

**CCL’s response to the PSA’s 2023 consultation on revising the PSA Code in relation to ICSSs**

**1. Introduction**

- 1.1. This document sets out the response of Customer Calls Limited (‘CCL’) to the PSA’s consultation on changes to its Code as it relates to information, connection and signposting services (‘ICSSs’) that was published on 1st March 2023<sup>1</sup> (the ‘consultation’).
- 1.2. The consultation follows on from the thematic review<sup>2</sup> that the PSA launched in July 2022 and proposes amending Code 15 (the ‘Code’) to address three issues that the PSA states it has identified from the data collected as part of its thematic review.
- 1.3. These three issues, and a summary of the PSA’s proposed solutions to address them, are set out at pages 11 and 12 of the consultation and are repeated below for ease of reference:

Issue	Proposal	Code provision PSA proposes to amend
<b>Issue 1:</b> Consumer misunderstanding leading to financial detriment	1. Alert to be provided at the beginning of the call State within the alert that: <ul style="list-style-type: none"> <li>• the organisation to which the service connects can be contacted directly for no or lower cost and provide the organisations official/direct contact number to assist consumers in contacting them directly</li> <li>• the amount that has been charged for the call (drop charge model) or the maximum charge for the call (per minute model)</li> <li>• the cost to receive an SMS (where applicable).</li> </ul> 2. Obtain positive opt-in to continue with onward connection and/or receive a chargeable SMS (where applicable)	Transparency Requirement 3.2.10
<b>Issue 2:</b> Financial detriment caused by high call costs	Maximum services charge capped at £40	

<sup>1</sup> Available at: <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2023/Consultation-on-ICSS-amendments-01-03-2023.ashx>

<sup>2</sup> See <https://psauthority.org.uk/news/news/2022/july/icss-thematic-review#:~:text=The%20thematic%20review%20is%20being%20launched%20by%20PSA,levels%20of%20compliance%20by%20providers%20in%20the%20market.>

<p><b>Issue 3:</b> Calls cutting off mid-call or before the consumer gets to speak to the organisation they are seeking</p>	<p>Consumers must be advised at the beginning of a call and before connection to the organisation that calls will cut off once the maximum charge is reached.</p>	
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## 2. Executive Summary

- 2.1. ICSSs play an important role in the PRS and wider economy, providing consumers with a useful and cost-effective service that competes with the conventional DQ services market.
- 2.2. The regulatory regime needs to strike an appropriate balance between protecting consumers and allowing competition to flourish providing services for which there is a clear demand — and CCL is concerned that the PSA’s proposal fail to do that, particularly if they are all applied to ICSSs using per-call tariffs.
- 2.3. CCL is concerned about the data the PSA has used from the thematic review on which its proposals are based. It necessarily includes data from clearly non-compliant ICSSs (two of whom have recently been removed from the market following adjudications), which may create a misleading impression of the levels of consumer detriment in the market. CCL also fears that the PSA may have drawn an oversimplistic and unsafe conclusion as to the reasons why a high proportion of ICSS calls are terminated within the first 60 seconds of the call.
- 2.4. The PSA may have erred in applying the OECD definition of 'consumer detriment' to the ICSS market, and wrongly assessed the scale with which such detriment is occurring.
- 2.5. The proposed regulation changes have limited application to ICSSs which use per-call tariffs compared with per-minute tariffs — and the former poses a much lower risk of consumer detriment compared to the latter. In particular, as charges for the call and SMS will have essentially been incurred at the point the call first connects to a per-call-tariff ICSS, it does not make sense to require providers using those tariffs:
  - to announce on the IVR the service charge cost of the call;
  - to announce on the IVR the cost of the SMS charge;
  - to announce on the IVR that the information they are seeking is available elsewhere for a lower (or no) charge;
  - to announce on the IVR that calls will cut off when the service charge reaches £40 because a per-call tariff can never reach that level; or
  - to provide a positive opt-in for call connection and SMS provision.
- 2.6. CCL is concerned that the PSA supports search engines’ policies preventing ICSSs being advertised. This is not an appropriate stance for a regulator of a different sector to be

taking, and it overlooks the non-financial detriment that will be suffered by consumers if ICSSs cease to exist.

- 2.7. We believe there are a range of alternative solutions that the PSA should consider — which are set out in the following section.

