

Code 15

A new approach to regulation

CODE 15

raising standards | preventing harm | simpler compliance | smarter enforcement

Today's Agenda

- Introductions & house keeping
 - Draft Code 15 Presentation
 - Questions and discussion
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The need for change

- **The market has changed significantly** in recent years and is fundamentally different to the market when Code 12 was introduced
 - **Outcomes-based regulation worked well during a period of market transition.** But regulation is now increasingly complex and employs several ex-post fixes
 - **Consumer expectations have changed** in line with their experiences in other digital markets and changes in consumer legislation
 - **Enforcement can be slow and perceived as ineffective.** Code 14 enforcement tracks and powers are increasingly limiting our opportunities for timely intervention and optimal regulatory outcomes.
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Our objectives

- We are proposing a new Code that is fit for a mature market that delivers what consumers want and allows us to implement our strategic purpose
 - We want our draft Code to:
 - introduce standards instead of outcomes
 - focus on the prevention of harm rather than cure
 - be simpler and easier to comply with
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Raising standards

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Standards create a higher level playing field, reduce ambiguity and leave ample space for innovation



- We are proposing to introduce 10 regulatory standards in place of 6 outcomes
 - They should result in a step change in market behaviour, ensuring high standards are followed by all
 - Standards should be clearer than outcomes and provide regulatory certainty
 - And they should not stifle innovation. Standards are not a return to prescriptive regulation
 - We also plan to retain the ability to be flexible to support good services
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Integrity, transparency and fairness standards set the expected level of engagement with consumers

Draft Code 15 standards

1. Integrity
2. Transparency
3. Fairness
4. Customer care
5. Vulnerable consumers
6. Consumer privacy
7. Prevention of harm and offence
8. Organisation and service registration
9. DDRAC
10. Systems

- New integrity standard sets out that providers must act responsibly and honestly
- Transparency standard ensures consumers can make fully informed decisions. It builds on the Code 14 outcome and incorporates relevant service specific Special conditions
- Fairness standard ensures consumers are not misled. It includes MFA for purchases made online (not all services as we had considered) and a subscription re-opt in.

Customer care and vulnerable consumers standards combine existing Code requirements with current guidance

Draft Code 15 standards

1. Integrity
2. Transparency
3. Fairness
4. Customer care
5. Vulnerable consumers
6. Consumer privacy
7. Prevention of harm and offence
8. Organisation and service registration
9. DDRAC
10. Systems

- New customer care and vulnerability standards bring in elements of current guidance into the Code to ensure consumers are treated well
- Customer care standard sets clear expectations about what a consumer should reasonably expect from a provider
- Vulnerable consumers standard brings together existing requirements from Code 14 and requires providers to have policies in place for vulnerable consumers

3 organisational standards set clear requirements for the technical aspects of the provision of services

Draft Code 15 standards

1. Integrity
2. Transparency
3. Fairness
4. Customer care
5. Vulnerable consumers
6. Consumer privacy
7. Prevention of harm and offence
8. Organisation and service information
9. DDRAC
10. Systems

- Org and service information standard clearly articulates the information required to **operate** and gives fellow providers better information about who you contract with
- DDRAC combines current Code requirements, current guidance and additional updates that were delayed due to Covid
- Systems standard incorporates many of the requirements detailed in consent to charge guidance

Preventing harm

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We want to work proactively with providers to prevent harm without the need for costly and lengthy investigations

- A critical objective of Code 15 is to allow PSA to be a more proactive regulator that seeks to address potential harm before it emerges.
 - We propose to do this by moving to a model which has an **increased focus on verification and ongoing supervision.**
 - we want to ensure that all those operating in the market are acting with integrity by ensuring market entry is managed at an appropriate level.
 - we want to work with providers to build in best practice and compliance in the first place.
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Verification

- We propose to introduce greater verification in the following ways:
 - Enhanced notification to PSA through the Registration Scheme
 - Strengthened DDRAC Requirements on networks & intermediaries to assess and control the potential risks of parties who they contract with
 - Both largely build on existing Code 14 requirements albeit with some new – mainly to ensure that PSA and industry have the right information readily available about third parties.
 - The principle of verification runs along the organisational standards proposed.
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Supervision

- We want to work in an open and co-operative relationship with industry stakeholders through ongoing and proactive supervision
 - We propose to monitor compliance through various information-gathering activities, including consumer complaints, audits, data reporting and skilled persons reports
 - We will have regard to the following principles:
 - evidence-based judgement
 - forward-looking
 - focused on risk of consumer harm
 - co-operation
 - Supervision can be proactive, reactive or thematic.
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Simpler compliance

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Code 15 is intended to be simpler and easier to comply with



- Code 14 has become increasingly complex
 - The draft Code 15 is intentionally simpler and more accessible
 - Standards are intended to reduce some of the regulatory ambiguity associated with outcomes
 - We have removed much of the additional regulation associated with Code 14, streamlining where we can, including reducing need for additional guidance and incorporating elements of Special conditions into the Code
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A simpler Code structure

Code 14 structure

Code

- 6 consumer outcomes

Special conditions

- 13 service specific sets of Special conditions

Guidance

- 14 pieces of general guidance
- 7 pieces of Service-Specific Guidance

Exemptions

Draft Code 15 structure

Code

- 7 consumer standards
- 3 organisational standards
- Service specific requirements

Guidance (including best practice)

Exemptions

Smarter enforcement

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Enforcement will remain part of our toolkit but we want to do so fairly, flexibly and efficiently



- Code 15 proposes a new approach to enforcement
 - This includes strengthened and expanded information gathering powers
 - We are proposing to introduce new engagement powers that will allow us to address less serious issues of non-compliance through agreed action plans
 - Where formal enforcement is necessary, we are proposing more secure interim measures, easier settlement processes and more efficient adjudications.
 - And where providers don't cooperate, Code 15 will enable us to move on with any investigation
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Enforcement proposals



Proposals	Description
Information gathering	<ul style="list-style-type: none">➤ Broader information gathering powers (including for the purpose of supervision/engagement & enforcement)➤ Request information held by parties who are not in the value chain➤ Codify data retention requirements (which currently sit under Guidance)
Changing our approach to engagement & enforcement	<ul style="list-style-type: none">➤ New approach of 'Enquiry Letters', Warning Letters' & 'Enforcement Notices'➤ Early publication of 'Warning Letters', as appropriate➤ Broadening the circumstances under which we can issue 'Enforcement Notices'➤ More streamlined decision-making process, including use of a single legally qualified CAP member for certain determination➤ More flexible 'Settlement' process
Interim measures	<ul style="list-style-type: none">➤ Requirement on relevant providers to notify the PSA of all future outpayment dates promptly➤ Requirement on relevant providers to pay over to the PSA any monies subject to a Withhold Direction
Individual liability	<ul style="list-style-type: none">➤ Strengthened the test for prohibiting individuals to include a "failure to take reasonable steps" in the context of their roles
Oral hearings	<ul style="list-style-type: none">➤ New process for Chair to determine the application for an oral hearing where a restriction of the right to an oral hearing is permissible

The benefits

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Code 15 will enable us to regulate differently in the interests of all



For consumers	For industry	For PSA
<ul style="list-style-type: none">• Clear and improved standards in the market to meet consumer expectations and best practice• Raised expectations for vulnerable consumers and post-purchase care• A focus on prevention of harm before it happens rather than cure post event, building trust and confidence in phone-paid services	<ul style="list-style-type: none">• A clearer and simpler Code to implement with fewer ex post regulatory fixes• A healthier market with confidence and certainty that those operating in the market are legitimate through enhanced verification• More proactive engagement from the regulator with networks and intermediaries to build in compliance and best practice, and therefore avoiding additional cost• Quicker resolution of issues where possible, avoiding uncertainty and drawn out investigations	<ul style="list-style-type: none">• A healthier, more compliant market with an improved consumer experience and confidence• More effective use of resource to both prevent harm in the first place and target enforcement when and where required• Better information and co-operation from regulated parties to enable the prevention of harm and streamline enforcement

