



Consultation on Code 15 amendments to Requirement 3.2.10 and Annex 1: Specified service charges and durations of calls

Response to PSA consultation

April 2023

NON-CONFIDENTIAL VERSION - REDACTIONS SHOWN BY [X<]

Executive summary

For too long UK consumers have been exposed to the significant and widespread harm caused by Information Connection and Signposting Services (“ICSS”). By the PSA’s own admission, the ICSS market is not working in the consumer interest. Every year, hundreds of thousands of consumers are unknowingly using ICSS and incurring substantial call charges to contact organisations which are available to call free of charge or at the basic rate. There is overwhelming evidence of material harm which, due the organisations being contacted, is likely to have a disproportionate adverse impact on vulnerable consumers.

After a number of missed opportunities, it is time for the PSA/Ofcom to take action to protect consumers once and for all. ICSS provide no benefit or value-add to customers, who can call the organisations they need, free of charge, using the organisations’ freephone number. The only beneficiaries of ICSS are the service providers that generate huge revenues by preying on vulnerable customers who are unaware that they have not directly called the organisation and in fact, have been onward routed for a substantial fee. The clearest way to protect consumers would be to ban ICSS.

Failing an outright ban, the PSA/Ofcom need to ensure that:

- consumers are given all the information they need to be able to make an informed decision as to whether to use ICSS;
- the Service Charge for the first 60 seconds is zero-rated;
- maximum call charges per minute after the first 60 seconds are capped at an appropriate level; and
- terminating networks can block ICSS numbers if asked to do so by the organisations that consumers are seeking to access, including their own customer numbers if the terminating network provider’s numbers are being targeted.

Sky's response

Introduction

Sky welcomes the Phone-paid Services Authority (“PSA”) consultation on changes to the fifteenth edition of its Code of Practice for regulating premium rate services (“the Code”),¹ which came into force on 5 April 2022, to address consumer detriment in the UK ICSS market.²

We note that Ofcom has overall responsibility for ensuring that ICSS, as a form of premium rate service, are regulated appropriately and that consumers are protected from the harm they cause. Responsibility for regulating phone-paid services is expected to transfer from the PSA to Ofcom in 2023, subject to approval by the Secretary of State of the Department for Science, Innovation and Technology.³

We further note that Ofcom already has powers to take enforcement action against those who persistently misuse electronic communications networks and service in ways which cause or are likely to cause someone else, especially consumers, to suffer harm⁴. Ofcom’s statement of policy on its persistent misuse powers specifically identifies scams which have certain common characteristics as likely examples of such misuse.⁵ These characteristics include: *“they exploit the use of premium rate or other revenue sharing services, or in some cases non-revenue sharing services, to generate calls where consumers are misled about the service offered and/or the costs involved”*. Given the complaints received and the consumer harm being caused by ICSS services, we call on Ofcom to exercise these powers to investigate these ICSS providers.

We note that Ofcom’s Plan of Work for 2023-24⁶ aims to tackle nuisance calls and scams *“by encouraging telecoms companies to develop technical solutions”*. Ofcom adds that *“cheap technology has enabled a significant and growing volume of scams received by phone calls and text messages, which disproportionately affect the most vulnerable”*. Whilst we support Ofcom’s work on scams which use *incoming* calls and texts, we consider that Ofcom and the PSA should urgently concentrate their efforts on scams which use *outgoing* calls, such as ICSS. Ofcom states that it *“will strengthen [its] own rules on preventing the misuse of communications services”* and that it *“will work closely with industry, Government and other regulators to make scams harder to perpetrate”*. Sky has long asked Ofcom and the PSA to assist by allowing Sky to block calls to ICSS number ranges to protect our customers, and we continue to stand ready to do so.

¹ Available at <https://psauthority.org.uk/For-Business/Code-Guidance-and-Compliance>.

² Available at <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Consultations/2023/Consultation-on-ICSS-amendments-01-03-2023.ashx>.

