

Phone-paid Services Authority response to BEIS Consultation on Reforming Competition and Consumer Policy

About the PSA

We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.

Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS).

We build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive.

We do this by:

- establishing standards for the phone-paid services industry
- verifying and supervising organisations and services operating in the market
- gathering intelligence about the market and individual services
- engaging closely with all stakeholders
- enforcing our Code of Practice
- delivering organisational excellence

Introduction

1. The PSA welcomes BEIS consultation on reforming competition and consumer policy. We have specific interest in proposals relating to subscription services and alternative dispute resolution and we have limited our response to those proposals.

The PSA's interest in subscription services

2. The PSA agrees with BEIS identification of issues in relation to consumers' experience of subscription contracts and supports the range of measures proposed in the consultation which will better inform and protect consumers. Subscriptions for services are a significant proportion of the phone-paid services market and we welcome the opportunity to share our experience of regulating them.
3. Consumers spent £628.6 million on phone-paid services in 2020-21 with subscription services and regular donations to charities making up about a quarter of the total. Our experience supports BEIS analysis that subscription models can be beneficial to both consumers and businesses, but that the use of subscription models by business is not always purely beneficial.

4. Subscriptions for services providing online access to adult content and services offered only online for entry into competitions offering prizes of consumer technology (such as mobile phones) or supermarket vouchers became a major problem for the PSA in 2015 and complaints to us grew to a peak of over 33,000 in 2016-17 with over 90% of them being about subscription services. Regulatory and enforcement action to control these service types was initially successful, but we saw the same practices transfer to services offering other sorts of digital content, including games and lifestyle services. One of the lessons for PSA from this experience was that regulatory measures needed to be applied across all service types – unscrupulous service providers simply applied the same sales and marketing techniques that they had applied for online adult services and online competition services to services offering different sorts of content once tighter regulation for the adult and competition services was introduced. Once we introduced regulation specific to subscription services of all types in December 2019, we saw most of the harm related to these services removed from the market and a drop in complaints to PSA to just over 5000 in 2020-21. The decline in complaints has continued to date and the proportion of complaints to PSA relating to subscription services is now less than 40%.
5. Most services categorised as subscriptions in the phone-paid services market involve continuous payment authority of indefinite duration, with payment usually on a weekly or monthly basis – analogous to taking a newspaper subscription from a newsagent with no set end date to the arrangement. Subscriptions of specific duration such as 6 months or a year are less common – and often associated with major brands who also offer the same service using other payment mechanisms.
6. The regulatory measures we have in place for subscription services which we have found to be most effective are:
 - Multifactor authentication required to be able to sign up for a subscription to avoid persistent issues of lack of evidence of consent to charge from the consumer.
 - Receipts required after every charge to the consumer is made as a prompt to the consumer that they are subscribed to a service.
 - An easy mechanism for opting out of the service. Many phone-paid service providers use the STOP function whereby a consumer simply has to send the word STOP to a mobile shortcode to end their subscription.
7. The PSA is in the process of updating our regulation and we have been consulting on a new draft of our Code of Practice. We have consulted on proposals to extend the requirement for multifactor authentication and receipting to single purchases of digital goods and services where the service is accessed online. We have also consulted on a proposal to introduce a requirement for subscription services to re-opt-in their subscribers every 12 months (as mentioned in your consultation). This last proposal has led to a number of responses from businesses but also from charities opposed to the proposal. The PSA is currently considering the responses we received to our consultation and expects to publish our statement in October.

PSA views on BEIS proposals

Clarity in pre-contract information

8. The PSA supports the proposals set out at paras 2.16-2.18 of the consultation. The principle that consumers should receive full and clear information prior to purchase has been central to our regulation of phone-paid services for several years. The draft 15th Code of Practice includes a Transparency Standard as follows:

“Consumers must receive clear, complete and timely information so as to enable them to make fully informed decisions when purchasing phone-paid services.”

9. We already apply similar measures to all purchases of phone-paid services (i.e., not restricted to subscriptions) under our 14th Code of Practice. The proposal that consumers should be given a choice at pre-contract stage, to take a subscription without auto-renewal or rollover is not currently part of our regulatory framework. We consulted on a proposal that traders offering subscriptions should be required to get consumers to opt in to the service again after 12 months. While this is different from giving consumers choice at the pre-contract stage, the practical effect where a consumer opts to take a subscription without autorenewal or rollover is similar in effect in that the consumer would have to positively opt in again to continue a subscription. The PSA received a lot of responses from industry and from charities who benefit from recurring donations on a subscription model opposing our proposal to require re-opt-in after 12 months. They argued that it would lead to substantial numbers of consumers failing to take the action to opt-in again. Some argued that it could lead to disruption in service where consumers forgot to renew a subscription they wanted to continue to use. We are currently considering responses to our consultation and expect to issue our statement and final version of the 15th Code of Practice in October.