High-level impact analysis



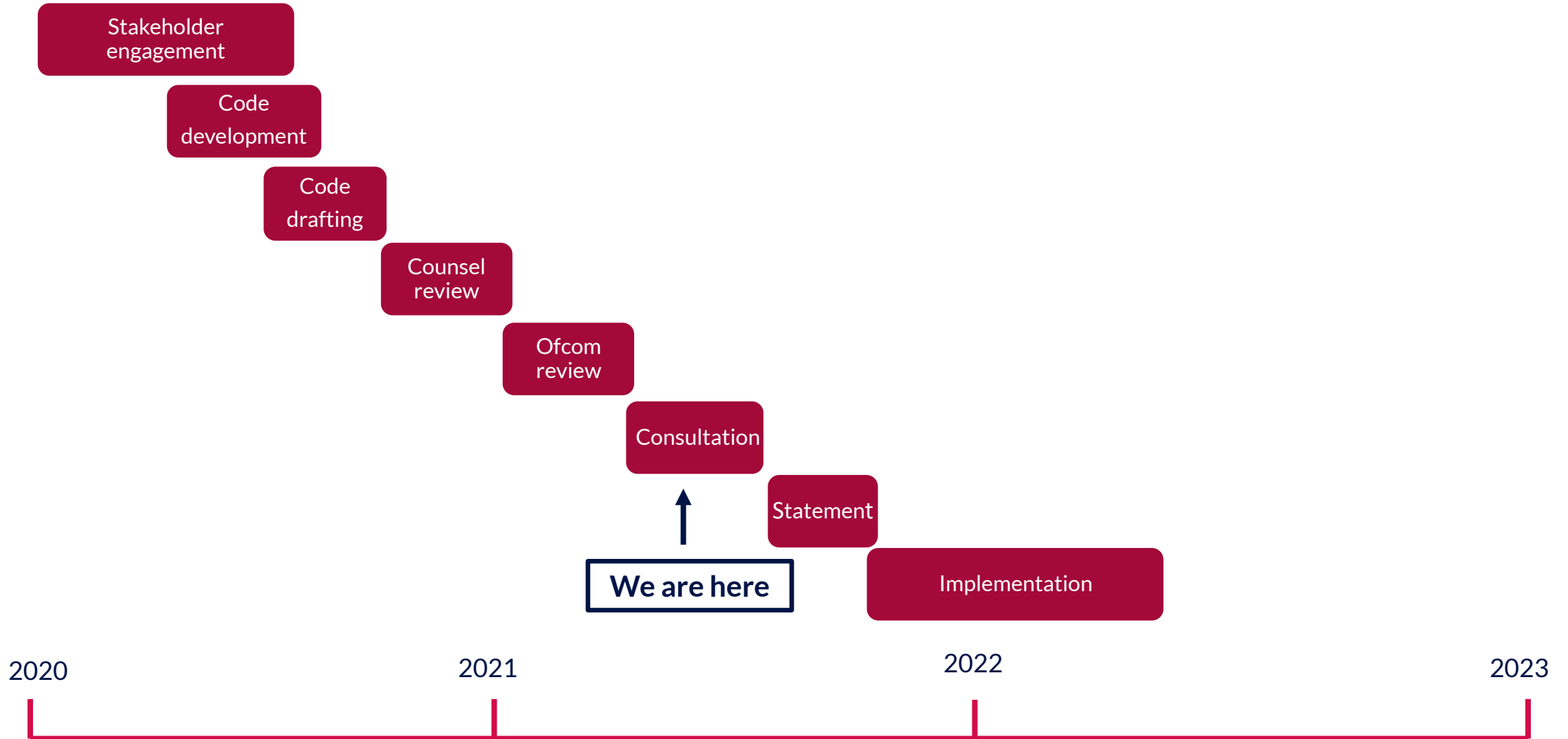
	Raising standards	Preventing harm	Simpler compliance	Smarter enforcement
Benefits	<ul style="list-style-type: none"> Clarity and certainty for industry Improved standards for consumers Potential reputational benefits 	<ul style="list-style-type: none"> Proactive engagement from the regulator Reduction in harm before it occurs Potential reputational benefits 	<ul style="list-style-type: none"> Simplified regulatory system Certainty associated with standards 	<ul style="list-style-type: none"> More opportunity for swift and/or informal resolution Enhanced settlement Opportunities for cost savings
Costs	<ul style="list-style-type: none"> Some related to individual standards Most standards should represent current good practice 	<ul style="list-style-type: none"> Registration and DDRAC largely build on Code 14 Supervision may carry additional cost, but these should be offset by less reliance on enforcement 	<ul style="list-style-type: none"> We do not foresee any long-term costs 	<ul style="list-style-type: none"> Little cost impact for well-intentioned
Assessment	<ul style="list-style-type: none"> Standards should be clearer and easier for industry to implement and set minimum requirements that meet consumer expectations, while retaining the space for innovation 	<ul style="list-style-type: none"> The focus on prevention of harm will enable us to work with providers to build in best practice and compliance, to avoid harm where possible, and deliver services that consumers trust and enjoy 	<ul style="list-style-type: none"> A simpler Code is in everyone's interest 	<ul style="list-style-type: none"> We believe a more effective and efficient enforcement will benefit all

The process

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Progress to date



Next steps

- We are running a series of webinars for more detailed discussion during the consultation period
 - We are open to having 1-2-1 meetings on request
 - Consultation will close on July 5th
 - Ofcom have published their consultation in parallel (closing 11th June)
 - We aim to publish our statement in Autumn
 - There will be an implementation period – our aim is for Code 15 to come into force from April 2022
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Questions

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