### 3. Alternative solutions the PSA should consider

- 3.1. We believe the PSA's findings of consumer detriment in the thematic review could be addressed in a number of alternative ways that go beyond the proposals being consulted on. These include:
- A. That ICSS providers must carry out (and evidence to the PSA) regular internal risk assessments as to how risks of misleading customers are managed. This would include a consideration of call costs and likely call durations. This exercise could be formally repeated on a periodic basis, but a requirement that the provider constantly keeps such risks under review.
  - B. An exploration with Ofcom, network operators and wider industry as to the feasibility of implementing pre-connection alerts that are free to callers. If such functionality existed, this would make some of the PSA proposals around IVRs more effective and feasible — and could apply to all premium rate services (including all ICSSs using either per-minute or per-call tariffs).
  - C. In relation to the PSA's call for industry to take up the 'currently unallocated service charge price points to make it possible to introduce a free alert on all number ranges used for ICSS'<sup>3</sup>, more analysis is required. In particular, work is needed to understand exactly what is needed technically to enable it, what its regulatory implications might be (including whether any unintended consequences may flow from it), and how it might be applied to all PRS rather than only to ICSS in the interests of fairness.
  - D. Greater consideration given to the reasons why ICSSs exist and that they are still relied on by the public. The PSA could review the practices of end organisations who take steps to 'hide' their customer helpline numbers and/or steer customers to use other forms of communication, such as online chat or email. CCL believes there ought to be guidance or best practice provided to organisations on where and how they should publish support lines and how these should be operated to give customers effective, prompt service.
  - E. A review and refresh of network operator guidance that applies to managing customer enquiries relating to third party services including ICSS. The PSA service checker and operator codes start from the sensible presumption that good consumer outcomes are typically achieved by a customer being put in direct contact with a merchant provider early so that any issues or complaints can be resolved quickly and fairly. In recent times, this has not been happening as effectively as it ought to with ICSS, and the delays and uncertainty can result

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<sup>3</sup> See paragraph 53 of the consultation.

in some situations that are capable of fast party-to-party resolution into slow rolling registered complaints and regulatory procedures. That situation does not serve consumer interests or their welfare.

#### 4. ICSSs and CCL's business model

- 4.1. It is important to acknowledge that the current ICSS market is supported by a number of different service models. As an established service provider, CCL provides services that genuinely provide an alternative to significantly more expensive DQ services.
- 4.2. CCL provides a valued service to the public by providing efficient and convenient information, connection and signposting services. Its business is focused on providing a viable alternative to conventional DQ services, competing ICSS providers, and customers seeking information themselves from the web or traditional printed directories. As a responsible ICSS provider, CCL consciously avoids providing its service in respect of Government departments (such as the DVLA, HMRC and the Department for Work and Pensions) or consumer 'welfare' type services such as Citizens Advice. However, that does not detract from the importance of remaining alert to the needs of vulnerable consumers who may use an ICSS to communicate with other types of end organisation, but CCL believes Code 15 already provides robust safeguards in that respect.
- 4.3. CCL's service provides to consumers quick and convenient information that may be otherwise difficult to find. It is a known fact that many large organisations deliberately make their direct phone numbers difficult to find online to help steer customers to other forms of communication — such as email or online chat.<sup>4</sup> This is principally done as a means of limiting the costs associated with staffing and operating call centres. Receiving communications from customers by email or chat is typically more cost-effective and convenient for organisations. This so-called convenience is not for the benefit of customers, who may wish to speak to the organisation by phone. ICSSs help customers do exactly that.
- 4.4. CCL's service comprises landing page promotions that customers find online when searching for contact details of specific end organisations which feature a premium rate number that the customer can call. A customer can call the relevant PRS number and receive information about, and be connected to, the end organisation. In addition, customers who call CCL's numbers from a mobile phone (and who have not withheld their number) receive for an additional charge SMSs featuring the direct number for the end organisation in question. This SMS avoids the need for the customer to repeatedly call the PRS number if they need to recontact the end organisation after the first ICSS call.
- 4.5. The phone call element of CCL's service is based on a 'drop charge' or per-call tariff. This means the customer incurs a single service charge for the call as soon as the call connects, which does not increase regardless of the duration of the call. This contrasts with some other ICSS providers who use a per-minute charge which means the service charge element for those calls will increase as the duration of the call extends. Under the non-geographic call service regime implemented by Ofcom in 2015, a caller will also incur an access charge set and received by the caller's originating communications provider on a

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<sup>4</sup> An issue reported in the Financial Times in 2022 — see Annex 1

per minute basis. The ICSS service provide has no control whatsoever over the setting of the access charge. CCL has long believed that access charges have been a significant source of bill shock and consumer harm, and we have made these points repeatedly to the PSA and Ofcom in recent years.

- 4.6. CCL believes that its per-call tariff and supplemental SMS provides an effective service offering value for money. The per-call tariff in particular means that customers can benefit from the speed and ease of speaking to the desired end organisation quickly without incurring high service charges — and is significantly less expensive than the two remaining DQ services with which CCL’s ICSS competes. Separately, as noted by CCL in previous consultation responses, we believe that the differences that now exist between DQ services and ICSSs are negligible (and are not relevant to the common issues of consumer protection) and that the same regulatory regime should apply to both.
- 4.7. CCL prides itself for being a diligent and responsible ICSS provider, paying close attention to very high standards of customer service and ensuring its service is fully compliant with the PSA Code. The volume of complaints that CCL receives is incredibly low— with [REDACTED] complaints from [REDACTED] calls to the service in the period 1st July 2021 to 30th June 2022 giving a complaint rate of [REDACTED]. The existing Code is designed to protect customers by specifically ensuring they are given sufficient information about the identity, nature and cost of the ICSS to make an informed decision. CCL believes strongly that that the existing regulatory regime is more than sufficiently robust to provide that protection in relation to ICSSs using a per-call tariff — provided that the Code is properly and promptly enforced against non-compliant providers.

