

PSA Consultation on the Business Plan and Budget 2020/21

Response from payforitsucks.co.uk

Introduction

The past year has seen PSA finally begin to take action to prevent high levels of fraud through premium rate services. In particular we welcome the introduction of new rules for subscription services, but fail to comprehend why this has taken so long.

It was also good to see action taken against one of the Level 1 providers **which was facilitating this fraud**. Although there seems little prospect of the fine ever being paid, we hope that it will act as a warning to other level 1 providers that they have a responsibility to vet the companies that they do business with, **and to prevent their platforms being used to facilitate fraud**.

The recent adjudication in the case of Veoo Ltd raises a number of serious issues. It is clear from the adjudication that **the directors of** this company deliberately allowed level 2 providers to make **fraudulent** charges to consumers. Companies that behave like this, and the individuals responsible need to be denied the opportunity **commit further fraud**. Essentially, a large number of consumers were charged without any verifiable evidence of consent.

The time between the initial investigation and the eventual sanctioning of the company is a cause for concern. The breaches of the code occurred in late 2014/early 2015. Why has it taken over four years to bring the company responsible to account? Veoo was in breach of the code and yet it took PSA years to take enforcement action.

The tribunal found, on the balance of probabilities, that this company deliberately applied unfounded charges to a large number of consumers' phone accounts. The company was allowed to continue its dubious practices throughout the period of the investigation with its directors deriving benefit from these **fraudulent** charges. Justice delayed in this way is justice denied! **It is to be regretted that criminal charges were not brought against these directors in view of the strength of the evidence.**

To add insult to injury, the PSA then asked Veoo Ltd what level of fine might be "survivable" for the company. What level of **fraudulent** charge does the PSA think might be survivable for a single parent on the National Living Wage? What level of **fraudulent** charge is survivable for a pensioner living on the state pension. PSA seem to be prepared to accept a level **of fraud** as long as it remains at a level of £4.50 per week or less. They have no understanding of the damage it can do to consumers who are living on modest incomes. I suspect that the majority of consumers would prefer companies that cynically exploit the system, like Veoo, NOT to survive!

Another feature of this adjudication is that it provides some numbers to help establish the scale **of fraud in the industry**. In the case of the first level 2 provider (Rhydel Ltd) it is revealed that of 12,601 numbers charged; only 12 could be verified! **On that basis 99.9% of the charges were fraudulent!** Most of these consumers will never have had the **fraudulent** charges refunded.

For service 3 (Virtual Rainbow Ltd), the corresponding figures are 31,651 numbers charged, of which only 224 were verifiable, making over 99% of the charges fraudulent.

PSA have not revealed full statistics for the other “services” involved in this case, but I would expect them to prove that the vast majority of these charges were fraudulent.

PSA try to give the impression that the vast majority of these charges are legitimate and that most disputes are the result of consumer error leading to “inadvertent” subscription. These figures suggest otherwise.

[In May this year BBC Watchdog commissioned a report on Payforit.](#) As well as identifying some of vulnerabilities in the system which are facilitating fraudulent charges, they also concluded in relation to Payforit:

“Since this service has been launched, a very large amount of accusations about the service being used for fraudulent activity have been made. Hundreds of posts on the cell carrier’s forums, as well as in other areas of social media such as Twitter, Facebook, and Reddit have reported that the service is being used to charge customers who have had no intention of making a purchase.

Various media outlets have reported on this issue, as well as the BBC Watchdog program investigating the problem. The consensus is that the majority of payments being used by the service have been made fraudulently without the users being aware.”

It is time that PSA took its responsibility to consumers seriously and stopped protecting bad actors in the Phone-paid Services industry.

