fair telecoms campaign **consultation response**

Response to - Call for Inputs
Review of Phone-paid Subscriptions

Introduction

The **fair telecoms campaign** is pleased to respond to this "Call for Inputs".

We acknowledge that many contributors have detailed and expert knowledge to supply and to support their suggestions.

Ours are based on a strong understanding of the general market and the needs of all stakeholders. We are well aware that this is one of a number of areas where the principles of fairness are not being applied effectively. An area which should be good and effective for all parties is sadly benighted, recognised largely as being used for the purpose of scams. **This must change.**

Whilst there are undoubtedly totally valid and highly beneficial uses for this mechanism, it has been wickedly exploited as a means of fraud.

This characteristic is shared with ICSS services, apart from the fact that very few (if any) ICSS services offer genuine consumer benefit.

The role of the regulator (in common with the level 1 providers – the "**Operators**") must be to eliminate all abuses of Phone-paid Services.

We therefore believe that the **Operators** have a key role to play in taking forward the objectives of this review, specifically in providing proper consumer protection and eliminating scammers from participation in this sector.

Scope

There is some doubt about the scope of the review.

Whilst it refers to "***subscription services***", defined as "***services which incur a recurring premium rate charge***", reference is made to one-off payments and services provided by **Operators** on an agency basis, e.g. **Netflix** as part of a standard subscription ("entertainment pack").

Whilst the comments made below are generally with reference to the **PayForIt** mechanism, which we understand to be the primary focus of the review, the general tone of our comments should be seen to apply also to subscriptions to recurring premium rate text messages. There may be an argument for this being totally replaced by use of the **PayForIt** mechanism.

Whilst one-off premium rate texts and **PayForIt** payments are supposedly outside the scope of this review, we see this exclusion as unnecessary and again, would wish our comments to encompass these also.

We understand that services provided through direct subscription with the **Operator** (e.g. as part of an "entertainment pack") fall outside the scope of **PSA** regulation. Whilst some may argue that all subscription services should be delivered in this way, we understand that the purpose of this review is to address the issue of contracting with a third party for "phone-paid" billing.

There are some aspects of our comments which call for possible intervention by **Ofcom** – in relation to contracts between operators and consumers. We do not however have any specific suggestions to make in relation to services provided on a direct agency basis.

PayForIt

The consumer protections offered by the **PayForIt** scheme are seen to be inadequate (or totally absent). For example, it is understood that **Operators** rarely "help" with the resolution of queries.

We look to the **Operators** to share common purpose with the **PSA** in regulating the activities of their (**PayForIt**) contractors. We see this as preferable to a full licensing regime enforced by the **PSA**. The threat of this could be recognised as an inevitable consequence of failure to put things right, in the event that such an approach would enable the **PSA** objectives to be achieved.

The onus must be on the **Operators** to apply the terms of a simple regulatory regime – set by the **PSA**, and enforced by it as a backup – on a day-to-day basis. **PSA** intervention, by its essential nature, is slow and relatively rare. It is for the **Operators** to keep on top of what is going on, with both consumers and contractors, on a day-to-day basis.

If, as we demand, **PayForIt** operates in full alignment with **PSA** objectives and seeks to ensure proper service to all customers, then no subscription service should be allowed to operate outside the terms of **PayForIt**.

If MVNOs who do not operate under **PayForIt** wish to set up an alternative scheme, on a similar basis, then we would have no objection. To the customer however, any such alternative scheme must share all the relevant features referred to here.

One essential requirement we propose as forming part of the arrangement with a **PayForIt** contractor is compliance with the provisions of the relevant **PSA** regulations and objectives. The relevant terms must be drafted into the terms of the contract between the **Operator(s)** and the Subscription Service Provider per se, i.e. a determination of non-compliance and the necessary response should not necessarily be conditional upon a determination by the **PSA**.

We would therefore expect the **Operators** to act on clear evidence of non-compliance by immediate suspension / termination of the contract and the application of appropriate remedial measures. Such action may aid subsequent or prior intervention and action by the **PSA**. At this stage we propose that this be done in a spirit of voluntary cooperation, to avoid any need for extended active **PSA** regulatory intervention.