## 5. CCL’s concerns with the PSA’s proposals

### Issue 1: Consumer misunderstanding, leading to financial detriment within the first minute of a call

- 5.1. CCL has a number of significant concerns about the PSA’s proposals in relation to issue 1.

### The data on which the PSA has relied is questionable and the PSA has drawn inaccurate conclusions from it

- 5.2. CCL believe the PSA has erred in its proposals because its decision to amend the Code is based in part on data that is unsafe to rely on, and the PSA has drawn inaccurate conclusions from that data. This has generated a distorted picture of the ‘harm’ being generated by ICSSs.

*(our emphasis added)*

- 5.3. At paragraph 42 of the consultation, the PSA says:

*The findings of the thematic review show that almost two-thirds of consumers who call an ICSS hang up within the first 60 seconds of the call after listening to the alert upon connection, resulting in £6.1m of financial detriment.*

*(our emphasis added)*

- 5.4. CCL has significant concerns about the validity of the data referred to by the PSA that ‘almost two-thirds of consumers who call an ICSS hang up within the first 60 seconds of the call after listening to the alert upon connection’. Such data stands in stark contrast to CCL’s

own data about its service. CCL believes the data on which the PSA has relied is potentially unsafe because it includes data associated with a high proportion of non-compliant services which has skewed the results and produced a misleading picture. The large gulf between the disconnection rates seen in the PSA's data and CCL's data may be attributable to the fact CCL operates its service in full compliance with the PSA Code and it uses a per-call tariff — unlike some other ICSS providers. CCL contends that the low disconnection rates it sees in its own call data is unrelated to the per-call tariff price not being included on the call announcement because, if the low disconnection rate were due to callers being unaware of the price until they received their phone bill, CCL would necessarily see high complaint rates when those hypothetical customers complained. However, CCL's complaint rates are very low — with [REDACTED] complaints from [REDACTED] calls to the service in the period 1st July 2021 to 30th June 2022 giving a complaint rate of [REDACTED]. The PSA has also noted in direct correspondence with CCL that its complaint rate is low.

- 5.5. Two recent PSA adjudications concerning non-compliant ICSS providers underline CCL's concerns about the PSA's reliance on data concerning non-compliant services.<sup>5</sup> The adjudication in relation to Heidi Corkhill trading as Call Support<sup>6</sup> reported that the PSA received 161 complaints about the service, and in the adjudication in respect of Connect You Limited<sup>7</sup>, the PSA reported that it had received 408 complaints. This complaints data necessarily formed part of the data used in thematic review and on which the PSA has relied in formulating its proposals. The services operated by these two non-compliant providers also made up a significant volume of all ICSS calls made — underlining the risk of distortion in the complaints data. For example, the adjudication concerning Connect You Ltd. reported that 321,405 calls to the service were made during the period 1st July 2021 to 30th June 2022.<sup>8</sup> That is almost 15% (14.62%) of the total ICSS calls for the whole industry during that time (2,198,176). Focusing on two clearly non-compliant services who are not representative of the majority of providers in the sector also risks the PSA designing a disproportionate regulatory solution in response.
- 5.6. Nevertheless, even if the data on which the PSA has relied were robust and sound, CCL fear the PSA has drawn unsafe conclusions as to the reasons why customers may be terminating calls within 60 seconds of the call starting. In particular, CCL believes the PSA has erred in concluding that a 'high proportion of consumers ending calls within 30 or 60 seconds is highly likely to be in response to the IVR message'.
- 5.7. An ICSS provider's IVR message lasts just a few short seconds before the call-connection to the end organisation occurs. CCL's own IVR, for example, makes it clear that the customer has called a ICSS within three seconds of the call commencing, and it's full IVR last just 12 seconds. CCL has conducted some simple market analysis of competing ICSSs by calling their PRS numbers. That testing has revealed that most other ICSS providers have IVRs of a

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<sup>5</sup> CCL is encouraged to see this robust enforcement activity being taken by the PSA against providers operating clearly non-compliant services, but believes further and swifter such enforcement action is required to address the remaining small minority of non-compliant providers in the market.

