

# Call for Inputs

Review of Phone-paid Subscriptions

6 September 2018

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## About the PSA

1. The Phone-paid Services Authority (PSA) is the UK regulator for content, goods and services charged to a phone bill.
2. The PSA's vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence. The PSA's mission is twofold:
  - Protect consumers from harm in the market, including where necessary through robust enforcement of our Code of Practice;
  - Further their interests through encouraging competition, innovation and growth in the market.

## Background to the review of phone-paid subscriptions

3. As outlined in its 2018/19 Business Plan, the PSA is undertaking a review of phone-paid subscriptions regulation to ensure that the regulation supports the PSA's vision and keeps pace with market developments.
4. Phone-paid subscriptions are defined at paragraph 5.3.37 of the Code of Practice (the Code) as 'services which incur a recurring premium rate charge'. This is a broad definition which captures a range of subscription services and subscription service types. This can include, but is not limited to, services charged on a daily, weekly, yearly or monthly basis and encompasses a broad range of payment mechanisms/platforms.
5. Over the last 12 – 18 months the PSA has seen growth in the types of phone-paid subscriptions services. For example, new services offered by major brands (e.g. music streaming subscriptions) as well as an increase in the number of consumers engaging with these services. The PSA wants to ensure that consumers can continue to enjoy the subscription services they value and that the regulation that enables this is right-touch.
6. Phone-paid subscriptions are already subject to specific PSA regulatory requirements. The existing regulatory framework includes the Code, as well as both Guidance and Special Conditions on which further information is outlined from paragraph 36 of this document.
7. There are also additional regulatory requirements that apply to specific subscription service types, including online competition and adult phone-paid services. In 2016, the PSA completed a review of online competition and adult phone-paid services. Through the review, the PSA found that stronger regulatory requirements were necessary for these services, and in 2016 introduced additional regulatory requirements for these services.
8. It is timely for the PSA to review the regulation that applies to phone-paid subscriptions. It is important to address the issues that are causing consumers to complain to the PSA, and to others across the value chain. Regulation needs to be

sufficiently robust to protect consumers, as well as being flexible to enable the operation of a range of subscriptions that consumers want.

9. This Call for Inputs is the first stage in the subscriptions review. PSA is undertaking the Call for Inputs to outline its initial thinking and to gather stakeholder input and evidence to support the review. Specifically, the Call for Inputs is seeking feedback from stakeholders on:
  - the rationale for the review, including the issues contributing to the high volumes of consumer complaints about subscription services
  - the draft review objectives
  - the evolution and growth of subscriptions over time, as well as on what providers see as the biggest potential growth / new service areas / types going forward
  - our high-level analysis of the existing regulatory framework and the impact of an evolving market on the effectiveness of the framework.
10. In addition, the PSA is seeking input specifically on the set of questions and requests for information and evidence from stakeholders outlined at the end of this document. This input will support the PSA in its analysis of the existing framework and development of any proposals for change
11. The PSA is seeking responses to this Call for Inputs by Monday 15 October 2018. If engagement with stakeholders, research and analysis identifies that changes to the existing regulatory framework are required to support the achievement of the PSA’s vision and mission, the PSA is aiming to release a consultation document at the end of 2018 / early 2019.
12. The proposed timeframe for the review is as follows:

<b>Date</b>	<b>Activity</b>
August 2018	Consumer research commissioned
September 2018	Call for Inputs published
October 2018	Research report delivered
December 2018 / January 2019	Consultation on any regulatory changes (if required)

13. Further information on each of these components is outlined below.

## **Rationale for Review**

14. There is the potential for significant innovation and growth across both subscription service types and subscriptions payment mechanisms. The PSA wants to ensure that its regulation supports this potential so that both existing and new services and service types that consumers want, can operate.
15. There are a broad range of phone-paid subscriptions providers and service types. While some of these services are operating effectively within the existing regulatory

settings, not all of them are currently delivering a good consumer experience, with subscription services generating the highest proportion of consumer complaints to the PSA across all service types over the last year.

16. The PSA believes it is in the consumer interest to enable innovation and new products and services. Equally, it is important that consumers are protected from harm. The PSA wants to help ensure that consumers have confidence engaging with all phone-paid services, including subscriptions. With the right regulatory settings in place, the PSA can create an environment which both protects consumers and encourages innovation and growth.
17. In the PSA's view, there is a strong rationale for why it is timely to review phone-paid subscriptions. The PSA's thinking is outlined below.

