

Statement on amendments to Notice of Specified Charges and Call Durations

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Contents

Executive summary	2
Background	3
Responses	3
Remote gambling services	4
Next steps	5

Executive summary

The Phone-paid Services Authority's (PSA) is the UK regulator for content, goods and services charged to a phone bill. Our vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

Our mission is two-fold:

- to protect consumers from harm in the market, including where necessary through robust enforcement of our Code
- to further their interests through encouraging competition, innovation and growth in the market.

We believe it is important that any PSA notice that specifies a maximum charge for any category of service is clear and easy to understand, and where appropriate aligned with spend limits set out in law.

Rule 3.12.1 of the Phone-paid Services Authority's Code of Practice allows us to specify maximum service charges for various service categories which are set out in rule 3.12.2. The Notice of specified service charges and call durations published in accordance with this rule details the maximum service charges and durations for various service types.

The PSA recently consulted on amending the Notice to align the maximum spend caps with the £40 single transaction limit that is set out in UK law in the Payment Services Regulations 2017 (PSRs). We received four responses, all of which focused heavily on the cumulative monthly spend limit for a single consumer of £240 which is also set out in the PSRs.

The PSA's objective was to lessen the potential for confusion arising from the difference between the single transaction limit in the PSRs (£40) and the PSA's current spend cap of £45 for single transactions (calls) for specific service types.

It appears that by mentioning the £240 cumulative spend cap contained in the PSRs in the consultation - which we did for completeness and context - we may have given the impression that we were introducing a cumulative spend cap as well.

We are sorry if our consultation caused any confusion on this point. We would like to clarify that our proposals relate only to the single service charge limit, and we have not proposed to introduce any monthly cap on the amount a service can charge cumulatively to a single consumer.

Other than this, none of the responses challenged our proposals, or suggested that respondents would have difficulty implementing them. As such, we will publish the revised Notice (attached to this statement) as we proposed in the consultation.

Background

Recent changes to EU and UK law have introduced maximum spending caps - per individual transaction and for accumulated transactions per month - for phone-paid transactions. On 25 November 2015, the second Directive on Payment Services in the Internal Market (Directive 2015/2366) was adopted by the European Parliament and entered into force in January this year. All EU Member States were required to implement the rules as national law by 13 January 2018. In the UK, these rules were transposed into law in the form of The Payment Services Regulations 2017 (PSRs).

Phone-paid service transactions are exempt from the PSRs¹ where the service is provided in addition to electronic communications services for a subscriber to a telephone Network, and where the additional service is:

- for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill, or
- performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere, provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.

The £40 limit for a single payment transaction is lower than the £45 limit that applies to a number of services as specified in the current Notice of Specified Charges and Duration of Calls.

We believe it is important that any PSA notice that specifies a maximum charge for any category of service is clear and easy to understand and where appropriate aligned with spend limits set out in law. In our view it makes little sense for PSA to maintain a spend cap which is higher than a separate legal limit that applies to the same transaction. As such, we reconsidered the maximum charges specified in our existing Notice and proposed to align the spend caps for Sexual entertainment services, Live entertainment services, Chatline services and Professional advice services with the £40 per transaction cap set out in the PSRs.

We also proposed to remove the existing spend cap which we have set for Remote Gambling services. This is on the grounds that the monthly spend cap permitted for a single consumer which will now be required by the PSRs is lower than the cumulative monthly consumer spend our previous cap for this service type allowed, and so removing our cap will offer consumers greater flexibility without any decrease in consumer protection.

¹ Activities which do not constitute payment services are defined in Part 2 of Schedule 1 of the Regulations: http://www.legislation.gov.uk/uksi/2017/752/pdfs/ukxi_20170752_en.pdf

We did not propose any amendments to the spend caps which we have in place for children's services.

Responses

We received four responses to the consultation which closed on 17 July 2018. The responses we received were heavily focused on the cumulative monthly spend of £240 per consumer that is set out in the exemption in regulation 2(1) of the PSRs². We apologise for any confusion which we may have caused by mentioning the £240 monthly cap in the summary of proposals table.

We would like to confirm that we are not introducing a monthly cumulative per consumer spend cap to the Notice of specified charges and call durations. We mentioned the £240 cap in the summary of proposals table within the consultation document to serve as a reminder that this is required by the PSRs, but this cap was not a consideration of the consultation. The focus of the consultation was the alignment of maximum spend caps which exist for the specific higher risk services listed in the Notice with the £40 per transaction spend cap introduced by the PSRs.

The PSA did not receive any response which challenged its proposals. Of the four responses received none had any material objections; two respondents agreed that it would not be difficult to implement the reduced spend cap of £40 from £45 for live, entertainment, chatline and professional advice services. Other respondents did not provide a response or suggest they anticipated any issues with implementation.