Reminding consumers of ongoing subscriptions

10. The PSA supports the view that consumers can sometimes forget that they are subscribed to a service and that occasional reminders can nudge them to exit unwanted subscriptions. We currently require traders to provide a receipt to consumers whenever a charge is made for a phone-paid subscription service. These receipts should also contain details for the consumer of how to exit the service should they wish to do so.
11. We support the proposal at para 2.20 of the BEIS consultation that traders should be required to remind consumers before the end of a commitment period that a contract will auto-renew unless cancelled. We agree with the propositions at para 2.22 that a reminder needs to be a reasonable time before the auto-renewal and that it should be sent by the consumer's preferred method of communication noting that what constitutes a reasonable time in advance of auto-renewal may vary according to the length of the commitment period.
12. We also support the proposal to require traders to remind consumers that a free trial period is coming to an end. We think it is particularly important that this should be sent with sufficient time for the consumer to act positively before the free trial period ends.

We do not think that it is necessary to go as far in all cases as to obtain the consumer's explicit consent again at the end of a free trial period, unless the free trial period is very short – for example, some subscriptions for phone-paid games services offered free access to the games for a period of 48 hours before the first charge is taken. In cases like this obtaining consent to be charged avoids the possibility that a consumer might overlook a reminder and end up being charged when they don't wish to continue.

Long-term inactive subscriptions

13. One of the issues that contributed to consumers' problems with phone-paid subscription services is that many of these subscriptions were low cost and often overlooked by consumers who do not necessarily check their phone bills in detail on a regular basis. The PSA has seen cases of consumers who have been unaware that they had subscribed to a service and only noticed many months or even 2-3 years later. In those cases, despite the low recurring cost (e.g., £1.50 per week), the detriment in individual cases ran to hundreds of pounds.
14. This problem was most acute in cases where consumers' consent to be charged had not been properly obtained, or at best, was in dispute and in relation to subscription services which had no defined period of commitment but relied on continuous payment authority. We have addressed this issue with some success through pre-contract or pre-sign-up transparency measures including requiring multi-factor authentication at the point of purchase. However, we consider that suspending or cancelling subscriptions that have been inactive for a period of time would provide a valuable additional layer of protection for consumers.
15. The potential issue with this proposal is being able to define what constitutes an inactive subscription and as the BEIS impact assessment points out, just because a subscription to e.g., a streaming service has not been used for a while does not necessarily mean that the subscription is unwanted. We agree therefore that a reasonable period of time needs to have elapsed before the subscription is cancelled. We consider however that what constitutes a reasonable period may differ depending on the type of service.

Making it as easy for consumers to exit a contract as enter it

16. The PSA agrees with the principle that it should be as easy to exit a contract as to enter it. Our 14th Code of Practice contains a provision that there should be a simple method of exit from the service as does our draft 15th Code of Practice.
17. There is a simple and effective method of exit widely used by the phone-paid services industry. Many services can be exited by sending the word STOP by text to a shortcode – which is often the same shortcode used to sign up to the service. Once received, exit from the service is immediate and further charges are not incurred. This method of exit has generally worked well for consumers and the industry alike.

Improving Alternative Dispute Resolution (ADR)

18. The PSA supports BEIS efforts to improve consumers' access to and understanding of ADR. ADR is not required by statute in relation to phone-paid services and not widely used by traders in the phone-paid services industry and the absence of an independent body to resolve individual disputes is a source of frustration for consumers. Consumers often contact the PSA expecting us to be able to help them secure refunds from traders and are disappointed when we explain to them that this is not within our remit as a regulator.
19. The levels of individual detriment suffered by consumers in relation to phone-paid services are low in comparison with the examples cited by BEIS. While some cases involve hundreds of pounds, the average refund sought by consumers is more likely to be in the range £20-50. The problem for all concerned is that the cost of resolving disputes relating to sums at this level far exceeds the amount in dispute. Traders are not incentivised to use ADR, ADR providers and ombudsman cannot provide a service that is economic, and consumers are therefore left with nowhere to turn other than the courts. At that point, most consumers give up.
20. We understand the criteria that BEIS has applied in considering extension of mandatory ADR provision. We note though that the absence of mandatory provision often leaves consumers with disputes for lower sums of money reliant on dealing with the traders direct. We support the proposals at paragraphs 3.72-3.77 to improve consumer awareness and understanding of their redress options and PSA will play its part in those efforts where possible, for example by providing information for consumers on our website.
21. We have also consulted on strengthening the requirements in our Code of Practice in relation to customer care, including a Customer Care Standard and requirements aimed at improving the customer care available to consumers of phone-paid services by setting clear expectations of traders in relation to e.g., hours of operation of customer care, signposting to customer care services and refunds. Since these are enforceable provisions of the Code of Practice, this should encourage traders to provide good customer care and where these requirements are breached the PSA will have the power to take enforcement action and potentially impose sanctions.

Phone-paid Services Authority

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