### **Ensuring the regulation enables growth and innovation across phone-paid subscriptions**

18. Initially, most phone-paid subscriptions were for products and services that enabled consumers to personalise their handsets, such as ringtones or wallpapers. Such services were only available to purchase using phone payment and were only "consumable" on the handset that the consumer had used to make the purchase.
19. While these services still exist, phone-paid subscriptions have expanded to include a range of different products, services and payment mechanisms. For example, branded subscriptions such as Spotify and Netflix have attracted significant customer bases. These services use a variety of different payment mechanics and are a markedly different type of phone-paid subscription to a subscription for a ringtone.
20. As part of the review, the PSA is seeking to understand more about the direction that subscriptions are heading in so that the regulatory framework enables and supports innovation and the development of new services that consumers want.
21. The PSA would welcome any input from providers on the range of subscription models, both those that are already operating and those that are under development, so that the PSA can ensure that its regulatory approach is forward-thinking and supports emerging approaches.

### **Using a balance of flexibility and controls to protect consumers and support new providers, products and services**

22. The PSA wants to ensure that its regulatory framework enables growth and innovation as well as ensuring that consumers are protected from harm. In recent years, the PSA has taken a range of steps to help ensure that its regulation strikes the right balance between these objectives.
23. For example, the PSA reviewed its regulatory framework in late 2016, with a view to ensuring that the framework is sufficiently flexible to enable the entry and operation of new and innovative services. Following the review, the PSA developed a Risk Assessment Framework that is applied to all new service models and mechanics to assess the level of risk they carry and how that risk can be mitigated and controlled.

This Framework has been operating effectively to control risks associated with new services.

24. Where risks associated with a service type are well managed, the PSA has the flexibility to introduce exemptions from some of the detailed requirements of the Code. For example, in September 2017, the PSA implemented an exemption to make it easier for Level 1 providers to contract with parties who want to use operator billing as a payment mechanism. If the Level 1 provider meets the criteria, their clients who only use their platforms can be exempt from registering with the PSA. This is aligned with other payment mechanisms where the party providing the payment platform deals directly with the regulator on behalf of their contracted merchants, rather than the merchant needing to do it directly.
25. These regulatory tools enable the PSA to carefully consider the impacts of the regulation on different services and service types. They demonstrate how flexibilities and controls can be used together to ensure the regulatory framework is operating effectively for both consumers and providers.
26. The PSA has had some feedback that the broader regulatory environment that applies to phone-paid services may not always support the entry of new products, services and providers into the market.
27. For example, there may be a view that implementing operator billing in the phone-paid services context is more complex than some other forms of payment, such as credit cards or PayPal, (which benefit from a uniform offering across different markets). Therefore, for some potential providers, operator billing may be less attractive than these other mechanisms. This may be limiting the potential for the growth of phone-paid subscriptions.
28. The PSA is interested in hearing from providers as to what controls might facilitate greater consumer protection and confidence in phone-paid services and what additional flexibilities might enable new subscription models, services and services types to enter and operate effectively in the phone-paid services market.

### **Consumer complaint levels**

29. In 2016, in response to on-going consumer complaints about two specific types of content (online competition and adult phone-paid services), the PSA undertook a review of the regulatory framework underpinning these service types.
30. Following completion of this review, the PSA introduced Special Conditions for these specific service types. In addition, the MNOs also took steps to reduce consumer harm, by requiring that all online competition and adult services utilised their Payforit payment mechanism.
31. This has proven to be a successful regulatory response, with a significant reduction in the number of consumer complaints received by the PSA in relation to these service types.

32. However, more generally, the PSA's experience with subscriptions overall is that they continue to generate a consistently high level of consumer complaints. This ongoing level of consumer harm is not sustainable and is one of the key reasons that this review is being undertaken.
33. The PSA would welcome any input from providers on the issue of consumer complaints in relation to phone-paid subscriptions.

## **Review objectives**

34. The PSA has developed a draft set of objectives for the phone-paid subscriptions review as follows:
- consumers having the confidence to use the phone-paid subscriptions that they want
  - the market is thriving and innovative
  - consumer interests are furthered through encouraging competition and innovation
  - there is the ability for existing services to operate effectively as well as for new services to enter the market
  - there is compliance with the regulatory framework for subscriptions. This means that consumers are protected from harm in the market.
35. These are a high-level set of objectives on which the PSA welcomes feedback from stakeholders.

## **The existing regulatory framework**

36. The existing regulatory framework for phone-paid subscriptions has three key components:
- the PSA Code of Practice (the Code of Practice)
  - Special Conditions
  - Guidance.
37. Each of these components plays an important role in regulating phone-paid subscriptions. Further detail is outlined below.

### **The Code of Practice**

38. The Code of Practice is outcomes-based and sets out the outcomes and rules that apply to all phone-paid services and providers of these services. The six outcomes from which all rules flow are legality, transparency and pricing, fairness, privacy, avoidance of harm, and fair and timely complaint handling.

39. Phone-paid subscriptions are defined at paragraph 5.3.37 of the Code of Practice as 'services which incur a recurring premium rate charge'. This is a broad definition which captures a range of subscription services and subscription service types.

40. Some of the general responsibilities in the Code that providers must comply with and which also relate to subscriptions include:

- Rule 2.2.1: consumers must be fully and clearly informed of all relevant information likely to influence the decision to purchase, including the cost, before any purchase is made
- Rule 2.2.2: promotional material must contain the name (or brand if part of the name) and the contact details of the Level 2 provider of the relevant PRS except where otherwise obvious. If the contact details include a telephone number, it must be a UK number and not at a premium rate
- Rule 2.2.4: all written information that is material to the consumer's decision to purchase a service must be easily accessible, clearly legible and presented in a way which does not make understanding difficult. Spoken information must be easily audible and discernible
- Rule 2.2.7: in the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service
- Rule 2.2.8: any messages that are necessary for a consumer to access, use or engage with a service but are provided separately from the service itself must be free of charge
- Rule 2.3.11: where the means of termination of a service is not controlled by the consumer, there must be a simple method of permanent exit from the service, which the consumer must be clearly informed about prior to incurring any charge. The method of exit must take effect immediately upon the consumer using it and there must be no further charge to the consumer after exit except where those charges have been legitimately incurred prior to exit.

41. In addition to the Code of Practice, attention should be given to the requirements set out in the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013. These require providers to ensure all relevant information is available to consumers so that they can make an informed purchasing decision.

### Special Conditions

42. The following Special Conditions<sup>1</sup> apply to phone-paid subscriptions that have a charge of more than £4.50 in any seven-day period (including any joining fee, where relevant):

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<sup>1</sup> Please see a link to the Special Conditions for Subscriptions [here](#)

- double opt-in is required from the consumer in the form of a positive, recorded and auditable response
  - the costs and name of the recurring charge service must be clear
  - consumers must be made aware that the service they are signing up to is one with recurring charges
  - pricing information (including method and frequency of billing) must be prominent
  - the method(s) of exiting the service must be clear.
43. The existing Special Conditions apply to phone-paid subscriptions charged at over £4.50 per week.
44. For clarity and certainty, the Special Conditions regime tailored to Subscription Services does not currently cover subscriptions charged at under £4.50 per week. However, some types of subscription services – e.g. online adult or competitions services, charitable donations and remote gambling services – may also be required to comply with other Special Conditions regimes.

### Guidance

45. Guidance<sup>2</sup> is in place to support providers of phone-paid subscriptions to comply with the Code of Practice. The Guidance applies to all phone-paid subscriptions, not just those charged at more than £4.50 per week.
46. The existing Guidance sets out that:
- when operating a phone-paid subscription, providers should make consumers aware of all relevant information that is likely to affect an individual’s decision to accept a future recurring charge
  - relevant information could include (but is not limited to) confirmation that the service carries a recurring charge and the obligation to pay it), the cost and when and how often the charges will occur, a description of what the service is offering, prominent pricing information and clear opt-out information
  - providers should take reasonable steps to ensure that the information is prominently available before the consumer begins use of the service
  - confirmation of the contract must be provided to the consumer in a durable medium prior to charging commencing.
47. While Guidance is not mandatory, if a potential provider breach is being considered by a Tribunal, the lack of adherence to Guidance may be considered an aggravating factor.

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<sup>2</sup> The Sector Specific Guidance Note for Subscription Services can be found [here](#)

## High-level analysis of the existing regulatory framework and consumer journey

48. To effectively fulfil its role as regulator, the PSA needs to ensure that its regulation is robust and clear, providing consumers with adequate protection from harm as well as enabling both existing and new and innovative services to operate effectively.
49. The PSA has undertaken some initial analysis of the existing regulatory framework and consumer journey and would welcome feedback from stakeholders on this analysis.

