

Freedom of Information: Right to know request

Request:

"The Consumer Rights Act s.45(4) provides a consumers with a statutory right to a refund with the same payment method that was used to make the purchase of digital content.

Under mobile network operators current terms and conditions, if PRS providers add charges to a mobile phone bill, the terms and conditions are set out to ensure that the account holder is solely responsible for assessing the accuracy and completeness of Content and the value, age-appropriateness and integrity of goods and services offered by third parties, and must obtain a refund directly with a third party.

Network Operators have been sighting their terms and conditions to consumers to off load any liability for a refund, however without having any agreements with PRS providers in place to facilitate refunds back into their customers billing accounts as required by law.

Please provide a copy of any complaints submitted to Ofcom regarding mobile networks terms and conditions unfairly removing the statutory right under s.45(4) of the Consumer Rights Act 2015.

Please provide any legal advice obtained by OFCOM regarding this issue. Please provide a copy of any emails, documents and minutes of meetings OFCOM hold on this subject."

Notes:

- Previously explained Ofcom's role as opposed to the PSA role, but the requester still wanted to pursue the FOI, as the PSA is not subject to FOI.
- One other document was found by Gavin Daykin, but it related to the recovery of fines, so was out of scope.

Response:

Further to my previous email to you, we have searched Ofcom's records for the information you have requested. We have located the following:

- A letter dated December 2015, addressed to an MP, which provides advice on the process for seeking refunds for disputed premium rate charges. We cannot disclose the contents of the letter, as it is exempt under S40 of the FOI Act, because it refers to the circumstances of one of the MP's constituents and contains the individual's contact details. However, extracts of the letter can be disclosed and those extracts are set out below:

" I am sorry to hear of XXX's problem and appreciate how stressful it can be to receive a charge on his bill which he does not believe he signed up to. Premium Rate Services (PRS) are subject to strict rules to protect consumers and ensure that they have access to effective redress when they encounter problems. While Ofcom has overall responsibility for their regulation, the day-to-day regulation is carried out by PhonepayPlus, our co-regulator.

PhonepayPlus does this by enforcing a code of practice, approved by Ofcom, which sets out the rules that all providers of PRS must comply with. These include pricing transparency, honesty of such services and promotions being appropriately targeted. PhonepayPlus has put in place additional rules regarding services which are aimed at ensuring that consumers are not inadvertently entering into a PRS-based subscription service. (...)

· XXX should be able to unsubscribe from the texts by responding with the word STOP to the shortcode number from which he receives messages. Further guidance on this can be found here: <http://www.phonepayplus.org.uk/for-consumers/who-charged-me>.

· XXX should be able to find a non-premium rate customer care number to contact XXX to complain by using the "NumberChecker" tool found on PhonepayPlus' website at <http://www.phonepayplus.org.uk/>.

· If, after contacting XXX, XXX remains dissatisfied with the response, he can contact PhonepayPlus, which will then consider his complaint. He can contact PhonepayPlus by calling 0300 30 300 20, or via its website at <http://www.phonepayplus.org.uk/>

PhonepayPlus will consider, and where appropriate, investigate any consumer complaints. Where the complaint is that

service charges are unsolicited, PhonepayPlus is likely to make checks to verify whether the service provider holds sufficient evidence to show that consumers did opt-in to its service. Where PhonepayPlus obtains enough evidence to prove that consumers have been charged without their consent, it can take formal enforcement action against the company.”

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