³ <https://psauthority.org.uk/news/news/2022/may/the-future-of-phone-paid-services-regulation>; <https://www.ofcom.org.uk/news-centre/2022/ofcom-to-take-on-responsibility-for-regulating-phone-paid-services>

⁴ Under sections 128-130 of the Communications Act 2003

⁵ Ofcom’s Persistent Misuse - A statement of Ofcom’s general policy on the exercise of its enforcement powers published 20 December 2016, available at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0024/96135/Persistent-Misuse-Policy-Statement.pdf

⁶ [Statement: Ofcom's Plan of Work 2023-24](#)

Addressing the ongoing issues relating to ICSS, “which remain one of the main sources of complaints to [the PSA]”, is one of the PSA’s top priorities for 2023/2024.⁷ The PSA’s recent thematic review⁸ confirms that the ICSS market is “simply not working in the consumer interest. Detriment remains high with hundreds of thousands of consumers engaging connection services every year not knowing they are doing so.”⁹

Sky strongly agrees that addressing ICSS should be a key priority for the PSA and Ofcom. The consumer harm caused by ICSS is a long-standing issue which Sky, together with other operators and UKCTA, has expressed concern about to both the PSA and Ofcom on numerous previous occasions.¹⁰ The data from industry clearly demonstrates how the existing regulatory framework is inadequate and fails to protect consumers from the significant harm caused by high ICSS call charges.

UKCTA has previously communicated to the PSA and Ofcom that, in its view, the only way to fully address the market failure caused by ICSS and ensure that consumers are fully protected would be to ban ICSS.

Failing an outright ban, Sky supports the following elements of the PSA’s proposals (subject to the qualifications discussed below):

- a free alert to be provided at the beginning of the call and more information in the pre-connection alert;
- two stage authentication, with a requirement for positive opt-in to connect to ICSS; and
- consumers should not be charged a Service Charge until connection to the ICSS.

In addition, Sky considers the following changes are also necessary to protect consumers:

- the Service Charge for the first 60 seconds (or if longer, until any informational message has been played) should be zero-rated;
- there should be caps on the maximum call charge per minute after the first 60 seconds;
- originating networks should manage call capping under the Payment Services Directive; and
- terminating networks should be able to block numbers if asked to do so by organisations whose lines are being targeted, e.g. HMRC, the Child Benefit helpline, and the Department for Work and Pensions (“DWP”).

Given the current cost-of-living crisis (which is having the biggest adverse impact on those individuals who are likely to be trying to connect to organisations like the Child Benefit helpline, DWP or their utility companies), it is more important than ever that this consultation does not become another missed opportunity for the PSA/Ofcom to address the harms caused by ICSS. Sky urges the PSA/Ofcom to take appropriate action against ICSS now to protect consumers once and for all.

⁷ ‘Our top priorities for FY2023/24’, PSA, 6 April 2023, available at <https://psauthority.org.uk/news/blog/2023/april/our-top-priorities-for-fy2023-24>.

⁸ <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/News/News/2023/PSA-ICSS-thematic-review-summary-findings-2-Feb-2023.ashx>

⁹ ‘Our top priorities for FY2023/24’, PSA, 6 April 2023, available at <https://psauthority.org.uk/news/blog/2023/april/our-top-priorities-for-fy2023-24>.

¹⁰ Response to the PSA’s Discussion Document on developing the next PSA Code of Practice - UKCTA 9 July 2020
UKCTA response to Ofcom’s consultation on its Approval of the PSA’s Code of Practice - UKCTA 16 June 2021
UKCTA Response to the PSA’s consultation on a new PSA Code of Practice (Code 15) - UKCTA - 12 July 2021

We have a number of specific comments and observations on the PSA's Consultation, set out below.