### The impact of the £4.50 per week threshold

50. In 2009, the PSA introduced Prior Permissions for subscriptions. As a result, any service operating at a price point of more than £4.50 in a seven-day period was required to go through the PSA's Prior Permissions process. The specific Prior Permission requirements that had to be met were transposed into Special Conditions in 2015.
51. The Special Conditions (which included retaining the threshold) were introduced in part due to the consistently high levels of consumer complaints being seen in relation to subscriptions. The threshold was intended to control the risk of financial detriment to consumers.
52. Prior to a threshold being introduced, services operated across a broad range of price points, with many operating over the threshold and some operating under the threshold. Following introduction of the threshold, there was a significant shift, with many subscription services moving to operate under the £4.50 threshold.
53. This has meant that most of the subscriptions currently operating are not subject to the existing Special conditions. This is likely to be contributing to the consistently high levels of consumer complaints that some subscription services are generating.
54. However, the PSA would like to be clear that there are also many phone-paid subscriptions operating effectively under the £4.50 threshold which are not generating consumer complaints. Careful consideration of an appropriate regulatory response to addressing this issue is required. The PSA would welcome any comments from stakeholders on this.
55. The PSA would also like to understand more about whether the current threshold is preventing innovation. For example, providers focusing on development of new service types or models charged at price points underneath the threshold, or whether providers who do not currently offer phone payment are dissuaded from doing so by the existence of a threshold or the level of the current threshold.

### The discovery and sign-up process

56. For many consumers, one of the benefits of phone payment is that it can be carried out with relatively low levels of friction i.e. there are often fewer steps involved in the

payment process and it takes much less time compared with other digital payment methods.

57. For example, a consumer making a card-based purchase is required to enter both personal and card details in different fields, and possibly on different screens, before a web purchase is confirmed. By contrast, a consumer making a phone payment may only have to press two payment buttons in succession (assuming the consumer's phone number has been passed securely by their mobile network to the website's payment platform when they began browsing a website).
58. This low level of friction may be attractive to market entrants, as it allows faster payment consent and increases the likelihood that a consumer will convert browsing into a purchase. However, there are also risks associated with low levels of friction. For example, in many of the consumer complaints that the PSA receives, consumers indicate that they did not understand that they had made a purchase for a phone-paid service or that their phone number had been used to facilitate this.
59. In part, this issue may be because many consumers do not realise that it is possible to make payments through a mobile in this way. Consumer research carried out for the PSA by Craft in 2016 indicated that consumers do not always realise they have signed up to a subscription and would welcome a higher degree of friction (i.e. an additional step before sign-up is confirmed).
60. It is important to acknowledge that there are varying levels of consumer understanding about phone-paid services. The regulatory environment needs to adequately protect consumers from harm and ensure they are provided with all of the information they need to make informed purchasing decisions when engaging with phone-paid services.

### **Post-purchase experience and complaint handling**

61. Under existing requirements, providers must ensure that there is a simple method of exit from their service.
62. In 2015, in accordance with section 3.12 of the Code, the PSA issued a Notice of caps, thresholds and actions which sets out the post purchase requirements that providers must comply with. As part of this, providers are required to send consumers participating in the service a spend reminder, at no extra cost to the consumer, once they have incurred charges of £20.45, or each month, whichever occurs first. This was intended to provide greater protections to consumers.
63. The message sent to consumers must outline the name, cost and charging frequency of the service, how to contact the provider, and a reminder of how the consumer can stop the charges. At present, most providers meet this requirement by texting a STOP command to consumers which will also contain the information outlined above.
64. These requirements were intended to provide consumers with greater confidence in phone-paid subscriptions. However, the 2016 Craft research found that many consumers find this opt-out mechanism to be counter-intuitive and that the STOP command is not successful for many consumers, who experience message delivery

failure. In part, this may be because many consumers attempt to reply to the STOP message, rather than send the message to a separate number, which is often required.

65. Developments in technology may offer other methods by which this could be achieved. The PSA would be interested in hearing from stakeholders about any other mechanisms that could be more effective and which they may be exploring, developing, or be aware of in other jurisdictions.
66. Section 2.6 of the Code sets out the providers' requirements in relation to complaint handling. The Code outcome sought is that consumers can have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is also provided quickly and easily.
67. The PSA is interested in hearing views from stakeholders as to whether the current Code outcome and rules are enough, or whether subscription services in general or specific service types might warrant specific provisions (such as special conditions) in relation to complaint handling and/or redress.

## Next steps and timeframe

68. The PSA is seeking to develop a clear understanding of what's happening across phone-paid subscriptions, from the perspectives of both industry and consumers, so that the review is informed by the knowledge, expertise and experiences of a broad range of stakeholders.
69. The PSA intends to build a strong evidence base to support it to effectively analyse the existing regulatory settings through:
  - analysing our consumer complaint data
  - analysing our investigations case data and evidence
  - commissioning formal consumer research to understand consumer expectations when engaging with phone-paid subscriptions
  - seeking input from industry, consumers, and any other interested parties, received initially through this Call for Inputs and on an on-going basis throughout the review.
70. Further information on these components is outlined below.

