

## Phone-paid Services Authority Consumer Panel

Meeting Nine – 13 November 2020

13:00 – 15:30 (via Microsoft Teams)

### Panel Attendees

Rhian Johns (Chair)

Patrick Bligh-Cheesman

Paul Eaves

Nicola Wilson

Louise Baxter

Fred Forbes

### Executive Attendees

Jonathan Levack

Emma Bailey

Gavin Daykin

Sarah-Louise Prouse

Katie King

Angela Wood (Minutes)

## Minutes

### Introduction

1. The Chair welcomed everyone to the meeting and asked Panellists to ensure they raise all questions and issues that they would like to discuss in relation to Code 15, as this meeting is a key opportunity for the Panel to contribute to its development.

### Setting the scene

2. The Executive set out the objectives of the review and shared the Code 15 timeline with the Panel.
3. The Executive noted that the draft code is now with external legal Counsel for review and will subsequently be sent to Ofcom for early review. Formal consultation is expected in the first half of 2021.
4. The Executive confirmed that once the new Code is in force, it must be complied with immediately.
5. The Panel asked about its role in the process given that a draft Code has been provided to external Counsel, and how it can best add value. The Executive noted that changes are anticipated both from Counsel ahead of consultation and then as part of the consultation process.
6. The Executive emphasised that it would like to test its thinking with the Panel and is receptive and open to Panel views, noting that there is still significant time to consider these and make any changes in response to Panel input.
7. The Executive highlighted that it is:
  - looking to move away from being reactive, towards prevention of harm, including through supervision
  - proposing changes to our enforcement approach which is currently perceived as slow and ineffective
  - making changes to strengthen information gathering powers
  - foster better behaviours from providers.
8. The Executive noted it had provided a background paper which set out the overarching structural changes proposed and asked the Panel if it had any questions about it.
9. The Panel asked about the removal of Special conditions and how the PSA intends to remain responsive to market issues if these no longer exist. The Executive noted that it has sought Counsel and Ofcom advice on including a broader Code amendment power in Code 15 that would enable changes it to remain responsive.

## Consumer Standards

10. The Executive presented its paper on the proposed consumer standards highlighting some of the proposals, including:

- new requirements on promotions and the purchasing environment
- multi-factor authentication for all purchases made online
- for subscriptions, re-obtaining a double opt in from consumers every 12 months
- a simpler and clearer approach to the regulation of ICSS
- codified standards and requirements in respect of consumer care and refunds,
- refunds being required to be processed within 14 days and in a way that is easily accessible for the consumer.

11. The Panel commented on a number of areas:

- there was a discussion around the subjective nature of transparency and fairness. The Panel noted that additional guidance might be needed here and that examples would be helpful. The Panel also noted that if something isn't clear to a consumer that is vulnerable then it shouldn't be considered clear or transparent, and that 'misleading omissions' should be considered in this context
- the Panel asked whether there is a way to require that receipts link to the consumer's phone bill to help them understand how they've been charged. The Executive noted that billing capabilities sit with the MNOs and it is currently limited in what it can do in this area
- the Panel noted that the proposed method of exit requirements could be clearer. The Executive noted it is intended that it is as easy to get enter as it is to exit and that it will consider whether the wording needs amended to ensure this is clear
- the Panel noted the receipt should also set out the name of the legal entity of the company, not just the trading as name, this would help if people get into a legal process. The PSA noted it would consider what's most useful for consumers in further developing this proposal.

12. The Panel asked why, within the proposals, it is stated that a voice-based service is not required to send a consumer a receipt to consumers. The PSA explained that if a consumer is calling from a landline or withheld number then a receipt cannot be sent.

13. The Panel asked whether it is possible to differentiate between calls that are on a mobile and those that are on a landline. If the system can distinguish, then it is the Panel's view that receipts should be required to be sent to calls made on a mobile.

14. The Executive agreed to take this away and consider what might be possible.

15. The Panel supported the proposal that providers be required to re-opt in consumers using subscription services after a certain period, as this would support raised awareness of phone-paid services. The Panel suggested that every 12 months is too infrequent and that 6 months is more appropriate to limit the risk of harm. The Executive noted its proposal was based on many subscriptions in other sectors being of 12 months duration but agreed to consider this. The Panel also asked the Executive to consider including an additional requirement that there can be no 'auto-increase' when subscriptions renew.
16. The Panel noted that across the Code generally, the language could be more positive, and that the Executive could consider using more 'must' requirements to set out what providers have to do, rather than setting out what they must not do.
17. The Panel asked whether there might be value in including information for the consumer (such as through the PSA service checker) where a provider is based, to support them to make informed purchasing decisions.