The consumer harm caused by ICSS is significant and widespread

It is indisputable that ICSS cause significant consumer detriment. This is evident from the sheer amount that consumers are being charged for using ICSS to connect to services – the majority of which are otherwise available at no additional cost to consumers – and the continuing high number of complaints from consumers and organisations that connect to ICSS. As the PSA notes in its consultation document:

*"ICSS account for less than 5% of the phone-paid services market by revenue, yet they are one of, if not the **most complained about service type**. While complaints about phone-paid services in total have fallen significantly in recent years, ICSS complaints have remained high."*¹¹ (Emphasis added)

According to one UKCTA member's analysis of its call data for 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."*¹² (Emphasis added)

Sky's most recent data also shows that our customers who used 09 numbers for ICSS between August 2022 and March 2023 incurred total costs of £[REDACTED] of which £[REDACTED] was due to Service Charges:

[REDACTED]

The consumer detriment caused by ICSS is widespread. As the PSA's thematic review of the sector found, there is:

- consumer misunderstanding, leading to financial detriment within the first minute of a call;

¹¹ PSA ICSS Consultation para.4.

¹² UKCTA Response to the PSA's consultation on a new PSA Code of Practice (Code 15), UKCTA, 12 July 2021, available at <http://www.ukcta.org.uk/ukcta-response-to-the-psas-consultation-on-a-new-psa-code-of-practice-code-15/>.

- financial detriment caused by high call costs; and
- consumer detriment caused by calls cutting off mid-call or before the consumer gets to speak to the organisation to which they are seeking to be connected.¹³

The PSA's current enforcement regime lacks teeth and does not provide sufficient deterrent

Sky considers that the PSA's recent prohibition decisions and ICSS Compliance Update,¹⁴ published on 4 April 2023, are insufficient to address the significant consumer harm caused by ICSS. Such decisions are unlikely to act as an effective deterrent when one compares the level of the fines against the potential revenue. For example, the recent fine of £750,000 imposed by the PSA on Connect You Limited is unlikely to deter them from operating with a revenue of over £7 million.¹⁵ It is clear that the potential profits for ICSS providers remain significant, even in the rare event that they are subject to a prohibition decision and fined by the PSA.

The Service Charge for the first 60 seconds should be a zero-rated

A high proportion of consumers end calls to ICSS numbers after hearing the IVR message. Consumers are being required to pay to listen to the IVR message and charged even if they decide to end the call because of the cost. Consumers are therefore incurring charges even if they do not actually access the service of the organisation which they were seeking to access.

Sky's data shows that, for the period August 2022 to March 2023, approximately 49% of calls to the '09' number range were terminated within the first 40 seconds ([3<] calls out of [3<]) but resulted in customers being charged a total of £[3<]. Multiple Sky customers were charged more than £6 for a call lasting less than a minute.

There is no reason or justification for consumers who call ICSS numbers to be charged a Service Charge for listening to the IVR message. As the PSA notes, "[c]onsumers should not pay for a service unless they choose to do so, having been given all the information they need to make that choice."¹⁶

There is currently a wide range of high Service Charges which mean that consumers are being required to pay substantially more for using ICSS numbers than if they called the relevant organisations using their official phone numbers (which are often free of charge). As noted in UKCTA's response to the PSA's Discussion Document on its Code of Practice in 2020, for the period January 2020 to June 2020, the fixed line customers of one UKCTA member collectively had to pay around 20 times as much for using ICSS numbers (compared to if they had called the organisations' official phone numbers):

¹³ Available at <https://psauthority.org.uk/news/news/2022/july/icss-thematic-review>.

¹⁴ Adjudication decisions relating to Connect You Limited and Heidi Corkhill trading as Call Support, available at <https://psauthority.org.uk/regulatory-decisions/adjudications-search/adjudications/2023/april/connect-you-limited> and <https://psauthority.org.uk/regulatory-decisions/adjudications-search/adjudications/2023/march/heidi-corkhill-trading-as-call-support>. The ICSS Compliance Update is available at <https://psauthority.org.uk/News/Compliance-Updates/2023/April/ICSS-Compliance-update>.

¹⁵ Para.109, <https://psauthority.org.uk/regulatory-decisions/adjudications-search/adjudications/2023/april/connect-you-limited>.

¹⁶ 'Our top priorities for FY2023/24', PSA, 6 April 2023, available at <https://psauthority.org.uk/news/blog/2023/april/our-top-priorities-for-fy2023-24>.