## Consumer research

71. The review provides an opportunity for the PSA to undertake research to understand more about consumer expectations when engaging with phone-paid subscriptions.
72. The research will look at consumer expectations when discovering a service, signing up, using a service, and opting-out of a service. This research will supplement the consumer information that the PSA already has about the consumer experience of phone-paid services.

73. The PSA would welcome any evidence or experience that industry has about the consumer experience of their subscription services, to supplement the consumer perspective of these issues.

### **Analysis of complaint data**

74. The PSA will be looking at its own complaint data to see whether there are any consistent themes across the complaints it receives. For example, this could be by provider, service type, method of discovery or engagement, experience of the service, or experience of exiting the service.

75. The PSA would welcome any information the industry has on the complaints it receives to supplement the PSA information and provide a richer picture of the issues.

### **Stakeholder engagement**

76. In addition to this Call for Inputs, the PSA would like to engage in an on-going dialogue with stakeholders to further develop and continue to test its thinking as the review progresses. The subscriptions industry is already diverse and continues to expand. The PSA would welcome information from industry on the subscription services that providers are currently operating and what they find useful and/or challenging about the current regulatory framework in relation to these specific services.

77. To understand what is working well within the current regulatory framework and where there could be opportunities for improvement, the PSA needs a comprehensive understanding of all services and service types currently operating, and to understand from an industry perspective why some services are operating effectively within the existing regulatory framework whilst others are the source of ongoing consumer complaints and/or PSA investigations.

78. The PSA would also welcome input from consumers and other stakeholders who have experience of using phone-paid subscriptions.

### **Considering options for change**

79. There are a range of different regulatory responses available to the PSA to support it to regulate phone-paid subscriptions effectively across different price points, with a view to reducing consumer harm and supporting innovation and growth of services that consumers want.

80. These span the use of formal regulatory measures, including:

- Changes to the Code of Practice (out of scope for this review)
- Special Conditions; and
- Guidance.

81. Through to less formal action such as:

- pilots to test the impact and outcomes of potential regulatory change; and

- workshops with providers to discuss issues and solutions.
82. It is important to note that different approaches have worked across different sectors of the phone-paid services market. For example, the implementation of Special Conditions for Online Competition and Adult services reduced consumer complaint levels significantly, whereas workshops and collaboration with providers has led to a reduction in consumer harm in relation to Direct Buy Marketing.
83. If the subscriptions review identifies that regulatory change is required to achieve the review objectives, the PSA is open to considering a broad range of approaches and options. Any proposed changes to the regulatory framework would be consulted on.

### Next Steps

84. The PSA would welcome feedback on this Call for Inputs up until Monday 15 October 2018 and is specifically interested in responses to the questions outlined below.
85. The PSA intends to take these responses, together with the findings of each of the components outlined above, to develop any proposals for change and aim to consult on these at the end of 2018 / early 2019.
86. The PSA will continue to provide updates on progress and ways for stakeholders to be involved, as the review progresses.

### How to respond to this call for inputs

87. The PSA welcomes responses to the questions set out below, along with any other information, evidence, or views that respondents have in relation to this Call for Inputs and the review of phone-paid subscriptions.
88. We plan to make available all responses received. If you want all, or part, of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

### Questions

- Q1:** What are your views on the review objectives set out on page 4? Has the PSA got the right scope or are there areas the PSA should include or exclude?
- Q2:** Some subscriptions generate high levels of complaints, whereas others with similar numbers of subscribers generate very few. Do you have any views on the regulatory measures that would better support growth and innovation across the subscriptions, whilst ensuring consumers are protected from harm?
- Q3:** Do you agree that different subscription services may require different regulatory responses? Do you have any thoughts on what this variation could look like?
- Q4:** Is there any other information or evidence that you would like to provide to PSA to assist it to undertake more detailed analysis of the existing framework, including around where you see subscriptions heading?

**Q5:** Do you have any experience or evidence to share about effective regulatory approaches in the other jurisdictions or methods of digital payment in which you may be operating, that have successfully balanced adequately protecting consumers from harm, as well as supporting innovation and growth?

89. The closing date for responses is 15 October 2018. Please submit comments in writing and send them by email to: [consultations@psauthority.org.uk](mailto:consultations@psauthority.org.uk)

90. Copies may also be sent by mail to:

Ms Emma Bailey  
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91. If you have any queries regarding this Call for Inputs, please send them to the email address provided above.