

Statement following consultation on the Business Plan and Budget 2018/19

Issued on 22 March 2018

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1. Consultation process

1.1. Our draft Business Plan and Budget 2018/19 was put out for public consultation on 15 December 2017, with a deadline for comment of 26 January 2018.

1.2. We have received four consultation submissions, from:

- Paul Muggleton
- Association for Interactive Media and Micropayments (aimm)
- Action4
- Caller Support Limited

1.3. We have considered each submission in detail. As in previous years, we have made our responses in a summary format. These are based on our understanding of the points in each submission, and we have limited our responses to those points that are relevant to the Business Plan and Budget. We will respond to any non-related items through the appropriate channels. Our responses should be considered alongside the respective consultation submissions, which are published separately alongside this Statement.

2. PSA response to consultation comments

2.1. Paul Muggleton

- 2.1.1. We note Mr Muggleton's response to the consultation follows problems experienced by a family member with a subscription service. Much of his introductory remarks and response in general are directed at Mobile Network Operators (MNOs) and so beyond the scope of our consultation.
- 2.1.2. That said we work closely with the MNOs in pursuit of our vision and mission, and will continue to liaise with them on how best to direct consumers to resolve any enquiries and complaints relating to premium rate services.
- 2.1.3. At various points Mr Muggleton asserts that the PSA's regulation is "weak" or "ineffective", and specifically states "one gets the impression that the MNOs and the regulator are quite content to be complicit in fraud". We strongly reject those assertions which are in our view based on misunderstandings of our powers and regulatory processes and, in particular, the need to follow due process.
- 2.1.4. While we note Mr Muggleton's concern that services continue to operate after complaints have been made, we do not agree with Mr Muggleton's assertion that "failure to deal with complaints in a timely manner should be sufficient to enable the regulator to suspend the offending company's 'services'" (sic). While the PSA may investigate potential breaches of para 2.6 of the PSA Code of Practice (the Code), regulatory action has to be fair and proportionate. The Code has a set of provisions with regard to the imposition of interim measures during the course of an investigation. This includes the suspension of services pending consideration of breaches by Tribunal and the grounds on which such action can be taken. Where Code breaches are subsequently upheld by a Tribunal it may impose a range of sanctions, including barring of access to services pending implementation of compliance advice, but this is a severe sanction which needs to be justified by the circumstances.
- 2.1.5. We understand Mr Muggleton is particularly concerned about the speed of taking cases forward and processes for obtaining refunds. As outlined in the Business Plan and Budget, the PSA is working to see what improvements can be made to refunds processes as a major project for 2018/19 and we want to ensure that refunds can be made as quickly and easily as possible, both where refunds have been agreed between the provider and the consumer and in cases where they have been ordered by Tribunals. Mr Muggleton's view that it should be possible to refund to a mobile phone account is in our view entirely reasonable, but it is also not the only possible mechanism and there may be valid reasons why both the provider and the consumer would wish to use alternative means - e.g. a consumer may have switched mobile phone providers and wish to be refunded to a bank account. We note that it is not "technically impossible" to refund a charge incurred via direct carrier billing to the

consumer's phone account – it may cost the service provider more and may take longer than another mechanism, but it is not impossible.

- 2.1.6. We disagree that obtaining a refund for losses is “rarely possible”. We acknowledge that there are service providers whose complaint handling does not achieve the Code outcome of dealing with complaints quickly and easily, but the Code provisions are there to deal with that circumstance.
- 2.1.7. We note Mr Muggleton’s view that “Payforit expects the consumer to negotiate directly with the originator of the charge”. This is also the PSA’s expectation – that the consumer in the first instance contacts the service provider originating the charge. We view this as normal consumer practice, with the service provider given the opportunity to correct an error or provide redress. Where this does not happen, the consumer may then turn to the PSA and we will look into the case to see if there is a breach of the Code.
- 2.1.8. Mr Muggleton further suggests that subscription services in general should be subject to a more rigorous regulatory regime and suggests that they should all be subject to a double opt-in procedure. We introduced new requirements (Special conditions) for online adult and online competition services at the beginning of 2017 and these have been effective in reducing harm – complaints to us overall are down almost 70%. We will be reviewing the need for further measures in relation to subscription services in general in 2018/19.
- 2.1.9. We note Mr Muggleton’s suggestion that “the amount spent on regulation will probably need to increase”, in order to speed up the deployment of resources. However, given our expectations of the volume of contacts, complaints and cases as set out in the Business Plan and Budget, we are satisfied that we have budgeted for sufficient resources at the right level to deal with issues as they arise in a reasonably timely manner, taking into account the need for due process.
- 2.1.10. We note Mr Muggleton’s suggestion “to impose different rates of levy on different services, based on the regulatory work they generate”, and that he is concerned with the issue of fairness towards service providers whose services do not generate complaints. However, we do not intend to change the levy model, for the following reasons:
- it has been subject to recent consultation with industry funders, and their strong preference is for the levy calculation methodology to remain the same;
 - in any case, given that the model is based on market share as the apportionment for each network to contribute fairly, imposing different rates of levy will not materially affect the levy funded by each network;
 - as stated in the Business Plan and Budget, we intend to continue to use collected fine income (from service providers who have breached the Code of Practice) to reduce the cost of regulation.