The same research highlighted several vulnerabilities of the Payforit system, all stemming from the use of MSISDN passthrough. After the introduction of new rules for subscription services, these vulnerabilities are still being used by service providers on one of the networks to take fraudulent single payments of £40. The network hosting this scam is the same network that refuses to implement a “charge to bill” or “charge to mobile” bar to protect its customers from this type of fraud. How long will it take PSA and the networks to appreciate that MSISDN passthrough is, in itself, a vulnerability. On its website PSA have advised consumers to “treat their phone number like credit card”. It shouldn’t really be necessary to do this, as consumers regularly need to give their number to third parties for contact purposes. What is wrong however, is that phone numbers are being surreptitiously passed to third parties when consumers use their phone to access the internet via a 3G or 4G connection. Many consumers remain unaware that this happens and express disbelief when shown the evidence. There is no need for consumers’ phone numbers to be leaked in this manner. If they want a company to have their phone number, whether for charging purposes or not, they can supply it themselves.

The unwillingness of the networks to assist victims of Payforit fraud remains a serious issue. The networks are reported to take at least 20% of Payforit charges, and should, at least, be expected to provide assistance to consumers who claim to have been defrauded in return for this fee.

Consumers continue to have great difficulty in obtaining information on how they came to be “subscribed” to these services or a refund if such information is not provided. Under the Consumer

Contracts (Information, Cancellation and Additional Charges) Regulations 2013, where the existence of a contract is disputed, the burden of proof rests with the service provider and not with the consumer. However, consumers have no mechanism to enforce this right, particularly when dealing with companies based overseas. PSA have repeatedly failed to address this issue.

Consumers are disadvantaged by not understanding the roles of the MNOs, the level 1 providers and the level 2 providers, and companies are using this disadvantage to prevent them from getting justice when they are defrauded. A look at the Trustpilot reviews of some of the leading “service providers” will give an idea of the level of dissatisfaction.

As a further example of the way in which “service providers” attempt to evade their responsibilities and misrepresent the contractual relationships, we reproduce below a “defence” filed by a “service provider” in answer to number of Small Claims cases:

“IN THE COUNTY COURT ONLINE BUSINESS CENTRE BETWEEN XXXXXXXX

- and -

Claimant

J1 MEDIA LTD

Defendant

DEFENCE --- CLAIM NO. XXXXXXXX

1. The Defendant to this action is J1 Media Ltd (‘the Defendant’), a company registered in England and Wales (no. 10907364), with its office at 27 Old Gloucester Street, London, United Kingdom, WC1N 3AX.

2. The Claimant is XXXXXXXX

3. The Defendant operates a number of educational video tutorial micro web sites in the United Kingdom which are consumed on mobile phones. The Product (‘the Product’) referenced is an educational product.

4. The Products operated by the Defendant are approved for operation in the UK marketplace by the following mobile carriers: O2 (UK) Telefónica, Vodafone UK, EE Limited and Three UK. In order to be approved, the Products must show transparent clear pricing and be of an adequate technical quality.

5. The mechanism by which Products are sold and billed to a mobile phone bill is referred to as Payforit (‘Payforit’). Payforit is a payment framework that enables consumers to purchase on-line digital content using a mobile phone with confidence that the mechanism is secure and transparent.

6. The Defendant utilises an Accredited Payment Intermediary (‘the API’) known as Tap2bill Limited, a company registered in England and Wales (no. 03212199), with its office at 5 St. John’s Lane, Farringdon, London, England, United Kingdom, EC1M 4BH.

7. Consent for purchase of a Product is obtained as part of the purchase process. The Product is sold through an Accredited Payment Intermediary.

8. The Defendant provides content to UK Mobile Phone Service Providers. The ‘Particulars of Claim’ have been incorrectly served on the Defendant. The ‘Particulars of Claim’ should instead have been addressed to the Claimants Mobile Phone Service Provider and not the Defendant.

9. The Products operated by the Defendant are regulated by the Phone-paid Services Authority (‘Phone-Paid Services Authority’), operating under the remit of Ofcom. The Defendant’s Phone-paid Services Authority organisation registration number is ORG832-37209-34551.

10. The role of the Phone-Paid Services Authority is to regulate premium rate services (such as the Product referenced in this Claim). The Defendant has received no complaint from the Phone-Paid Services Authority in respect of the Claimant. The 'Particulars of Claim' should instead have been addressed to this dedicated regulatory authority and not a County Court.

