

Reference: 548884

Jerin John
Information Rights Adviser
Information.Requests@ofcom.org.uk

05 July 2018

Dear Mr Holmes,

Freedom of Information: Right to know request

Thank you for your request for information where you asked about the consent process for mobile phone subscription services.

This was received by Ofcom on 7 June and it has been considered under the Freedom of Information Act 2000 (the Act).

I note you submitted your request to both the Phone-paid Services Authority (PSA) and Ofcom. Set out below is Ofcom's response to the request, where the PSA is a separate body with its own responsibilities.

Your request formed a series of questions. I have numbered them for ease of reference below. Please find our response beneath each question.

- I was recently charged for a subscription service on my mobile phone bill. I suspect one of my children accidentally made the purchase that incurred £65 over several months. I cannot understand how an agreement for a subscription service exists between two parties, when the merchant does not even know who the other party is, other than a phone number. If a merchant cannot even identify who has made a purchase, how can the merchant satisfy themselves that they are not supplying a service to a child without authority to agree to any agreement or contract? Every premium rate phone competition has the caveat that the caller must have the bill payer's permission. Why is this not the case for the purchase that my 4 year old daughter accidentally made? Surely every single transaction has the potential to be unlawful because it could have been made by a child. Do you hold any legal advice on this?*

We do not hold legal advice on the specific point you have raised. We set out below, however, information which may be of assistance to you.

From the information you have provided in your request, it appears that you may have been charged for a premium rate service (PRS).

PRS are subject to strict regulatory rules to ensure that consumers can purchase these services with trust and confidence and have access to effective redress when they encounter problems. The Phone-paid Services Authority ('PSA') is the body that is responsible for the day-to-day regulation of PRS (<https://psauthority.org.uk/>).

The PSA undertakes its regulatory work by enforcing a Code of Practice ('the Code'), approved by Ofcom, which sets out the rules with which all providers of PRS must comply. A copy of the Code can be found here: <https://psauthority.org.uk/for-business/code-of-practice>.

The rules set out in the Code include those concerning pricing transparency, fairness (including requirements with regard to securing consumers' consent) and ensuring that promotions are targeted appropriately. The PSA has also issued guidance relating to PRS providers who are intending to offer services which are aimed at, or are likely to appeal to, children. See: https://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Guidance-and-compliance/Explore-our-guidance/Guidance-files/14_Childrens-services.ashx

The PSA is able to undertake investigations under the Code and if they find that the rules have been broken, they can apply a range of sanctions. Such sanctions may include fining the company, barring services and requiring providers to refund affected customers.

2. *What processes have Ofcom put in place to ensure all subscription contractual agreements made are consensual and how do Ofcom prevent accidental purchases by a toddler? Please provide any information you can on what processes are in place to ensure an adult's consent, and stop inadvertent purchases by toddlers.*

Please see our response to Question 1 above.

In addition, the PSA has the power under the Code to apply 'special conditions' to certain types of service where they are satisfied that there is an increased potential for consumer risk, harm or offence. The PSA currently has 12 sets of special conditions in place. One of these sets of special conditions relates to subscription services over £4.50 in any given seven-day period, and include requirements such as securing a 'double opt-in' from the consumer and providing the consumer with confirmation that they are subscribed to a service.

For further details of the PSA's special conditions, please see the following link: <https://psauthority.org.uk/for-business/special-conditions>

Ofcom has set a condition under sections 120 and 120A of the Communications Act 2003 which require PRS providers to comply with any direction which is given to them by the PSA in accordance with the Code. The most recent version of this Condition is set out here: https://www.ofcom.org.uk/data/assets/pdf_file/0031/82678/ngcs_revised_date_statement.pdf. Ofcom has powers to enforce compliance with this Condition under section 123 of the Communications Act 2003.

Further information regarding Ofcom's and the PSA's role in relation to PRS is set out on our website here: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/policy/premium-rate-services>.

3. *A PIN is required for gambling and adult specific digital content, why is this different? Please provide any information held with the rationale for that decision. It appears to me a PIN could be introduced for all purchases but Ofcom have decided against this.*

Please provide any information on why Ofcom is deliberately allowing the encouragement of children to enter into subscription agreements without a PIN.

We do not hold information as to the rationale for determining when certain PRS purchases should require a PIN. This is a matter for the PSA who regulate PRS on a day to day basis through their Code.

You may be interested to know, however, that the PSA is currently undertaking a review of the current systems providers use to ensure secure and verifiable consent to charging. The PSA has also committed as part of its business plan for the year ahead to review subscription services more generally. This is set out in the PSA published [Business Plan and Budget for 2018/19](https://psauthority.org.uk/-/media/Files/PSA/News-and-Events/News/2018/Business-Plan-and-Budget/Business-Plan-and-Budget-2018-19.ashx?la=en&hash=89404B11135E81812EF47BD51DB720D6025A021B). See <https://psauthority.org.uk/-/media/Files/PSA/News-and-Events/News/2018/Business-Plan-and-Budget/Business-Plan-and-Budget-2018-19.ashx?la=en&hash=89404B11135E81812EF47BD51DB720D6025A021B>

4. *Please provide any information held on processes in place to obtain a refund without any inconvenience. What information is held that establishes how I get my refund in compliance with your rules?*

Where the PSA finds that there has been a breach of its rules under the Code, it has the power to impose sanctions which can include fining companies, having service barred and ordering refunds to be paid to consumers. In certain limited circumstances, the PSA's Code requires such refunds to be paid directly to the consumer's account – see: paragraph 4.8.4(a) of the Code.

We note in your email of 13 June 2018 that you refer specifically to section 45 of the Consumer Rights Act 2015 (CRA) which, in your view, entitles you to have a refund credited directly back to your account. Although all cases are fact-specific (and we are not in a position to form a view on the specific facts of your case), we note that the right to a refund paid in accordance with section 45(4) of the CRA arises in relatively limited circumstances, namely where a trader has supplied content to a consumer when they do not have a right to do so (for example, because they do not own the relevant content or have the authorisation to sell it).

It is not clear from your email whether or not you have raised or wish to raise a complaint with the PSA in relation to the PRS which has been charged to your mobile account (or whether you have already done so). Should you wish to submit such a complaint, you can do so by:

- Following the [online-process](https://psauthority.org.uk/for-consumers/making-an-enquiry) on the PSA website here: <https://psauthority.org.uk/for-consumers/making-an-enquiry>; or
- calling its helpline - 0300 30 300 20 (open 09.30 – 17.00 Monday – Friday); or
- writing to Phone-paid Services Authority, 25th Floor, 40 Bank Street, London E14 5NR.

I hope this information is helpful. If you have any queries, then please contact information.requests@ofcom.org.uk. Please remember to quote the reference number above in any future communications.

Yours sincerely,

Jerin John

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF