Phone-paid Services Authority

Statement following consultation on Business Plan and Budget 2023/24

20 March 2023

The UK regulator for content, goods and services charged to a phone bill

Contents

1. Consultation process

1.1. Our draft Business Plan and Budget 2023/24 was put out for public consultation on 15 December 2022, with a deadline for comment of 26 January 2023.

1.2. We have received three consultation submissions:

- aimm (Association for Interactive Media and Micropayments)
- BT Group
- Virgin Media O2.

1.3. We have reviewed each submission in detail and our responses in respect of the publishable submissions are set out in section 2 of this document. As in previous years, we have written responses to be stand-alone with regard to each consultation submission (published separately alongside this statement), and therefore a number of similar points are repeated across these submissions.

2. PSA response to consultation comments

2.1. aimm

2.1.1. We thank aimm for its submission and understand that it represents the varying views of its members.

2.1.2. We note aimm's repeated concerns about staffing levels. Our view remains that while our activity plans for 2023/24 and the overall cost of those plans are rightly open to scrutiny through this consultation process, it is the responsibility of the PSA's senior leadership to determine the detailed nature of the organisation structure, while the PSA Board is responsible for the overall allocation of resources to match the delivery of the business plan activity. We do not agree that there is "no visibility of who those staff are and what they are doing":

- our activity is reported formally in the consultation document, our Annual Report, and our Directors Report and Financial Statements
- the Annual Report clearly identifies our Board, other office holders and our Leadership Team, alongside a schematic of the structure of the organisation
- the industry - including aimm and a number of their members - have regular contact with PSA staff, especially those involved in policy and supervision roles. Where we have concerns around issues of non-compliance, the parties involved will also have contact with staff in enforcement and engagement roles.
- aimm and a number of their members are Industry Liaison Panel (ILP) members, through which there is regular engagement with staff and extensive reporting on our activity. ILP and industry more generally were briefed on the reorganisation of the PSA to reflect Code 15 at the March 2022 ILP meeting.

2.1.3. As noted by aimm, most of our contacts are handled automatically (as they have been for a number of years) and complaints are at record low levels. Our activity plans include the ongoing need to gather intelligence about individual services – and we will allocate staff resources accordingly - but we view reduced complaint volumes as a successful consequence of the overall activity set out in the Business Plan and Budget.

2.1.4. Aimm's continued request for staffing resources to be directed towards commercial growth and business development in the sector again suggests an ongoing misunderstanding of our role and remit as a regulator - which is set out in our strategic purpose and delivered though the activity set out in our business plans. The promotion of growth and business development is primarily the role of government departments rather than regulators. As a regulator we have regard for the need for regulation to allow for innovation and Code 15 explicitly allows for tailored approaches to regulation.

2.1.5. We note aimm's comments about bad debt, which continue to demonstrate a misunderstanding about the role debt collection plays in our regulatory approach. We reiterate:

- our experience of recent years shows that serious non-compliance has almost exclusively been carried out by providers with no long-term legitimate commitment to the market, and who often attempt to liquidate rather than rather than comply with regulation, deliver good services to consumers and seek to continue as viable businesses. Our strong emphasis on due diligence, risk assessment and control – embedded clearly within Code 15 - has been driven by this experience.
- it is often clear in serious cases that it will be difficult to recover fines even before the case reaches a Tribunal. The Tribunal however has to consider cases on their merits. In reaching a fair and proportionate decision, it cannot be driven by the potential risk that a provider may not pay an imposed fine, nor can it consider the funding requirements of the PSA.
- we will continue to rigorously pursue debt collection in 2023/24 through all legal means, so that every avenue is explored to hold providers to account. We will work with Ofcom to arrange for the ongoing pursuit of outstanding debts to pass to them as part of the transfer process.
- fines are an important sanction available to the Tribunal to act as a means of deterring non-compliance, but not the only one. The PSA will, for example, seek prohibitions against both the provider and the individuals from the market in cases where there has been serious non-compliance, preventing them from continuing to cause harm. We will also consider further regulatory action where there has been non-payment of fines. Furthermore, in order to ensure consumers of phone-paid services are protected more broadly, we also share information (where lawful and appropriate) with other relevant regulators to allow them to consider enforcement measures that extend beyond our remit.