11. The Defendant participates in the Ofcom Alternative Dispute Resolution Scheme ('ADR'). ADR schemes act as an independent middleman between the service provider and the customer when an initial complaint cannot be resolved. The Defendant has made no attempt to resolve this matter through the ADR process. As per Ofcom processes, the Defendant is to be given an opportunity to resolve the matter through the ADR process and not a County Court.

12. The Defendant has no contractual(sic) relationship with the Claimant. The Defendant does not know this individual. The Defendant simply provides content on behalf of the UK Mobile Phone Service Providers. Any payments that have been taken have been done so by the Claimants Mobile Phone Service Provider.

13. The 'Particulars of Claim' has been served to the incorrect Defendant and have been served to the incorrect Defendant and have no merit."

We never cease to be amazed at the way that these companies distort the truth, sadly with the support of the PSA. It is a disgrace that PSA allow companies to misrepresent the role of the various players in PRS, and fail to intervene when they are made aware of this misrepresentation. The consumers who were **defrauded** by this company approached the PSA for comment and/or support, but were afforded no assistance. A statement from the PSA highlighting the inaccuracies of this "defence" could have been really useful! Despite repeated requests to this company, no proof was ever provided that the consumers concerned entered into a legally enforceable contract with them.

Consumers frequently have great difficulty making contact with service providers. The customer service requirements in the code are often met by yet another third party company. These "customer service" companies routinely promise to get the service provider to call back, but promised callbacks are rarely received. Maybe PSA should consider doing some "mystery shopper" research on this and crack down on companies that use this method of evading their customer service responsibilities.

The new PIN requirements have introduced yet another "third party" into the mix. Some service providers have chosen to subcontract the PIN authorisation process to yet another company. These companies are invariably located offshore (in Singapore or South Africa) Consumers have reported receiving unsolicited PIN texts from these companies (to which they did not respond) and then becoming mysteriously "subscribed" to a service they have never heard of. In several cases 4G routers have become subscribed to such service!

We've been involved in several such cases, and with so many different parties involved, finding out what has gone wrong is nearly impossible.

So we now have five parties involved in these PRS transactions

- The MNO
- The level 1 provider
- The service provider
- The customer service company contracted by the service provider

- The PIN authentication service.

This compares very unfavourably with other payment mechanisms and is one of the main drivers of dissatisfaction with PRS services. The system is demonstrably insecure and not fit for purpose. Tinkering of the type done this year will improve matters, but what is really needed is a complete re-think of how PRS services should be charged. A modern system with consumers able to check, verify and cancel charges online could be a game-changer. A modern system would allow consumers to see an itemised bill for all third party charges and not rely on text messages which are often deleted or blocked because they look like spam.

The number checker provided by PSA should be a valuable resource, but information is often incomplete or out of date. The number checker needs to identify **ALL** the services active on each shared shortcode. Services should not be removed from the service checker until PSA can be sure that the service has closed down and that there are **no** active subscriptions to that service. The service checker also needs to identify the level 1 provider responsible for each shortcode. In our experience, when a service provider proves difficult or impossible to have meaningful contact with, the level 1 provider can often be pressured into helping (as they should).

The publication of Tribunal judgements can be useful, but PSA have a policy of dealing with many cases “informally”. Whilst recognising that this can save time and resources, it can put some consumers at a disadvantage. Where an informal investigation discovers evidence of a breach of the code, an agreement is often made that affected consumers should be refunded. Unfortunately such agreements are not publicised, which results in many consumers not receiving refunds for which they are qualified.

PSA discourage consumers from making complaints to them by telling them to first complain to the service provider, and then telling them that even if they do complain to PSA they won't get any help with their individual dispute. We always encourage consumers to report fraud to the PSA, but know that only a minority actually do so, as they are aware of the large number of unresolved disputes presided over by PSA.

As an example, we recently dealt with a case where a consumer had lost over £1000 as a result of two concurrent **fraudulent** subscriptions to services operated by a well-known service provider. Despite being identified in a Freedom of Information request as the most complained about service provider, there is no record of this provider ever having been investigated or sanctioned by PSA.

After initially refusing any refund, the company then offered a £40 refund. which was later increased to about £120. In view of this, we advised the consumer to use the Small Claims procedure to seek a full refund.