One respondent commented that the proposals were too focused on providers making use of the PSR exemption rather than registering with the Financial Conduct Authority (FCA) as a Payment Services Provider (PSP), which would exempt the provider concerned from the £40 and £240 caps in the PSRs. Although the monthly cumulative spend cap of £240 per consumer is not the concern of this statement we would like to reiterate that if a provider is registered with the FCA as a PSP then only the maximum spend caps set out in our Notice will apply. This is because these are necessary measures in place to enable consumer spend control for the service types listed in the Notice of specified charges and call durations.

Another respondent stated that they supported the £40 cap and that aligning the maximum spend caps is a sensible approach which they believe would improve consumer protection and pricing transparency if it was applied to all phone-paid services. We can confirm that the PSA does not, at this time, intend to introduce spending caps to any service types other than those listed in the Notice. This is because we have not formally considered, nor identified any specific reason to formally consider, PSA-specific spending caps for other service types at this point. However, we would remind providers that a maximum spend cap of £40 per transaction is required by the PSRs for all phone-paid service types falling within the exemption, otherwise the provider will be required to register as a PSP.

² Activities which do not constitute payment services are defined in Part 2 of Schedule 1 of the Regulations: http://www.legislation.gov.uk/uksi/2017/752/pdfs/ukxi_20170752_en.pdf

Remote gambling services

Regarding the spend cap for remote gambling services, we received no objections to the proposal to remove the cap, one respondent commented that they agreed with the rationale behind the proposal. Consequently, we confirm that the spending cap for remote gambling services will be removed from the Notice.

Next steps

Following the consultation, and our consideration of the responses as above, we have determined to publish the revised Notice as originally proposed.

The final Notice is attached to this statement for reference and will take effect on **1 October 2018**.

The PSA will continue to monitor compliance with this and other notices which we issue.

Annex A

Notice of Specified Service Charges and Durations of Calls

Published in accordance with paragraph 3.12.6 of the 14th Code of Practice

This Notice is being issued to inform all providers involved, or intending to be involved, in the provision of the service categories set out in paragraph 3.12.2 of the Phone-paid Services Authority's Code of Practice, 14th edition ("the Code"), that specified actions are required under paragraph 3.12.1 of the Code. Those specified actions are listed for each service category separately.

Failure to carry out the actions specified in this Notice will amount to a breach of the Code under paragraph 3.12.5.

Specified actions

1. Sexual entertainment services

- 1.1 Sexual entertainment services are defined under paragraph 5.3.34 of the Code
- 1.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 1.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 1.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

2. Virtual chat services

- 2.1 Virtual chat services are defined under paragraph 5.3.39 of the Code
- 2.2 All such services must, as soon as is reasonably possible after the user has spent £10.22 (inclusive of VAT), and after £10.22 (inclusive of VAT) of spend thereafter:
 - (i) Inform the user separately from the service or any promotion that £8.52 plus VAT has been spent; and
 - (ii) Terminate the service promptly if the user does not interact further with it following the provision of the message sent in accordance with (i).

3. Live entertainment services

- 3.1 Live entertainment services are defined under paragraph 5.3.21 of the Code
- 3.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 3.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 3.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

4. Chatline services

- 4.1 Chatline services are defined under paragraph 5.3.12 of the Code
- 4.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 4.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 4.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

5. Professional advice services, excluding counselling services

- 5.1 Professional advice services are defined under paragraph 5.3.29 of the Code
- 5.2 When £15 Service Charge (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been reached
- 5.3 When £30 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service
- 5.4 When £40 Service Charge (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

6. Counselling services

- 6.1 Counselling services are defined under paragraph 5.3.16 of the Code
- 6.2 Such services offered on a one-off basis must terminate after 20 minutes duration.
- 6.3 Such services offered over a pre-arranged number of sessions, each call must terminate after 60 minutes duration.

7. Subscription services, excluding recurring donation services operated by a registered charity and society lotteries

7.1 Subscription services are defined under paragraph 5.3.37 of the Code

7.2 For all subscription services, once a month, or every time a user has spent £20.45 (inclusive of VAT) if that occurs in less than a month, the following information must be sent free to subscribers:

- (i) The name of the service;
- (ii) Confirmation that the service is subscription-based;
- (iii) What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
- (iv) The charges for the service and how they will or can arise;
- (v) How to leave the service; and
- (vi) Level 2 provider contact details.

8. Services aimed at, or which should have been expected to be particularly attractive to children

8.1 Children is defined under paragraph 5.3.13 of the Code

8.2 Such services must not charge more than £5 (inclusive of VAT) per call in a single transaction or per month for a subscription.

8.3 Such services must not charge more than £20 (inclusive of VAT) over a single monthly billing period.