

The Future Regulation of Phone-paid Services

Consultation Response from the Phone-paid Services Authority Consumer Panel

About us

The Phone-paid Services Authority (PSA) Consumer Panel was established in 2018 to provide advice and challenge on aspects of the PSA's work, to support and enhance the interests of consumers by:

- providing advice and comment from a consumer perspective on the extent to which PSA policies and regulation are aligned with its consumer-focused strategy
- bringing to the attention of the PSA issues that are or are likely to be of significance to or impact on consumers and providing advice and comment on these issues
- commenting on consultations and research undertaken by the PSA.

The Panel currently comprises 5 members¹, with a broad range of expertise in consumer advocacy, the not-for-profit sector, consumer protection, policy, communications and regulation.

The Panel, PSA Board and Executive all believe that the PSA Consumer Panel has had a real impact on regulation to the benefit of consumers. Since its inception, the Panel has worked on a number of issues, including Code 15, ICSS (Information, Connection and Sign-posting Services), subscriptions and vulnerability to ensure regulation functions in the interest of consumers.

Summary

The Consumer Panel welcomes the opportunity to respond to this consultation. Both the PSA Executive and Ofcom have kept the Panel abreast of the transfer process in recent months. Throughout, the Panel have been supportive of the rationale for change and decision to transfer regulation. We are also broadly content with the proposed Statutory Instrument (SI) drafted to achieve this. In particular, the Panel welcomes the decisions to:

- bring across as much of the current regulatory framework into a SI as possible, including Code 15's consumer-facing standards
- strengthen regulation for ICSS and vulnerable consumers.

There are, naturally, risks to consumers presented by any change to regulation. We note some of these potential risks to consumers of phone-paid services here and welcome the opportunity to engage further with Ofcom to ensure these are well managed during and post-transfer.

¹ Ordinarily, the Panel comprises 6 members. However, a Panel member recently resigned their post and we chose not to replace the role given the impending transfer of regulation. Panellist's biographies are available here: <https://psauthority.org.uk/About-Us/Consumer-Panel>

Additional measures

1. **ICSS.** The Consumer Panel are very supportive of Ofcom's intention to require ICSS to provide key information to the consumer prior to onward connection for free. ICSS has long been a focus for the Panel. ICSS-related consumer detriment and misunderstanding has been unacceptably high. In 2022, the PSA Executive estimated that financial detriment associated with ICSS may be as high as £1 million per month. As a Panel, we suspect that consumer detriment may have been higher still.

Much of this detriment occurred early in the call. The PSA's ICSS Thematic Review demonstrated that nearly 2/3rds of calls to ICSS ended within 60 seconds; 64% of calls were terminated before the advertised service could realistically be delivered. We therefore were supportive of the changes PSA made to Code 15 to address detriment in this market. Our understanding is that the initial assessment of these Code changes has been positive.

We were also supportive of PSA's desire to require a free first minute but understood that this was considered beyond their remit. Even with the new Code changes, a free first minute is still essential from a consumer perspective. Since the Code changes came into force on September 18th 2023, the PSA Executive believe that the per call (£6 drop charge) model is now the predominant ICSS operating model². While this has had the benefit of reducing the high levels of individual financial detriment associated with the per minute model, the changes have not been able to fully address the immediate detriment suffered upon a caller unknowingly engaging an ICSS. Indeed, the Code changes may have resulted in an increase in the number of consumers suffering detriment in the first minute and, therefore, before they fully understand they are engaging an ICSS. (We understand that was an anticipated potential result by the PSA). Providing relevant and necessary information to the caller as part of an IVR for free will ensure consumers only engage an ICSS knowingly and willingly.

2. **Consumer vulnerability.** Consumer vulnerability has also been a Panel focus. Code 15 and associated vulnerable consumers guidance provides a good level of protection to those consumers who may be vulnerable. We therefore welcome Ofcom's intention to not only maintain these requirements but also the proposals set out at 4.188, 4.189 and 4.190 to strengthen regulation in this area. The Panel supports the intention to prohibit service provision until proper and demonstrable regard for vulnerable consumers had been met and the extension of Code 15's vulnerable consumers requirements to the entire value chain.

Areas for consideration

The transfer of regulation from one regulator to another comes with possible risks to consumers. Despite the close working relationship between the PSA and Ofcom, this transfer is no different. Our concerns relate both directly to details of the SI and also how Ofcom will

² Prior to the Code changes, the PSA estimated that approximately half of the market operated a per minute model.

regulate the market post-transfer. The Panel suggests that Ofcom should consider the following issues:

1. **Regulatory flexibility.** Code 15 has the ability to flex regulation built in. We have already seen the benefit of this through, for example, changes to ICSS regulation. Whilst we understand Ofcom's view that it cannot be as flexible in the SI, and has therefore tried to ensure the draft SI is as future proof as possible, the Panel notes the risk associated to this and would be interested in how Ofcom intends to ensure it can remain responsive to any emerging evidence of consumer detriment, including where technology develops or consumer or provider behavior changes.
2. **Enforcement deterrent.** We understand Ofcom considers that it cannot include the prohibition of individuals as a sanction in its enforcement regime. We highlight that this has been an effective sanction in the past. The phone-paid services market is no longer a place where the less scrupulous can do business. And this has had a material impact on the market to the benefit of consumers. Given this, we would encourage Ofcom to continue with the prevent harm agenda and ensure the most appropriate deterrent sanctions are put in place.
3. **Monitoring of effectiveness.** PSA regulation has been very successful in recent years. Consumer complaints have fallen by over 90% from their peak to consistently low levels, detriment has reduced, areas of consumer concern have been limited to just two market areas (at the time of writing) and market compliance has risen. In short, the consumer experience of phone-paid services has improved significantly. Much of this progress is the basis for transfer. However, the transfer of regulation should not risk that which has been achieved. The Panel is, therefore, keen to understand how Ofcom intends to monitor consumer experience post transfer to allow for success to be evaluated and actions taken to address and mitigate risk and harm post transfer.
4. **Consumer representation.** The phone-paid services market is relatively small and niche. A dedicated, expert regulator with a focused consumer panel has served consumers well. The Panel is keen to ensure that phone-paid services regulation is not de-prioritised in relation to Ofcom's other regulatory responsibilities and that consumer expertise and challenge is not lost. Therefore, the Panel would like to understand how Ofcom intends to continue to support the specific interests of consumers of phone-paid services after the transfer of regulation.

As a Panel, we have built up several years' experience representing consumer interests in the regulation of phone-paid services. We are eager to pass on this knowledge and expertise. We therefore remain at both Ofcom's and the Communications Consumer Panel's disposal in any way to ensure the transfer of regulation is a success.