At this point, we discovered from another consumer that PSA had “informally” investigated services operated by this company at a time corresponding to the start of the disputed subscriptions, and that the company had, at that time, agreed to refund affected customers. When confronted with evidence of this agreement, the company refunded in full. It was only by chance that we discovered the existence of this agreement, and without it the matter might well have gone to the County Court. It would have made things much easier and quicker if the existence of this refund agreement had been published.

Such publication should include details of the service, the shortcode used, and the period of subscription covered. We are not looking for full publication of all the details, as this would be unduly onerous, but a simple record of cases where refunds have been agreed would enable us to check before starting legal action.

Q1 – Do our plans for 2020/21 sufficiently deliver our role as a regulator? What else do you think we should be doing or not doing?

There are many things which need to be done and which are not being done.

The most glaring omission from PSA's role as a regulator is the provision of a disputes resolution service. Whilst recognising that the role of PSA is not to adjudicate in individual disputes, it does have a responsibility to ensure that a consumer who has a dispute with a service provider has a mechanism to have that dispute resolved. We have repeatedly asked PSA to look at this issue as it is at the heart of the problem with Premium Rate services. Where the service provider is based in the UK, the Small Claims procedure can be used. Some UK based providers are members of CommsADR. The effectiveness of this scheme is uncertain though as the ADR process appears to be much slower than the Small Claims procedure.

However, many service providers are based offshore. If such a service provider refuses a refund, there is no method of having the dispute independently adjudicated. Under Payforit rules, the networks are supposed to perform this function for services charged via Payforit, but they routinely refuse to perform it. It would be better to accept the networks' unwillingness to act and put something else into place.

PSA should insist that all service providers publish their disputes procedure on their websites. They should also require any company not based in the UK to be member of an approved, UK based ADR scheme. Companies which fail to abide by the outcome of ADR or fail to satisfy CCJs should be excluded from the market.

A further issue is the failure of PSA to act against companies that have been shown to be defrauding consumers. One well known "service" (closed to new subscribers, but still collecting money, and not listed on the service checker) has a string of unpaid CCJs from dissatisfied consumers, but is still being allowed to operate. PSA even carried out an informal investigation of this service, and the company supposedly agreed to pay refunds, but they have not been paid and the company continues to collect money through subscriptions.

If service providers fail to respect the judgement of the County Court and satisfy CCJs obtained by defrauded consumers, this should be sufficient for PSA to stop them from operating until the judgements have been satisfied.

Despite promised improvements to the service checker, it remains out of date and incomplete. PSA should automate the process of transferring registration information to the service checker, so that new services appear within 48 hours. Services and companies which fail to meet the registration requirements should be sanctioned. Historically PSA have "turned a blind eye" to companies and services which failed to register in a timely manner. A small automatic fine of say £100 per day per

service for failure to register within 48 hours would, we suspect, dramatically improve compliance. Older services which have closed to new subscriptions, but for which consumers are still being charged should be maintained on the service checker until such time that there are no active subscriptions. Records could perhaps state when PSA have been informed that the service has closed to new subscriptions.

The service checker should identify the level 1 provider responsible for each of the shortcodes. A further improvement would be to allow the service checker to be searched by service name.

Service providers are increasingly outsourcing their customer service to specialist companies. These companies lack the authority to discuss complaints or agree refunds, so they normally agree to get the service provider to call back the consumer, which is fair enough, **as long as it happens**. Such call-backs are rarely actually made, and the use of the third party telephone answering service is merely a method of avoiding the need to deal with disgruntled consumers. It would be a good idea for PSA to test the customer service of some of these companies, and where it is found wanting, pursue them for a breach of the code.

Three of the four MNOs allow users a “charge to bill”, or a “charge to mobile” bar to prevent users, particularly children or vulnerable adults, from inadvertently running up charges for premium rate services. In our view such a bar should be the default for new contracts.

One of the MNOs is unable (or unwilling?) to provide such a bar. Pressure needs to be brought to bear on this network to provide this valuable protection. MNOs also need to be much clearer and more honest about charge caps, which many consumers mistakenly believe will prevent excessive charges for Premium Rate Services. The same network as refuses to implement a “charge to bill” bar also has staff that mislead customers about this. This may be another case where PSA staff could pose as “mystery shoppers” to find out EXACTLY how well the MNOs are meeting their obligation to inform consumers of their exposure to these services and the extent to which they can limit that exposure.