*“Calls were charged at £3.60 per min for one range, £1.55 per min for another and £6 per call for the two other ranges. That analysis showed that from January to June their customers paid £591,500 for calls to ICSS when the estimated costs those customers would have paid if they had called the official numbers for organisations was between £25-30k. **One customer incurred charges of over £450.**”¹⁷ (Emphasis added)*

If these figures were grossed up to include customers of other communications providers and all the calls made from mobile phones were also added, the total cost of consumer harm caused by ICSS will be exponentially higher – likely many millions of pounds per year.

Sky considers that, in the absence of an outright ban, the solution is for the Service Charge for the first 60 seconds (or, if longer, the full length of the information message) of calls to ICSS numbers to be zero-rated. This should provide sufficient time for consumers to listen to the IVR announcement advising on the cost of the call and decide whether to proceed. That way, consumers are free to decide whether to proceed with the call once they have been informed how much it will cost.

This approach has two benefits:

1. Consumers who decide to proceed with the call can then do so on an informed basis.
2. Consumers who do not proceed will not be required to pay a Service Charge for a service that they have not received.

Sky disagrees with the PSA's conclusion 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 (and in any case, this price point is not available for use on the 084 and 087 number ranges).¹⁸

“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.”¹⁹

The Service Charge is defined by the number range holder which can currently select from 100 different price points. The Service Charge could be easily configured to allow the first 60 seconds of a call to be zero-rated, akin to the '118' cap for which Ofcom gave providers four months' notice and new price points were introduced in 2019 across the UK.²⁰ There are precedents in caps for some Service Charges. For example, Service Charge 73 (one of a 100 different price points that 084/087/09/118 calls can be charged at) is at no additional cost to consumers for the first 60

¹⁷ 'Response to the PSA's Discussion Document on developing the next PSA Code of Practice', UKCTA, 9 July 2020, available at <http://www.ukcta.org.uk/response-to-the-psas-discussion-document-on-developing-the-next-psa-code-of-practice/>.

¹⁸ PSA ICSS Consultation para.52.

¹⁹ PSA ICSS Consultation para.53.

²⁰ https://www.ofcom.gov.uk/data/assets/pdf_file/0017/128420/Directory-Enquiries-118-Review-statement.pdf

seconds and thereafter £2.50 per minute. Therefore, zero-rating the Service Charge for ICSS the first 60 seconds should be possible.

Sky notes that the PSA says that it “will support industry initiatives to provide service charge price points with a free first minute”.²¹ However, the PSA cannot/should not rely on industry to make this change. The PSA needs to take action to ensure that it is implemented.

Caps on ICSS price points used after the first 60 seconds of the call should be introduced

As discussed above, high call costs for using ICSS numbers are causing consumers significant financial detriment, for a service that typically provides little or no value. We estimate that Sky’s customers who use ICSS are incurring costs in the region of £[redacted] million each year for trying to access organisations which are otherwise available free or at a significantly lower cost.

[redacted]

The PSA/Ofcom should be protecting consumers, some of whom may have particular vulnerabilities, against paying disproportionately high charges to access organisations which can otherwise be accessed free of charge.

Sky considers that the only way that the PSA/Ofcom can adequately protect consumers is to cap price points used after the first 60 seconds (e.g., at no more than £0.50 for the next 180 seconds). The current price cap for Directory Enquiries is £3.65 (including VAT) for the first 90 seconds. In Sky’s view, as Directory Enquiries is a true value-added service, a price cap of around £1 would be appropriate for the first 180 seconds of calls to ICSS numbers.

Call charge caps per minute after the first 60 seconds would also help to address the issue of forced terminations, which are causing customers to redial (in some instances more than once) and incur additional unnecessary charges. In its adjudication decision relating to Connect You Limited, the PSA notes how Connect You Limited earned a total revenue of £100,571.29 from consumers who disconnected a call within 60 seconds.²²

Over the period August 2022 to March 2023, [redacted] Sky customers made [redacted] calls to ICSS numbers that could be subject to forced termination. Out of these [redacted] customers, [redacted]% of them made repeated calls to the same numbers and [redacted]% of

²¹ ‘Our top priorities for FY2023/24’, PSA, 6 April 2023, available at <https://psaauthority.org.uk/news/blog/2023/april/our-top-priorities-for-fy2023-24>.