Additional "opt-out" requirement for Operators

One essential requirement, along with others we would like to see added to the regulation of contract terms by **Ofcom**, must be the option for every customer to opt-out of subscription services, as part of their contract with their **Operator**.

Where such an opt-out were exercised, billing for subscription services would be prohibited, overriding any supposed contract with a subscription service provider. This would have to be written into the terms of the arrangement between **Operators** and subscription service providers.

We would see no reason why a customer could not contact their **Operator** to suspend such an opt-out, e.g. for a brief period to allow the creation of a particular subscription. This must however be arranged between the customer and the **Operator** directly. Once that particular subscription service had been contracted, the opt-out would be put in place again.

The mechanism referred to above is to respect the fact that contracting for the subscription is done with the provider, albeit that many would wish for each arrangement to be confirmed to the **Operator** by the customer – the "two-step" process.

Our view is that if a two-step process were necessary, this would indicate that the mechanism lacks the degree of trust and reliability which is essential for its effective use.

Whilst we propose that there should be an opt-out, rather than an opt-in, presentation of this option at the time of entering into a contract for telephone service (which we demand) would help inform customers of the fact that they are liable to pay their telephone service provider for services not directly delivered by, or explicitly contracted-for with, that provider.

Possible further measures

There is a strong case for demanding that subscription services should be required to be subject to an ADR, and for automatic refunds and suspension of disputed charges to be a regulatory requirement. These are aspects of what we would see as necessary if action by the **Operators** and the **PSA**, in response to this consultation, is not effective, i.e. the mechanism is found to have failed.

In the present environment, with many abuses of the mechanism, there is a clear case for making the **Operators** directly responsible for the charges which they levy, on behalf of others. This would mean that all subscriptions would have to be contracted with the **Operators**, acting as agents for the subscription service providers.

We believe that if it were necessary to adopt either of the above, or the "two-step" approach referred to previously, this would indicate that the declared **PSA** objectives could not be achieved, i.e. the mechanism is seen to have failed.

In the context of the intended **PSA** approach to this issue (supported, as necessary, by **Ofcom**) we believe that cooperative voluntary action by the **Operators**, as indicated above, must be forthcoming to forestall extensive regulatory intervention and to enable full consumer confidence in this potentially valuable payment mechanism.

Our specific demand

We call for immediate dialogue on this topic between (in suitable phases) the **PSA** and **Ofcom**, the **Operators** and appropriate consumer representative bodies.

There is no question that if phone-paid subscription services are to continue and expand, an objective we are happy to support, then the whole area needs a thorough cleaning up and effective elimination of the scams which are seen to be the major feature of this mechanism.

Unlike with ICSS, for which we see little or no proper purchase, there should be potential for valuable and proper use of the phone-paid subscription service mechanism. It is however imperative that its "grubby" reputation, which reflects on the **Operators** due to their failure to engage fully with it, be removed.

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Answers to Consultation 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?

The desire for growth and innovation in this sector must be based on an assurance that it can function without abuse and command trust from consumers.

If changes, such as those proposed above, cannot secure this assurance and trust (which are well short of being present currently) then use of the mechanism must be severely restricted or even prohibited altogether.

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?

Clearly this comes down to the behaviour and objectives (malign in some cases) of the service providers. The requirement for pre-authorisation cannot be limited to a certain level of payment. There is however no reason why this cannot be effectively applied by the Level 1 providers at the time when they authorise use of the mechanism.

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?

Use of the phone-paid mechanism should have a single regulatory structure in respect of value. Higher cost subscriptions that may require additional levels of regulation should be eliminated from this mechanism, otherwise it becomes unwieldy.

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?

It is the Level 1 providers that must take the leading role (in conjunction with the **PSA**) in taking forward this sector. Their fundamental duty to their customers and the integrity of their billing systems are at the core of these issues with phone-paid subscriptions services. At present, they lack the trust which they should be able to command. They cannot subcontract responsibility for re-gaining that trust, and retaining it going forward, to the **PSA**.

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?

A casual look around other jurisdictions suggests that effective regulation in this area is difficult, as in some cases it has been abandoned by prohibition. If the Level 1 providers are not ready to take a common strong role in the protection of their customers and the integrity of their billing mechanism, whilst supporting innovation and growth, then continuation of this mechanism must be seen as being under threat.