<sup>6</sup> See <https://psauthority.org.uk/regulatory-decisions/adjudications-search/adjudications/2023/march/heidi-corkhill-trading-as-call-support>

<sup>7</sup> See <https://psauthority.org.uk/Regulatory-Decisions/Adjudications-Search/Adjudications/2023/April/Connect-You-Limited>

<sup>8</sup> See paragraphs 30 and 31 of the relevant adjudication decision referred to at footnote 7 above.

similar length to the one used by CCL. No market testing has shown IVR messages even close to 30 or 60 seconds in length. As a result, it is clear that customers who choose to disconnect their call between 30 and 60 seconds has nothing to do with the ICSS provider's IVR and it must be due to other factors. These may include the following:

- a) The IVRs of many end organisations inform callers that the information or assistance they are seeking can be obtained another way (such as online).<sup>9</sup>
- b) The end organisation may advise the caller upon connection of current wait times (and/or the specific department of the organisation that the caller has chosen after hearing the organisation's IVR may be particularly busy) and the caller may prefer to call back at a different, quieter time.<sup>10</sup>
- c) Network issues (particularly for mobile devices) can also cause problems for callers trying to connect to services whereby the call 'drops' unexpectedly.
- d) In CCL's case, its customers are also given the direct number to call the end organisation, and the customer is advised on the landing page promotion to have a pen and paper ready to make a note of the direct number. The consumer may not want to be connected at that time, and that is the reason behind the disconnection.

5.8. The PSA's claim that calls ending within 30 to 60 seconds indicates consumer misunderstanding or confusion<sup>11</sup> is without a sound basis and cannot be justified in our view. Once a call has been connected, the ICSS provider has no control or influence on how and end organisation chooses to manage its call handling and customer care processes. There is no evidence that the IVR cost message is the predominant trigger for call disconnections. In any event, the Code already requires ICSS providers to include in their promotions comprehensive and effective information to allow potential customers to make an informed decision. This information includes a clear explanation that the service is an ICSS not affiliated with the end organisation, that the information may be obtained for less or even free elsewhere, and what it will cost to use the service. The vast majority of visitors to CCL's landing page promotions choose not to call the premium rate number. This further proves that consumers do understand the service and the associated cost, and that the Code's existing provisions on this point are more than sufficient and are working well.

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<sup>9</sup> For example, the DVLA direct callers to online resources, with its IVR stating, within just 21 seconds, 'do you know that the DVLA offers a range of online services which is the quickest and easiest way to transact with us'.

<sup>10</sup> HMRC advise on its IVR within just 19 seconds that its call handlers 'are currently very busy and you may have to wait longer for your call to be answered'. This is followed directly with the statement 'our online digital assistant or web chat advisors may be able to answer your query quicker.'

<sup>11</sup> See paragraphs 43 and 46 of the consultation.

## The definition of detriment

- 5.9. The PSA's analysis associated with the thematic review, and its consultation proposals, draw heavily upon on a definition of consumer detriment from the OECD.<sup>12</sup> This provides that:

*'Consumer detriment' means the harm or loss that consumers experience, when, for example, i) **they are misled** by unfair market practices into making purchases of goods or services that they would not have otherwise made; ii) they pay more than what they would have, **had they been better informed**, iii) they suffer from unfair contract terms or iv) the goods and services that they purchase do not **conform to their expectations** with respect to delivery or performance[.]*

(our emphasis added)

- 5.10. This definition embodies the concept that consumer detriment is harm or loss that consumers experience when they are misled or are inadequately informed about the price — which is simply not the case when ICSS providers adhere to the existing Code. This supports the argument that greater enforcement action by the PSA against providers who blatantly flout the Code's provisions, rather than new rules being imposed.

- 5.11. The PSA states in the consultation that:

*[...] it can be argued that any ICSS that leads to a consumer spending more on a call than they would if they had used the official number of the organisation connected to is inherently detrimental.<sup>13</sup>*

- 5.12. CCL fundamentally disagrees with this conclusion; consumer detriment only occurs where those consumers were not adequately informed of the price of using a service and there are numerous existing provisions in the Code that are focused on ensuring consumers are provided with the information needed to make an informed decision at the promotion stage as to whether or not to use the service.

## None of the PSA's proposed changes have sensible application to ICSSs using per-call tariffs

- 5.13. CCL believes the PSA's proposals are not relevant and should have no application to ICSSs using per-call tariffs. Per-call tariffs, as used by CCL and some other providers, give customers the **certainty and simplicity of a flat-fee service charge** that will not vary with the duration of the call. Accordingly, issues such as bill shock over the service charge, automatic disconnection of calls once the £40 PSR price cap is reached<sup>14</sup> and the consumer detriment associated with those issues, simply does not occur with such services. Quite simply, a caller using CCL's service could never incur a service charge for a call greater than £6 (plus £6 for the SMS element of the service). As a result, the caller will never be automatically disconnected because of the PSR price cap before they receive the information and/or connection service they are seeking. We believe the ICSS regulations

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<sup>12</sup> Organisation of Economic Co-Operation and Development (<https://www.oecd.org/>)

<sup>13</sup> See paragraph 35 of the consultation.

<sup>14</sup> As described more fully in paragraph 5.37 below.



should recognise that reduced risk by excluding elements of the proposed changes that make no sense when applied to services charged on a per-call tariff basis. We consider specific elements of the proposals against this backdrop below.