- 2.1.11. We note Mr Muggleton's view that the phone-paid services market will only grow and compete seriously if it works to increase consumer confidence, specifically in relation to improved consumer protection measures and better refund procedures. We agree that improving consumer trust and confidence is key to success for this sector, and, as set out in the Business Plan and Budget, we will be working with our Industry Liaison Panel on actions to develop this.
- 2.1.12. We regret that Mr Muggleton takes the view that the PSA prioritises the interests of the industry over consumer protection. Our Vision and Mission statements are clear that consumer protection is the PSA's primary concern, and much of the activity set out in the Business Plan and Budget is intended to promote the offering of compliant services in the interests of the consumer. If the industry gets it right at the outset, then consumers suffer fewer problems and the need for regulatory action to stop harm and provide redress is also reduced. Our policy interventions have been informed by consumer research and we make efforts to reach out to consumer organisations. Our proposal to set up a consumer panel – for which Mr Muggleton's support is welcome - is a further initiative to seek input from ordinary consumers.
- 2.1.13. We are also overhauling our website and reviewing our information for consumers. It is regrettable that Mr Muggleton has in our view misinterpreted a particular piece of information in relation to exit from a website. To be clear, the PSA regulation requires the consent of the consumer to be charged and failure to be able to demonstrate that consent has been obtained has resulted in a number of adjudications against companies, in turn resulting in fines and other sanctions being imposed – the PSA takes a particularly dim view of deliberate efforts to mislead consumers.

2.2. aimm

- 2.2.1. We welcome confirmation of aimm’s view that the paying consumer should make their choices “freely and knowingly”. This principle supports the range of activities set out in our Business Plan and Budget, both in terms of our work directly with consumers and our engagement with industry.
- 2.2.2. We note that a number of concerns and issues raised by aimm in their response to question 1 are matters for industry (whether aimm members or not) to resolve. We are clear about our role, and remain committed to ensuring that our regulatory approach, as set out in the Business Plan and Budget, does not unnecessarily hinder the development of services that benefit consumers.
- 2.2.3. We disagree strongly with the sentiment expressed, again in response to question 1 of the consultation, that blames consumers for industry constraints. As our recent research, shared with industry, shows, consumers need help to allow them to engage freely and knowingly with phone-paid services. We plan to develop the shape this help should take, through furthering our body of consumer knowledge and engaging with industry to enhance the experience of consumers.
- 2.2.4. Based on last year’s Business Plan and Budget consultation, industry funders (the largest of which are aimm members) agreed to a four-year plan to smooth the amount of levy funding required at a reduced level. The PSA’s retained funds (of collected fine income) will be used for that purpose, meaning that only the identified budget is available to fund activity in 2018/19. For further information on collected fines, please see the blog post we published in January.
- 2.2.5. In its response aimm calls for the PSA to take a “long hard review” of how it can assist the operating environment in terms of growth and consumer confidence. The PSA’s Project 30 (undertaken during 2016/17) included a funding review (as referred to at 2.2.4 above), and a comprehensive strategic review of our approaches to consumer protection, market innovation, and growth in the consumer interest. The output of this work can be seen in our revised vision, mission and strategic priorities, which in turn inform our ongoing work plans. Through extensive engagement with the broader value chain during these wide-ranging reviews there has been limited feedback to date suggesting complexity or barriers with regard to the PSA regulation. There has been, to date, limited requests for additional flexibility through Code exemptions suggesting the PSA regulatory framework is providing the appropriate level of support for growth and innovation without undermining consumer protection. The PSA welcomes ongoing dialogue with industry participants where flexible regulatory approaches can assist both growth and consumer trust and confidence. As part of our work on improved website content and accessibility, further information and clarity for industry providers in making requests for regulatory exemptions is planned for delivery in 2018/19.