In our view, the charge to bill bar should be applied to all new contracts unless the consumer asks or it to be removed. The Court of Justice of the EU ruled in September 2018 that “The sale of SIM cards on which services that can incur fees have been pre-loaded and pre-activated constitutes an aggressive unfair commercial practice when the consumers are not informed of that fact in advance” (Judgment in Joined Cases C-54/17 Autorità Garante della Concorrenza e del Mercato (‘AGCM’) v Wind Tre SpA and C-55/17, AGCM v Vodafone Italia Spa). To comply with this ruling all networks should specifically warn consumers that Payforit and other PRS services have been activated on the SIM and give customers the opportunity to disable them.

It is good to see PSA looking at the issue of refunds. The law provides for routine refunds to be made back to the original method of payment. Most other payment systems adopt this approach and it is the most logical. This should be the normal method of refund, whilst leaving the possibility of an alternative refund method if the consumer and the company can agree it. Service providers should not be pressuring consumers into providing additional personal information in order to facilitate other refund methods, nor should they be insisting on refund mechanisms which are inconvenient for the consumer.

The introduction of a Consumer Panel should have enabled PSA to become more aware of consumer views on Premium Rate services. Sadly this has not happened, mainly because consumers have no means of raising issues with the panel. The panel appear to be unaware of the widespread fraud perpetrated by companies operating PRS services. PSA could and should have provided a mechanism for consumers to voice their concerns to the panel, but this hasn't happened. A panel made up of representatives of consumer organisations which regularly deal with disputes related these services would have been infinitely more useful, and might have forced PSA to actually listen to the voice of consumers for a change!

PSA regularly have meetings with members of the companies operating these services. Could they consider holding open sessions, maybe twice a year, for consumers, so that they get both sides of the story? It would be an inexpensive gesture, but might help unhappy consumers to feel that they are, at least, being listened to.

PSA should publish brief details of the outcome of informal investigations, with a view to ensuring that all consumers entitled to a refund are able to claim it.

Whilst accepting that PSA can't investigate individual consumer disputes, PSA should monitor companies which have been the subject of legal action by consumers. Where a consumer obtains judgement against that company and that judgement is not satisfied within a reasonable period, PSA should act to protect consumers from that company. The presence of a significant number of unsatisfied CCJs should be a warning sign that this company may be defrauding consumers.

Where PSA become aware that a PRS company has lied in its evidence to the county court, they should assist the consumer by providing a statement highlighting the misrepresentation. For example, where a service provider claims that a charge is the responsibility of the consumer's network, PSA should provide a statement making it clear that this is not the case. Where a company incorrectly claims that PSA have legal jurisdiction over a consumer claim, they should assist the consumer in countering this claim and not sit on their hands pretending nothing is wrong. Courts, like consumers, have difficulty in understanding the roles of the various players in the PRS market. As a regulator, PSA have a duty to assist their understanding.

Q2 – Do you have any comments on the proposed budget for 2020/21? If you recommend any changes, please clearly identify which areas of activity you expect this to impact upon.

In order for PSA to gain proper control of the market, and regain consumer confidence, more attention needs to be paid to enforcement. Levels of non-compliance will hopefully fall as a result of actions taken in the past year, but PSA need to be vigilant as fraudsters will be seeking new ways of exploiting the PRS environment, which has been a home to scammers for many years. A zero tolerance approach to fraud should be the objective. Successful enforcement will reduce costs in the long term.

Q3 – Do you have any comments on the proposed levy for 2020/21?

No comment

Q4 – What is your view on the estimated size of the market for 2020/21?

The market will almost certainly grow, with nearly all the growth coming from the more reputable PRS services. However this growth will be a fraction of what could have been achieved by re-thinking the entire system so that it offers the features expected of a modern payment mechanism. Payforit and premium texts have had their day. It's time to bring PRS services into the 21st century!

Q5 – Do you have any other comments on the Business Plan and Budget 2020/21?

No

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