**Requiring providers to announce on the IVR the charge for the call**

- 5.14. The PSA has proposed that ICSS providers must include on their IVRs the amount that has been charged for the call (for per-call tariffs) or the maximum charge for the call (for per-minute tariffs), and the cost of receiving any SMS that is sent as part of the service.
- 5.15. As CCL has noted in the past, and the PSA acknowledged in the 2019 statement on amending the ICSS special conditions,<sup>15</sup> services using a per-call model are charged immediately once the call to the PRS number is connected. This means the PSA's proposed requirement of informing the customer of the call cost makes little sense for per-call tariffs; it would amount to telling the customer about the charge they have already incurred and are therefore no longer in a position to choose to accept or avoid it.
- 5.16. We note that the PSA is not proposing to require the call announcement to be free of charge. On this, the PSA say at paragraphs 52 and 53 of the consultation:

*We have concluded for the purposes of this consultation that it would not be possible to require providers to make the alert free of charge to consumers at this time, as it would effectively force providers to use a single price point.*

*It is not within the PSA's remit to be able to specify service charge price points that would facilitate the provision of a free alert to consumers in advance of connection to an ICSS. We understand that there are a number of service charge points that are not currently allocated. We recommend that industry should use these currently unallocated service charge price points to make it possible to introduce a free alert on all number ranges used for ICSS. If and when such price points become available, it would then be possible for the PSA or Ofcom to introduce a requirement for the alert on connection to be free of charge.*

(our emphasis added)

- 5.17. In view of this, it is unclear how the proposed changes applied to per-call tariffs would tackle the PSA's concern of financial detriment due to consumers disconnecting within the early part of the call. In fact, it could create rather than remedy consumer harm if customers using an ICSS adopting a per-call tariff become confused at hearing the cost on the IVR and take it to mean they will incur a further charge. Customers in that situation may terminate the call immediately at that point. That would result in a particularly poor consumer outcome and would hardly serve the promotion of consumer welfare: the customer would have been charged the full per-call tariff charge but would not receive the call connection service. Because of this, CCL strongly believe that the inclusion on the IVR of the call cost should apply only to services using per-minute tariffs and not per-call tariffs.

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<sup>15</sup> See para 97 - <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2019/Consultation-on-the-regulatory-framework-for-phone-paid-subscriptions/post-consultation/ICSS-Statement-20-12-2019.ashx>

5.18. The PSA previously acknowledged the futility of a provider informing a customer about further call costs (save for access charges) where a per-call tariff was being used. In the October 2019 statement<sup>16</sup> amending the ICSS regulatory framework, the former ICSS Special Condition 7 was tweaked to require that the call announcement must state the cost of onward connection where charged on a 'per minute' basis.<sup>17</sup> This essentially meant that where a per-call tariff was used, the ICSS provider simply needed to state that onward connection would result in no further service charge, but that the relevant access charge would apply. This sensible approach recognised the lack of sound rationale to require a provider using a per-call tariff to inform the customer of the service charge they have already incurred. The logic behind the PSA's earlier position applies equally today as it did in 2019.

***Requiring providers to announce on the IVR the charge for the SMS***

5.19. CCL have found the information SMS aspect of the service to have been an effective method to tackling repeat or excessive use of ICSS. As noted in paragraph 4.4 above, the SMS is sent to callers using a mobile phone (and the number is not withheld) as soon as the PRS call ends. It provides them with key information about the end organisation, including the direct number for future use, the opening times and a link to the end organisation's website. With CCL's service, the SMS charge (for applicable customers) is incurred upon connecting to the 09 number. As a result, the same point made in paragraphs 5.15 and 5.17 above apply: informing the customer about a charge they have already incurred serves no useful purpose and could be counterproductive by creating confusion and motivating the customer to terminate the call early before they have received the call connection part of the service they have paid for.

5.20. The SMS forms an inherent part of CCL's service; the call and SMS elements combine to provide an attractive service to customers at a fair price point. CCL's model offers a clear and well-understood price for the service offering good value for money when compared to those ICSSs who use the permitted £3.60 per minute service charge for the duration of a call. It is disproportionate and lacks fairness to single out ICSSs that adopt SMS as part of their proposition providing a trusted and valued service to customers for a flat fee, particularly if the services charged in this way have not been proved to have significant levels of customer complaints. The regulatory focus should be on ICSSs using high per-minute price points which also bring with them problems associated with calls terminating unexpectedly when the £40 price cap is reached.