2.1.6. For information, fines in 2021/22 were £4,280,000 and admin charges were £215,496, totalling £4,495,496 across 11 cases. In relation to these fines and admin charges, £794,049 was recovered during the year, of which (a) £453,746 was due to amounts withheld in the value chain across three cases and (b) £340,303 was paid by a single provider that had accepted sanctions with a view to improving their compliance with the Code. A further £120,693 was recovered from previously allocated bad debt, meaning the overall charge for bad debt in the 2021/22 accounts is £3,850,754.

2.1.7. With regards to aimm's comments on our approach to Enforcement activity, we are happy to confirm that only 2 new cases have been opened in the period to January 2023. At the same time, as stated in the Business Plan and Budget, we are continuing to resolve all outstanding cases in relation to Code 14.

2.1.8. In relation to the planned transfer of regulation into Ofcom, we note aimm's emphasis on PSA "communicating the planned transfer to industry and, where able, responding to queries as they arise". This we have done, but aimm and its members will need to approach Ofcom concerning their programme for enabling the transfer (including any consultation they undertake around this). As far as this consultation exercise is concerned, we have set out a Business Plan and Budget that covers the full 2023/24 year, but with a levy funding proviso should the transfer happen during the year.

2.1.9. We note aimm's comments regarding consumer education and positive PR. It is not our role to aid commercial growth, but, to expand on part 4.4.1 of the Business Plan and Budget, we build consumer trust through:

- frequently tweeting at least every few days, giving consumers information about phone-paid services. These provide self-contained advice and also point to our resources on our website. This is an activity that industry could support or reinforce with little or no additional investment of resources.
- promoting the positive messages of the Annual Market Review both generally and for the charity sector
- updating our consumer videos and regularly reviewing our consumer content and messaging (e.g. emails to consumers who have complained and information on the website) to ensure that the information is up to date and relevant.

2.1.10. With regards to aimm's comments on the proposed budget for 2023/24:

- by definition, real-terms savings calculations are based on inflation. The equivalent budget in 2023/24 of the amount budgeted in 2015/16 is some £2.7m higher than the proposed cash budget. Even allowing for variations in differing interest rates (e.g. CPI instead of RPI), the key point is that very significant savings have been delivered over a sustained period of time
- for those aimm members concerned about this presentation of the budget, the table at paragraph 1.6 of the Business Plan and Budget also clearly shows the cash budgets for each of the years since 2015/16
- our position on detailed staff costs is set out in paragraph 2.1.2
- the savings in office costs have primarily been achieved through a significant reduction in the floorspace occupied by PSA staff, although these have been partially offset through anticipated

increases in energy costs and Ofcom's cost recovery model for shared spaces and facilities
- the costs of the Consumer Panel are included within the overall staff cost budget. For aimm members wishing to understand more about their work, we would direct them to the following page on the PSA website – https://psauthority.org.uk/About-Us/Consumer-Panel which includes the published minutes of all of their meetings. We note that aimm members have in the past presented to the Consumer Panel.
- we explain in paragraph 5.3 in the Business Plan and Budget that the increased cost of the Annual Market Review is due to an increase in the scope of the fieldwork to include two additional years of forward-looking forecasting.

2.1.11. We note aimm's comments regarding the role of fines, debt collection and levy requirement. In addition to our views at paragraph 2.1.5, the PSA Board has a financial responsibility to ensure there is sufficient funds available for day to day working capital needs (including cover for any potential liabilities), to mitigate risks identified on the company Risk Register, and to allow for the smooth and orderly wind-up of the company. At the end of 2021/22, the PSA's retained surplus was £2,373,000, and, as stated, any fines collected during 2022/23 and 2023/24 will be added to this amount to ensure all possible wind-up scenarios are covered. For clarity we can confirm that the phrases "retained reserves" and "retained surplus" are the same thing.

2.1.12. We note aimm's comments on the estimated size of the market, and that an alternative calculation has not been offered.

2.1.13. With regards to comments made by aimm members regarding the Annual Market Review:
- we stand by the accuracy of the fieldwork, but allow for the obvious difference between consumer responses to market surveys and their propensity to register a complaint about individual services with the regulator
- we view the Net Promoter Score (NPS) methodology as standard and as such aligned with the approach used by the mobile network operators when surveying their consumers. Changing methodology would make it impossible to track trends across years. We remain clear that NPS is not a measure of consumer satisfaction. A negative NPS does not mean that consumers are not satisfied, but does indicate whether they are prepared to recommend a service to others which is an indicator of potential for growth.
- we are happy to consider aimm's suggestions for questions for inclusion in the consumer survey.

