, it is not clear to us that this is something that would be technically feasible for all providers to implement”.*¹⁰ However, what enquiries has the PSA made into whether this would be technically feasible? UKCTA considers there to be little/no merit in this argument.

15. The PSA suggests that it could require such a pre-call announcement for ICSS at some point in the future but, in the meantime, consumers will continue to face (with the PSA’s knowledge) significant harm. Any further delay in taking action to protect consumers would be unacceptable.
16. UKCTA ultimately considers that the only way to effectively protect consumers from the harm caused by ICSS is to prohibit outright the use of premium rate numbers for ICSS. We see no benefit to consumers of allowing ICSS to continue to operate using ‘09’ numbers, and we urge the PSA to take this opportunity to reflect such a ban in its new Code of Practice.

End.

¹⁰ Paragraph 203, PSA Consultation.