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<sup>16</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2019/Consultation-on-the-regulatory-framework-for-phone-paid-subscriptions/post-consultation/ICSS-Statement-20-12-2019.ashx>

<sup>17</sup> See the wording of the former Special Condition 7 — available at: <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/For-business/Code-guidance-and-compliance/Special-conditions/Notice-of-Special-conditions---ICSS--20-Dec-2019.ashx>

***Requiring providers to announce on the IVR that the information the customer is seeking could be obtained at no or a lower cost***

- 5.21. The PSA has also proposed that ICSS providers must include on their IVR the statement that the information provided by the service may be available from another source for a lower or no cost than that charged by the ICSS.
- 5.22. CCL's service already provides, in the alert prior to connection, the end organisation's direct number for the customer's future use. As required by existing provisions in the Code, the landing page promotions also clearly state that the information can be found at no or lower cost via the website link provided. CCL firmly believes that adding the statement that 'the organisation to which the service connects can be contacted directly for no or lower cost' during the audio alert will cause consumer confusion in relation to ICSSs using a per-call tariff, since the consumer at that point will have already been charged for the call (and the SMSs in relevant cases). This means that the 'less or no cost' message will no longer be true at the IVR stage — and the point should be made only while it is factually correct (i.e. at the promotion stage). Including content on an IVR that is no longer true in itself can be said to be misleading to consumers and may cause (not remedy) consumer confusion and harm. CCL therefore believes that the PSAs proposal on this point should not apply to per-call tariffs.

***Positive opt-in for call connection & SMS***

- 5.23. CCL also believes it makes no sense for the positive opt-ins for call connection and SMS to apply to ICSSs using per-call tariffs. As noted above, the way these services work mean that the customer essentially incurs both charges immediately upon connection to the PRS number. Giving customers the illusion that they can control whether or not to incur a cost that they have in fact already incurred will be unhelpful, misleading and confusing. It will cause, not remedy, customer detriment and may lead to bill shock rather than addressing it. That state of affairs is not consistent with achieving good consumer outcomes or promoting consumer welfare.
- 5.24. CCL firmly believe that their alternative service proposition of a £12 flat fee for the call service charge and SMS combined offers very good value for money compared to competing ICSSs which charge £3.60 per minute for the service charge and DQ services. Automatically sending relevant customers SMSs has worked well to reduce the customers repeat calling a PRS number if they need to get in touch with an end organisation again. The £6 charge for the SMS element of the CCL service providing the customer with the end organisation's direct number can work out significantly less expensive for a customer than calling a competing ICSS with a service charge of £3.60 per minute.
- 5.25. Even if the PSA's proposals around positive opt-in make sense for ICSSs using a per-minute tariff, it is not clear whether technical feasibility and implications have been fully considered. The PSA suggests at paragraph 54 of the consultation, that the opt-in could work by a customer wanting to proceed to press a button on their handset as that was a 'well-understood mechanism'. While that may be true, it is unclear what would happen if the customer did nothing at the opt-in point: would the call continue to 'hang' without connection to the end organisation or an SMS being sent, or would it simply terminate? More analysis around how this would work, and the implications for consumers

(particularly the scope for it to cause customer confusion) should be undertaken in our view.

- 5.26. The PSA's current transparency requirement provides a clear and readily understood obligation on ICSS providers that is focused on achieving pricing clarity to protect against consumers using PRSs without first fully understanding the cost of doing so. The obligation applies at an appropriate stage in the transaction process — before the point of purchase when the customer incurs cost — and empowers consumers to make informed decisions.
- 5.27. We believe transparency and the protection of consumers around this point is best and most effectively achieved by the pricing information being clear and proximate to the PRS number, and existing PSA rules already address this sufficiently. In our view, issues with consumers misunderstanding of the cost of using an ICSS are due to providers not complying with the existing provisions in the Code.
- 5.28. For the reasons noted in paragraph 5.23 above, CCL believes strongly that the PSA's proposals around positive opt-in should be amended so they exclude ICSSs using per-call tariffs. CCL believes it would make no sense, nor would it serve the interests of consumers, if a positive opt-in applied to per-call tariffs as the full costs of using the service would have already been incurred when the IVR opt-in was played. A customer at that point would no longer be in a position to choose whether to accept or avoid the cost — and it would be unhelpful and misleading to suggest otherwise to consumers.

**It is concerning that the PSA supports search engines' policies preventing ICSSs being advertised, and non-financial detriment will be suffered by consumers if ICSSs cease to exist**

- 5.29. The PSA has openly acknowledged<sup>18</sup> that it agrees with Google's policies to restrict the advertising of ICSS via the Google search engine. The ultimate effect of this risks cutting off the 'air supply' needed for ICSSs to exist, thereby denying consumers the right to be able to choose to use such services for which there is a clear and demonstrable need.
- 5.30. CCL struggle to understand why the PSA is adopting this stance which flies in the face of freedom of choice for consumers — resulting in consumer detriment in itself. CCL believe it is dangerous and unhelpful for the PSA to make a recommendation on this topic which threatens the very existence of ICSSs. We feel it is not appropriate for a regulator to be asking commercial entities to comply with the 'rules' imposed by a player in a separate market who holds a clearly dominant position with vested commercial interests.<sup>19</sup> It is also unfair to single out ICSSs ; for example, Google's advertising policies 'strongly restrict' sexual content from being promoted, but ads for that material feature constantly within Google's search results.
- 5.31. There is an important role for compliant ICSSs to play who provide a legitimate, sought-after service for consumers looking for a quick and convenient way to connect with end organisations. As noted above, CCL has data which clearly shows a large proportion of