#### *Customer Care and refunds*

18. The Panel asked whether there will be any guidance on who in the value chain is responsible for refunds and under what circumstances. The Executive noted that it is usually the merchant unless they have an agreement with another party to do it on their behalf.
19. The Panel suggested there needs to be guidance in place around when refunds will be given. For example, are there circumstances in which a consumer might be entitled to a refund, but the company has decided that they will not provide it. The Executive noted that it may be limiting to set out the circumstances in which a refund must be provided.
20. The Panel noted that it is not clear whether the 14 days for a refund to be provided also applies when the refund is being provided by someone other than the merchant. The Panel also recommended that it be made clearer that the 14 days does not refer to when someone can request a refund (and only relates to the time period within which a refund must be processed).
21. The Panel asked whether it would it be worthwhile having a log/portal where PSA could access to every complaint that was made to each provider. The PSA noted it isn't looking at this but is considering what data providers need to share and the frequency which could include a complaints 'annual return'. The Panel suggested a 'mystery shopper' approach might be useful here.

#### *Vulnerable consumers*

22. The Panel noted that this was a forward-thinking section and asked how the PSA intend to ensure compliance. The Executive noted it expects things like consumer usage patterns to be analysed. The Panel noted that providers could do more through

their customer care to identify where a consumer might be vulnerable and enable consumers to self-report.

23. The Panel suggested this standard could be updated to include providers being aware of particular vulnerabilities at the time of purchase. The Executive noted that it does not wish to limit provider obligations to the point of purchase.

### Organisational 'how it works' standards

24. The Executive is seeking to ensure that organisations operate to a high standard – including providing detailed registration information and undertaking thorough DDRAC. The Executive noted it is proposing to introduce a new supervisory function to support it to be more proactive.
25. The Panel asked what happens if a provider fails to register. The Executive noted that it isn't able to implement an authorisations regime (pre-approval before a service operates) but that a failure to register would be a breach of the Code.
26. The Panel asked Is there a requirement for the full value chain to be accessible so a consumer doesn't have to look for it. The Executive noted that through the information and service checker it is seeking to ensure that the most relevant and useful information is provided to consumers.
27. The Panel suggested the PSA consider requiring that:
- registration information is kept up to date and re-confirmed every six months to ensure those listed are still with the relevant organisation
  - registration information is able to be verified in some way so that the PSA can be sure that someone is who they say they are and that the company directors or owners haven't previously been sanctioned by PSA.
28. The Panel were supportive of the proposal to have a nominated overall contact as well as named persons with specific responsibilities.
29. The Panel thought that there should be a due diligence requirement for organisations to ensure those they contract with are maintaining the same standards as when they first did the checks. The Executive explained the proposed changes through Code 15 that will seek to ensure this.
30. The Panel noted the need to ensure that consumers understand the benefits that Code 15 will deliver for them. The Executive noted it has a clear and phased communications plan in place.

### Enforcement

31. The Executive introduced the paper noting it is looking to implement a much more flexible enforcement approach and to be able to:

- engage with providers more quickly
  - require corrective steps outside of a Tribunal process
  - introduce a single decision maker when a case is less complex.
32. The Panel asked what happens where a provider is providing a service but is not registered. The Executive noted in this scenario a breach may be raised for failure to register. In addition, a DDRAC issue may be raised in respect of those that have contracted with that party.
33. There was discussion on the appropriate time to publish enforcement activity in the consumer interest and the Panel encouraged the PSA to think about the impacts of publishing information before a failing has been found, noting there are risks with publishing too early, and risks of publishing too late.
34. It was noted that there is a balance to be struck between what is the best point for PSA to publish. Ofcom publishes at a point in which they open the investigation, but the PSA publish at a point at which they close an investigation. It was noted that different regulators do it in different ways.
35. The Panel suggested the Executive consider how long it is appropriate for sanctions information to be listed against a provider's name.
36. The Panel noted that the PSA's fine collection rate is low and agreed that improvements are needed here.

## **AOB**

37. The Chair asked the Panel if there is anything that Panellists haven't raised yet that they wanted to discuss.
38. The Panel asked whether there are any other sources of information that would be useful for it to understand broader consumer issues in this area. The Executive noted it has an Independent Complaints Assessor, sometimes receives complaints from MPs in relation to their constituents, as well as through social media, and can keep the Panel informed of these.
39. The next meeting is on 2 December 2020.