



The **fair telecoms campaign** is pleased to present its response to this consultation, including the points made in the Addendum, both of which are [published here](#).

Please consider these comments along with those made in our [submission in response to the Call for Inputs](#) to the [Review of Phone-paid Subscriptions](#), which preceded this consultation.

The role of the PSA

The **PSA** has an important role in regulating the conduct of **providers** of premium rate services. There is little in the proposals, for what they are, with which we would disagree.

We however see the problem with phone-paid subscription services as resting not so much in the relationship between the **PSA** and the **providers**, but in two other important relationships, which are not directly governed by the **PSA**.

The key relationships

The issues which cannot be directly addressed by this consultation, or any revision to **PSA** regulations, are found in the nature and terms of the following relationships:

1 - Mobile operators vs. subscription service providers

Most subscription services are provided through an arrangement known as “**PayFort**”. This lays out the terms whereby mobile **operators** agree to process billing instructions from **providers** of subscription (and other) services charged through the telephone bill.

We strongly believe that all **operators** should embed the terms of the proposed **PSA** requirements (and perhaps more) into the terms of their arrangements with the service **providers** – through **PayFort**, or any alternative scheme used by the minority **operators** who are not members of **PayFort**.

This would obviate the need for the unpredictable and lengthy process of **PSA** intervention to correct problems and rogues. It would also enable the **operators** to clearly demonstrate their care for the integrity of their billing operations and their reputation with their customers.

2- Mobile operators vs. their customers

The agreement to accept third party billing as part of a contract with a telephone service provider should not be taken for granted.

We firmly believe that customers should, firstly have the opportunity to refuse to accept any such charge, as a mandatory option when taking on service and, secondly be able to challenge any charge directly with the telephone service provider.

The first of these would probably require a change to the **Ofcom** General Conditions.

The mechanism to deal with the second of these, so as to enable resolution – e.g. direct refund of an improper charge, would have to be built into the terms of arrangements such as **PayFort**. If these arrangements are as robust as they need to be, to protect the integrity of phone-paid subscription services, this should not be a major issue.





Our response to the Consultation

We fully support the proposals of the **PSA**. We note however that this represents an incomplete solution to the issues, albeit that it respects the limits within which the **PSA** is able to act, whilst respecting the fact that the industry, broadly, behaves properly and provides valuable services.

We strongly believe that responsibility for dealing with the rogues who have gained this sector a poor reputation and the poor standard of customer service – commonly represented by the behaviour of rogue **providers** – must fall to the ultimate providers of service to the customer, the mobile **operators**.

Having formed **PayForIt** as a mechanism by which the **operators** may act as one, we see that there is every opportunity for them to apply higher standards to the provision of use of the mechanism and the way in which issues that arise are dealt with.

We acknowledge that, in practice, the role of the “**aggregators**” is critically important. They are however only acting as agents for the providers and must therefore reflect duties placed on them. These duties on the providers are applied both by the regulatory action of the **PSA** and by the contractual terms demanded by the mobile **operators**.

We agree with the decision not to draw the **aggregators** directly into the scope of regulation.

Our responses to the specific consultation questions follow:

Responses to consultation questions:

- 1. Do you agree with the PSA's assessment that the evidence gathered from the research and other information, data and inputs considered support implementation of Special conditions for all subscriptions as an appropriate and proportionate response? If not, please set out your alternative approach and the supporting evidence.**

The special conditions should be applied.

We nonetheless believe that the terms thereof should be adapted and built into the contractual relationship between mobile **operators** and subscription service **providers**.

- 2. Do you agree with our proposed approach that the proposed Special conditions be applied to all phone-paid subscription services to create clarity and certainty for providers of subscription services, with any additional requirements under other Special conditions not being replicated in the proposed conditions?**

Yes. There are elements of the requirements which should be applied to all payments for one-off unrelated services that are collected through the telephone bill.

- 3. Do you agree that the research and other information, data and inputs we considered support action on each of the identified issues outlined in this document? If not, please provide supporting evidence.**

No basis for objection.





- 4. Do you agree with our analysis using the risk taxonomy (outlined from paragraph 249 of this document) that Special conditions represent a proportionate regulatory response to the risk of harm posed by phone-paid subscription services? If not, please provide supporting evidence.**

No basis for objection.

- 5. Are there any other issues not addressed through our proposed response that you consider warrant regulatory action in light of the research and other information, data and inputs considered? If yes, please provide supporting evidence.**

We see the same issues arising with one-off payments that are similar in nature to that of accepting a subscription

- 6. Do you have any views or evidence on the use and effectiveness of free trial periods of varying durations to support the PSA in considering what might be appropriate in the context of phone-paid subscription services?**

Any argument presented against the need for (opt-in) confirmation on switching from a free service to a paid-for service must be thoroughly tested, and most likely rejected.

- A1. Do you agree with our proposal to include use of a secure, consumer controlled, mobile originating short message service (MO SMS) as a method that providers could utilise to fulfil the proposed first or second phase consent to charge requirements (and as proposed at Annex A)?**

This option for obtaining consent provides the subscriber themselves with a record of the consent being granted, in a familiar format. We therefore see every reason for this being used, potentially along with the other options. This will be tested over time, but we see every reason for this option to be promoted, notwithstanding the merits of other options.

- A2. Does the addendum provide clarity on the proposed consequential amendments to the service-type specific sets of Special conditions and Notice of Specified Charges and Duration of Calls, required as part of the subscriptions review? Do you agree with the consequential amendments proposed within Annexes B to F? If not, please explain.**

No basis for objection.

- A3. Do you agree with our approach as outlined at paragraphs 20 – 24 above? If not, please provide evidence that would support an alternative approach, and/or on any potential impacts of the approach currently being proposed.**

No basis for objection.

- A4. The PSA welcomes feedback on the new receipting-based proposals set out in the proposed Special conditions.**

The key point with all of these proposals is that we will have to wait to see the effect created by their implementation. Surely nobody would be so bold as to say that no effect will be achieved, or that all the issues will be resolved.

It may be as well to schedule a further Review for some time after the new conditions have bedded-in. This may involve waiting until after the first round of enforcement actions, and the reaction to them!