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<sup>18</sup> Including in the ICSS compliance update published by the PSA on 6th April 2023 where it the PSA said it 'strongly recommend[s] providers follow search engine advertising policies and do not take steps to circumvent them', available at: <https://psauthority.org.uk/news/compliance-updates/2023/april/icss-compliance-update>

<sup>19</sup> The stark reality is that Google holds a very dominant position within the search engine market by enjoying around 90% market share — <https://gs.statcounter.com/search-engine-market-share>

consumers who visit our landing pages choose not to use our connection service. This demonstrates that promotional material provides clarity explaining who we are, who we are not, what the service consists of and what it costs to use.

5.32. Consumers who choose to use connection service do so for several reasons, including but not limited to, speed and convenience and being unable to locate the required information themselves.

5.33. If ICSSs are no longer able to promote their services using search engines, CCL fears consumers will be restricted to searching for information themselves online, which is very often difficult and inconvenient, as was noted in a recent Financial Times article entitled 'The strange death of the company phone number'<sup>20</sup>. Among other things, the article noted that:

- An increasing number of organisations no longer feature phone numbers on their websites or make them hard to find;
- It's rare to find a company phone number that is featured prominently on the company's website, as is having a call answered quickly by a person;
- While many queries can be addressed online or through other communication methods, many customers' first choice is to contact an organisation by phone — particularly for complex or sensitive issues. This trend applies across all demographics; and
- Many websites 'bury' contact information at least five links deep because some organisations wish to discourage direct customer contact. Where contact information is available, it's often an online form or email address only.

It could be said, using the OECD's definition of 'personal detriment'<sup>21</sup>, that the blocking of ICSSs by search engines may result in non-financial detriment<sup>22</sup> to consumers due to:

- Restricted choice
- Psychological detriment (stress)
- Time required to address problems
- Inconvenience

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<sup>20</sup> An issue reported in the Financial Times in 2022 — see Annex 1 for more details.

<sup>21</sup> See pages 10-11 of the OECD's feasibility study on measuring consumer detriment and the impact of consumer policy, available at: [https://one.oecd.org/document/DSTI/CP\(2019\)13/FINAL/En/pdf](https://one.oecd.org/document/DSTI/CP(2019)13/FINAL/En/pdf)

<sup>22</sup> See Figure 1 below, taken from page 11 of the above-mentioned OECD feasibility study on measuring consumer detriment and the impact of consumer policy.

**Table 2.1. Types of personal detriment**

Financial detriment	Non-financial detriment
<ul style="list-style-type: none"> <li>• inflated prices</li> <li>• the cost of flawed products (e.g. products that do not deliver on the expected function, or level of quality)</li> <li>• the cost of repairing or replacing a product</li> <li>• administrative and/or travel costs associated with resolving a problem (e.g. telephone costs or travel costs)</li> <li>• a reduction in the value of the asset (e.g. poor repairs that reduce the value of the repaired product)</li> <li>• cost of expert advice or assistance (e.g. legal costs)</li> <li>• lost earnings (e.g. due to loss of time or injury)</li> <li>• damage to other property</li> </ul>	<ul style="list-style-type: none"> <li>• restricted choice (which can also have financial impacts, and result in structural detriment, discussed below)</li> <li>• psychological detriment (e.g. stress, anger or embarrassment)</li> <li>• compromised personal information or privacy</li> <li>• time required to address problems</li> <li>• inconvenience</li> <li>• injury or adverse effect on health</li> </ul>

Source: OECD (2010<sub>[6]</sub>).

Figure 1

5.34. By supporting Google’s policy of prohibiting ICSSs from advertising their services on Google search, CCL believes the PSA’s position is contributing to causing consumers non-financial personal detriment.

**Issue 2: financial detriment caused by high call costs**

5.35. The consultation sets out the PSA’s belief that high service charge costs are generating consumer harm and has proposed to address this by imposing a maximum service charge cap of £40. This will close the loophole being used by some ICSS providers who are FCA registered and can thereby avoid being subject to the £40 maximum transaction charge under the Payment Services Regulations 2017 (‘PSRs’).

5.36. As CCL’s service model is based on using per-call tariffs — for which the service charge can only ever reach a maximum of £12 — the PSA’s proposal in relation to issue two will have no application. Accordingly, CCL has no substantive comments to make on this aspect of the proposed regulation changes.

**Issue 3: consumer detriment caused by calls cutting off mid-call or before the consumer gets to speak to the organisation they are seeking.**

5.37. The consultation details the PSA’s finding from the thematic review that consumer detriment is occurring because of calls to some ICSSs are terminating automatically before the consumer has the opportunity to speak to the end organisation sought — typically when the call is waiting in a call queue. The cut offs are occurring because calls are reaching the maximum transaction figure imposed under the PSRs of £40 in respect of ICSSs who rely on the FCA regulation exemption for communication services. The PSA has proposed to address this issue by requiring ICSS providers to include a notification at the beginning of a ICSS call and before connection to the end organisation occurs that calls will cut off once the maximum charge is reached.