²² Para.31.

them made more than one repeated call. [REDACTED] of the customers were charged over £[REDACTED] each.

[REDACTED].

This is just one example of the substantial and unnecessary costs which customers are incurring as a result of forced terminations which could be avoided if the caps were imposed on call charges per minute.

Originating networks should manage call capping under the Payment Services Directive

Since the revised Payment Services Directive (“PSD2”) came into effect on 13 January 2018 (implemented in the UK by the Payment Services Regulations 2017),²³ all UK operators have a responsibility to ensure that customers are not charged more than £40 for the Service Charge. Originating operators apply the Payment Services Regulations, there is no valid reason for the Terminating network to disconnect calls. Especially concerning given that consumers are often held in queues for a significant amount of time to DWP etc., thereby having a disproportionate adverse impact on consumers who are likely to already be financially vulnerable. In its recent adjudication decision relating to DWP, one of the sample complaints noted by the PSA referred to how the customer’s call got cut off three times after being on hold, resulting in a total bill of £56.32 and “*still no answers*”.²⁴ Other examples cited by the PSA included complaints from consumers who had incurred significant costs even if they had not been connected to the desired organisation because of being put on hold and then the call being artificially ended, in some cases several times.²⁵

Terminating networks should be able to block numbers used by ICSS providers

Some organisations have expressed concern about the use of ICSS. As the PSA notes in the consultation document, organisations that connect to ICSS also complain to the PSA and are concerned about the harm to consumers, who are looking to contact the organisations because they are often vulnerable due to personal and/or financial circumstances.

Sky considers that, if an organisation for example HMRC has concerns about the use of ICSS numbers and asks the terminating network to block the numbers, then the terminating network should be permitted by law to do so. The PSA should amend its Code of Practice to enable this.

²³ https://www.legislation.gov.uk/uksi/2017/752/pdfs/ukxi_20170752_en.pdf

²⁴ Para.9, available at <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Tribunal-adjudications/2023/Tribunal-minutes-Heidi-Corkhill-trading-as-Call-Support-185532-f.ashx>

²⁵ Ibid paras.9 and 14.

Responses to consultation questions

Sky's responses to the following questions should be read in conjunction with its above response.

Q1. Do you agree with our proposal to require a positive opt-in prior to connection by the ICSS provider to the sought organisation?

Yes, but it is important that consumers are not charged for this (i.e., call charging should begin only if the consumer opts in and once the consumer has been connected by the ICSS provider to the sought organisation).

Q2. Do you agree with the information that we propose be required to be included in the consumer alert prior to opt-in to ensure transparency and consumer awareness?

Yes.

Q3. Do you have any information that would inform our assessment of the impact and especially the financial costs and benefits of our proposals in relation to Requirement 3.2.10?

Sky data shows that approximately [3<] % of calls by its customers to ICSS numbers terminate within 40 seconds of connection. However, this varies significantly by number range between [3<] % and [3<] %, which suggests that some announcements are less informative than others.

Q4. We welcome input on whether there are any other measures that could support consumer understanding of ICSS. We would like to understand if all network operators are able to provide free pre-call announcements and whether these can be applied to specific service types. It would also be helpful to understand what other technology is available to support free alerts upon connection to ICSS.

No comments.

Q5. Do you agree with us that it is appropriate and proportionate to cap the service charge of all ICSS calls at £40? Should a lower figure be considered?

Yes.

Q6. Do you agree that consumers should be informed before onward connection that calls will be terminated once a maximum charge of £40 (inclusive of VAT) is reached?

Sky does not agree that calls should be forcefully terminated. Sky considers that a more appropriate solution would be to implement a cap on the maximum call charge

per minute. Such caps would help deal with the issue of forced terminations because calls need to last for over an hour before the £40 cap is reached.

Q7. you have any information that would further inform our analysis of the costs Do and benefits of our proposals in respect of caps on service charges?

No.

Sky

April 2023