2.2. BT Group

2.2.1. We thank BT for its submission and welcome the support for our "priorities and business plans for 2023/24".

2.2.2. We note BT's requests for weekly and monthly reporting, which we are happy to discuss in detail as part of the activity set out at paragraph 4.3.3 in the Business Plan and Budget.

2.2.3. With regard to more proactive consumer campaigns, the Business Plan and Budget sets out in broad terms our planned activity within the scope of our budget. Additional detail to this includes:

- frequently tweeting at least every few days, giving consumers information about phone-paid services. These provide self-contained advice and also point to our resources on our website. We would welcome any support BT is able to provide in reaching its audiences – noting that BT's brand recognition and reach are far greater than the PSA's.
- promoting the positive messages of the Annual Market Review both generally and for the charity sector
- updating our consumer videos and regularly reviewing our consumer content and messaging (e.g. emails to consumers who have complained and information on the website) to ensure that the information is up to date and relevant.

2.2.4. We note BT's observations regarding Registration, and, as set out in paragraph 4.2.3 of the Business Plan and Budget, we are committed to supporting consumers through delivery of our online Service checker. We are clear, however, that there is a distinction between Service checker as a consumer-facing tool and the requirement for industry providers to register themselves and their services with us as a regulator. We are happy to discuss how we can further support industry access to Registration information to improve due diligence, risk assessment and control.

2.2.5. In terms of BT's request for us to consider if there is scope for providers to be involved in the Annual Market Report (AMR), we would note:

- providers are already extensively interviewed by Analysys Mason to help with the AMR narrative and market estimates. BT is usually among the providers interviewed and we are happy to ensure that they are included in this year's work.
- extending the AMR consumer survey to include wants and expectations of consumers would be prohibitively expensive for us to conduct.

2.2.6. We note BT's comments on the levy reconciliation, and can confirm we already review each quarter's network returns and check that the on-account monthly invoicing to major funders is broadly accurate. However, we can only ultimately reconcile levy payments for the year once we know (a) the overall size of the market i.e. after Q4 returns have been received, and (b) therefore what each individual network's share of the market is (and what, therefore, their actual levy should be).

2.2.7. As noted by BT, we will ensure there is no over recovery of the budget, whether in relation to a full or partial year in 2023/24. The funding of phone-paid services regulation post-transfer will be a matter for Ofcom.

2.2.8. In relation to the transfer and what happens to any residual assets, the PSA is legally obliged to distribute any net asset balance at wind up according to its Memorandum and Articles of Association i.e.:

"If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4 hereof, such institution or institutions to be determined by the members within three months of the members resolution passed initiating the winding-up failing which and if and so far as effect cannot be given to such provision, then to such charitable object as the Directors shall resolve upon."

2.3. Virgin Media O2

2.3.1. We thank Virgin Media O2 for its submission.

2.3.2. We note Virgin Media O2's desire for "further clarity and detail regarding the transfer of PSA activities to Ofcom", but we are unable to respond to those points raised regarding Ofcom's responsibilities post-transfer, such as those in relation to the regulatory environment, data protection and industry funding.

2.3.3. We note the comments made by Virgin Media O2 regarding the PSA's budget, and in response would make the following observations:

- our view remains that while our activity plans for 2023/24 and the overall cost of those plans are rightly open to scrutiny through this consultation process, it is the responsibility of the PSA's senior leadership to determine the detailed nature of the organisation structure, while the PSA Board is responsible for the overall allocation of resources to match the delivery of the business plan activity.

- the high level of consumer contact automation has been in place for a number of years, with staff resources reduced accordingly over time
- the decision to outsource the work of a Data Protection Officer was taken for operational, not budgetary, reasons
- as stated at paragraph 5.3 of the Business Plan and Budget, we are budgeting for office cost savings of £251,000 overall for the full 2023/24 year.