5.38. CCL notes the PSA's findings from the thematic review in this regard, and the proposals it has formed in response. CCL believes the PSA's proposed requirement should not apply to per-call tariffs where the maximum charge is incurred by the consumer immediately on call connection and that charge can never come close to £40. Because of that, it would make little sense (and it may cause customer confusion) if the ICSS's IVR refers to calls cutting off once a certain figure is reached. Customers relying on the certainty provided by a flat-fee nature of per-call tariffs will understandably become confused and concerned if they hear during the call an announcement that the call will cut off once a certain cost is reached. That confusion will cause, not remedy, consumer detriment. For these reasons, CCL would urge the PSA to clarify that the proposal on issue three is not intended to apply to ICSSs using a per-call tariff.

## 6. Concluding remarks

- 6.1. Regulation exists to create a balanced framework within which services can operate, innovate and serve consumers safely. Our hope is that this consultation exercise allows the PSA to fine-tune only the necessary elements of the framework to allow services and the PRS market to continue to function effectively.
- 6.2. It is for merchants to be clear on the service being offered, to deliver what is expected of them and to avoid actions that mislead users. The PRS regulatory regime provides the framework for that. Effective regulation must achieve a balance between necessary, targeted regulation that adequately protects consumers from harm, and providing conditions in which competition can thrive.
- 6.3. The PSA has created a regulatory framework over many years that delivers a basis on which responsible service providers can manage hundreds of thousands of PRS calls annually with an absolute minimal level of enquiry or complaint, and that allows the regulator to act when services are not run properly resulting in consumer harm.
- 6.4. CCL has a growing concern that the PSA's regulatory amendments in respect of ICSS are not sufficiently targeted and in some cases are not warranted. It is our belief that the risk of consumer detriment and harm is considerably less for ICSSs using a per-call tariff compared to those using a per-minute tariff — and we feel the regulatory framework needs to recognise that.
- 6.5. We worry the suggested additional requirements are disproportionate and may actually obstruct or disadvantage consumers by having unintended consequences. A prime example is the proposed requirement to include additional details in the IVR which, for services using a per-call tariff, may result in confusion and the caller choosing to disconnect before they receive the connection part of the service.
- 6.6. In relation to enforcement, we also worry that a continuous review of policy serves as a distraction from regulatory action that would carry greater effect: targeting the minority of non-compliant, harmful services and taking interim action more swiftly to limit consumer harm while an investigation is ongoing.
- 6.7. We support regulation that gives the public choice in how they access information and engage with the businesses and organisations they use. Unfortunately, it seems at

times that these organisations seek to operate in ways that suit their interests, but not those of their customers or users. Such organisations often appear difficult to access, hard to engage with and seek to minimise direct communication with end users or steer them towards forms of communication other than voice calls.

- 6.8. From years of trading without incident, CCL knows that compliant and responsible ICSS providers meet a genuine demand for customer support with information and connection to often-sought organisations. We think it important that PSA, as a regulator, works to create an environment which facilitates and enables consumers being able to engage safely with services that serve this demand. We feel it is inappropriate, therefore, for the PSA to make any commitment to support or give effect to policies that might be adopted by search providers or other businesses to advance their commercial and financial interest in the market. Specifically, CCL remains concerned at the PSA's inclination to support search engines' policies to prevent ICSS providers advertising.
- 6.9. We have sought to respond constructively to the specific proposals, but firmly believe their proposed application needs to be reconsidered to address the reduced risk posed by ICSSs using a per-call tariff.



**Annex 1: FT article ‘The strange death of the company phone number’, dated 22nd September 2022<sup>23</sup>**

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<sup>23</sup> Available at: [https://www.ft.com/content/1ee2344e-b046-46cd-96b5-e73d80d64417?accessToken=zwAAAYb\\_2i9\\_kc8e4jROsEZGzdOWtec9gNZEfw.MEYCIQDnJtn4\\_\\_ImfYXtgoQ1-IMZtPEToqOGP1JNj0Qeqb10pglhAlaMzblnD9cAYmj00jq3a8ifckXxjyzXT\\_FTbrVv7nny&sharetype=gift&token=6168b4d2-e880-463e-acb1-d9eb713d4adb](https://www.ft.com/content/1ee2344e-b046-46cd-96b5-e73d80d64417?accessToken=zwAAAYb_2i9_kc8e4jROsEZGzdOWtec9gNZEfw.MEYCIQDnJtn4__ImfYXtgoQ1-IMZtPEToqOGP1JNj0Qeqb10pglhAlaMzblnD9cAYmj00jq3a8ifckXxjyzXT_FTbrVv7nny&sharetype=gift&token=6168b4d2-e880-463e-acb1-d9eb713d4adb)