2.2.6. We agree that the PSA should deliver an ambitious plan and we have set this out. Our activities are defined so as to deliver on our mission to protect consumers and further their interests through supporting innovation and growth. We have detailed a wide range of activities in terms of helping consumers use phone-paid services with confidence, preventing harm, building compliance, flexible and enabling regulation to support service development and delivery, and considerable focus on improving all aspects of the consumer journey and best practice customer care. As such in relation to aimm's specific suggestions, we note that these relate to activities already set out in the Business Plan and Budget as identified below:

- Section 4.1.3: Where consumers contact the PSA, simple bill enquiries are handled effectively and efficiently and, in our experience, are not escalated into complaints. If a consumer is dissatisfied with a service, we register the complaint – but first refer them to the service provider if they have not previously contacted them.
- Section 4.1.1: Rule 2.6.5 of the Code of Practice does not prevent merchants' use of ADR or ADR providers' services. Our understanding from discussions with industry has been that the cost of individual ADR cases, which can often be £200-£300, has been the major barrier to take up of ADR services by merchants. We will, within scope of our remit, implement best practice arising out of our current work on refund mechanics and ADR.
- Section 4.2.2: While we are currently happy with our risk taxonomy, we will review its effectiveness in 2018/19. At the same time, we also believe that the industry needs to reframe its view of Special conditions. Where a service type presents a higher risk of causing consumer detriment than other types of phone-paid services, then we consider the need for appropriate Special conditions by means of consultation. Special conditions provide a means for the industry to manage the risks presented by the service type and to continue to offer the service. Compliance with Special conditions should enable consumers to continue to enjoy the relevant service with confidence. As discussed with aimm and individual industry members, we remain open to any evidence that allows service type definitions to be made such that Special conditions are not required (or that different Special conditions should be applied) for such service types. In the particular case of affiliate marketing, this is in our view not an inherent characteristic of the service types in question, rather a marketing method applicable to a wide range of service types.
- Section 4.1.2: We have recently consulted on Registration requirements, and, once agreed, we will be using the additional information collected to allow consumers to be better informed about services and their providers. We note that, based on recent

conversations, MNOs (who are aimm members) individually wish to deal with their own consumers, and are developing systems and processes to better enable them to do so.

- Section 4.2.4: The high number of pieces of individual compliance advice given reflects, in many cases, detailed questions about the design and operation of specific services and not so much broad questions about the regulatory framework. Some merchants are extensive users of our compliance advice and we welcome their efforts to ensure that their services comply with our regulation. We will continue to provide compliance advice for those that ask for it and we are planning to review our processes for offering compliance advice. We will further support industry understanding of the Code and our Supporting Procedures through workshops, improved communications and an ongoing programme of engagement.
- Sections 4.2.3, 4.3.2, 4.4.1: While we remain committed to acting with regulatory clarity, we also recognise that MNOs will impose their own terms and conditions for commercial reasons. We will continue to work with industry to identify any areas where MNO contractual requirements are in conflict with our Code of Practice. In addition, we remain in close liaison with the MNOs (and other members of the value chain) on their responsibilities and delivery of customer handling and care.
- Section 4.3.2: We do not agree with aimm's analysis of our monitoring capabilities. We have a due process to follow in terms of enforcement activity and policy development. The intelligence flowing from our monitoring of market activity has played a significant part in identifying and dealing with issues. We also reject the analysis that previous high levels of complaints were due solely to affiliate marketing activity.

2.2.7. To deliver good governance and effective organisational management, the PSA Board and executive Leadership Team decide upon and control the required structure, resources, systems and business processes used to deliver its stated strategy and objectives. As stated in the Business Plan and Budget, we have carried out a zero-based budgeting approach in the context of operating priorities. We therefore reject aimm's assertion that our mix of staff roles are not applicable or staff levels are not at a minimum level.

2.2.8. A number of requests are made for clarity, which we are happy to provide:

- The Business Plan and Budget is a draft written in November 2017, with a final version published in March. While the draft assumed Registration would be completed by the end of the 2017/18 year, the final version will be correct in presenting the actual progress status at that point.

- We note that most of the Digital Economy Act 2017 does not directly impact on phone-paid services, and we have reported this orally at numerous meetings attended by aimm representatives and members including the ILP. We also had participation from DCMS at the May 2017 Industry Forum on the government's approach to age verification requirements for adult websites. The other provision of the new Act with the potential to impact demand for phone-paid services are the requirements in relation to capping of mobile phone bills – which was set out in Ofcom's letter to providers of mobile phone services on 24 November 2017. While services provided by third parties is outside the scope of the mobile bill limits provisions, our joint view is that it would be desirable to include third party service charges within caps to avoid consumer confusion.
- In relation to the General Data Protection Regulation (GDPR) and our expectations on information to be held by providers, we will be updating our guidance in this area and expect to consult on this early in the first quarter of 2018/19.
- Our project on refund mechanics and ADR is ongoing and we plan to consult on this work during 2018/19. We are not aware of an ADR company that has been unsuccessful in securing a meeting with us – the PSA has demonstrated on numerous occasions that we are willing to meet industry – both in broad-based meetings such as the ILP and Forum and in individual meetings. As part of our work on refunds and ADR we have both sought meetings with companies and taken meetings at the request of all the certified providers that have approached us.
- For clarity, the PSA does not refer consumers directly to individual ADR providers – we do however want to be able to advise consumers with confidence about ADR in general.