2.3.4. We note Virgin Media O2's comments in relation to the availability of funds from enforcement action. To address any potential misunderstanding about the role debt collection plays in our regulatory approach, we reiterate:

- our experience of recent years shows that serious non-compliance has almost exclusively been carried out by providers with no long-term legitimate commitment to the market, and who often attempt to liquidate rather than comply with regulation, deliver good services to consumers and seek to continue as viable businesses. Our strong emphasis on due diligence, risk assessment and control – embedded clearly within Code 15 - has been driven by this experience.
- it is often clear in serious cases that it will be difficult to recover fines even before the case reaches a Tribunal. The Tribunal however has to consider cases on their merits. In reaching a fair and proportionate decision, it cannot be driven by the potential risk that a provider may not pay an imposed fine, nor can it consider the funding requirements of the PSA.
- we will continue to rigorously pursue debt collection in 2023/24 through all legal means, so that every avenue is explored to hold providers to account. We are happy to confirm that (a) we will continue to commit the same (low) level of staff resources to the process of debt collection, but that (b) most of the activity is undertaken by external specialist solicitors. We will work with Ofcom to arrange for the ongoing pursuit of outstanding debts to pass to them as part of the transfer process.
- fines are an important sanction available to the Tribunal to act as a means of deterring non-compliance, but not the only one. The PSA will, for example, seek prohibitions against both the provider and the individuals from the market in cases where there has been serious non-compliance, preventing them from continuing to cause harm. We will also consider further regulatory action where there has been non-payment of fines. Furthermore, in order to ensure consumers of phone-paid services are protected more broadly, we also share information (where lawful and appropriate) with other relevant regulators to allow them to consider enforcement measures that extend beyond our remit.

2.3.5. For information, fines in 2021/22 were £4,280,000 and admin charges were £215,496, totalling £4,495,496 across 11 cases. In relation to these fines and admin charges, £794,049 was recovered during the year, of which (a) £453,746 was due to amounts withheld in the value chain across three cases and (b) £340,303 was paid by a single provider that had accepted sanctions with a view to improving their compliance with the Code. A further £120,693 was recovered from previously allocated bad debt, meaning the overall charge for bad debt in the 2021/22 accounts is £3,850,754.

2.3.6. In terms of the comments on staffing resources, we note Virgin Media O2 is an Industry Liaison Panel (ILP) member, through which there is regular engagement with staff and extensive reporting on our activity. ILP and industry more generally were briefed on the reorganisation of the PSA to reflect Code 15 at the March 2022 ILP meeting.

2.3.7. In relation to Virgin Media O2's comments regarding clarity on levy charges, the PSA Board has a financial responsibility to ensure there are sufficient funds available for day to day working capital needs (including cover for any potential liabilities), to mitigate risks identified on the company Risk Register, and to allow for the smooth and orderly wind-up of the company. At the end of 2021/22 the PSA's retained surplus was £2,373,000, and, as stated, any fines collected during 2022/23 and 2023/24 will be added to this amount to ensure all possible wind-up scenarios are covered.

2.3.8. In relation to the transfer and what happens to any residual assets, the PSA is legally obliged to distribute any net asset balance at wind up according to its Memorandum and Articles of Association i.e.:

"If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4 hereof, such institution or institutions to be determined by the members within three months of the members resolution passed initiating the winding-up failing which and if and so far as effect cannot be given to such provision, then to such charitable object as the Directors shall resolve upon."

3. Finalised Business Plan and Budget 2023/24

3.1. We have produced a final Business Plan and Budget 2023/24 that takes into account:

- the three consultation responses received, and
- our own full internal review of activities subsequent to the draft being written.

3.2. We have made grammatical changes where relevant, but the only (minor) changes to the draft Business Plan and Budget 2023/24 written in December 2022 are:

- since we no longer expect to hold an industry forum, we have removed reference to this from the examples listed under structured industry-wide set pieces (paragraph 4.4.3)
- with regard to the reach of our supervisory work, we have added larger merchants to network operators and intermediaries at paragraph 4.2.1
- we have recalibrated real-terms savings to reflect current inflation rates (paragraphs 1.6 and 5.2).

3.3. The final version of our Business Plan and Budget for 2023/24 is published alongside this statement and follows approval of our budget as £3,797,000 by Ofcom. It contains confirmation of the levy at 0.81% of outpayments for 2023/24, based on estimated outpayments of £450m from network operators to their industry clients.