2.3. Action4

- 2.3.1. We welcome Action 4's support for our collaborative approach to regulation.
- 2.3.2. We note Action4's suggestion of an award event. Industry efforts to increase compliance and support good practice are of course welcome and should be celebrated, but this is not something a regulator can be involved in as we need to be (and be seen to be) impartial.
- 2.3.3. Our decision to move to our current office location in 2015 included consideration of moving out of London, which was rejected for a number of reasons - not least that the costs of re-locating outside London would likely have been greater than those saved due to the loss of key staff and likely redundancy payments . We have a lease agreement on our office premises to the end of 2022, and while we will of course take any changing circumstances into account, we currently have no plans to review our location and office working arrangements until nearer that time.
- 2.3.4. Action 4 believes that the PSA's budget should decrease as a result of a decrease in market size. As we have emphasised previously, the budget that the PSA needs to carry out its role effectively is not a direct function of market size. It is much more a function of the levels of contact and casework that we experience and in that context, it has been a challenge to manage the budget reductions we have delivered over the last couple of years against a background of very high complaint levels and case load. We remain very mindful of the need to ensure we provide value for money, and as set out in the Business Plan and Budget, we have carefully worked through the resources we need to deliver the activity described (all of which is within our scope of regulation and remit). Our budget is subject to annual approval by Ofcom, and further independent scrutiny is provided by the National Audit Office (whose audit assessment of risk includes consideration of inadequate budget management) and DCMS (who hold us accountable for having "due regard to the standards, rules, guidance and advice in Managing Public Money").
- 2.3.5. It also appears to us that Action 4 are relying upon incorrect information. It quotes a figure of £763.7m 2014/15, when in fact the market size (as measured by outpayments from networks) was £443.6m.

2.4. Caller Support Limited

- 2.4.1. We understand that Caller Support Limited is principally concerned about the impact of access charges on the PSA's ability to regulate the phone-paid services industry. As acknowledged within the consultation submission, regulation of access charges is a matter for Ofcom and not within our remit, but we recognise we have a role to play in ensuring that consumer confidence is not undermined by any misunderstanding about service and access charges. To this end, our agents are trained to provide relevant information to consumers, we have supporting information on our website and refer any consumer issues on the matter to Ofcom as a matter of course. Furthermore, we will share with Ofcom the comments made in the consultation submission and discuss the matter as part of our regular engagement with them.
- 2.4.2. We note that Caller Support Limited believes that the access charge "triggers the vast majority of pricing dissatisfaction and complaints", but this is not the PSA's own experience. The majority of consumers' complaints to the te to either a concern that they are being charged for a service they did not sign up for or, in the case of Information Connection and Signposting Services (ICSS), that they had mistakenly thought that they were calling the "official" contact number of the organisation sought and hence have been misled in some way. Only a very few of the complaints we receive refer specifically to the access charge, and while that is not to say that the access charge is not a factor in some cases of bill shock, we do not consider that it is anywhere near as prevalent a problem as suggested.

3. Business Plan and Budget 2018/19 final version

- 3.1.1. We would like to thank our stakeholders for the submissions received.
- 3.1.2. After full and due consideration of the comments received, we note the following in respect of the Business Plan and Budget 2018/19:
- many of the comments made or issues identified in the consultation responses will be addressed by the planned activities already set out
 - we have provided explanations (in section 2 above) as to why some suggestions will not be taken forward, including where these relate to issues outside of our remit.
 - The consultation responses have helped us identify some areas in which we can make our activity plans clearer, and the Business Plan and Budget 2018/19 has been amended accordingly. These changes are:
 - inclusion of a policy review of subscriptions in general (section 4.2.2)
 - inclusion of guidance on our expectations on retention of information and data in light of the GDPR (section 4.2.5)
 - inclusion of an emphasis to provide greater industry understanding about exemptions (section 4.3.2)
 - inclusion of the potential to enhance our offering to consumers through user-friendly access to a wider range of Registration data (section 4.1.2)
 - clarity about our work on refund mechanics and ADR (sections 3.1.1 and 4.1.1).
- 3.1.3. The final version of our Business Plan and Budget for 2018/19 is published alongside this Statement and follows approval of our budget as £3,850k by Ofcom. It contains confirmation of the adjusted levy at 0.44% of outpayments for 2018/19, based on estimated outpayments of £410m from network operators to their industry clients.