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# Developing the next PSA

## Code of Practice

Discussion Document

27 February 2020

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## Chairman's Foreword

Effective regulation to support a fair marketplace cannot be static. As the market develops and the expectations of consumers change, so must regulation. The PSA continually assesses how we can improve our regulation to keep pace with change.

The last major strategic review of our regulation in 2009 led to the introduction of outcomes-based regulation under Code 12. At the time, less than half of consumer spend was mobile-based. Directory enquiries accounted for 25% of the total market by revenue. Consumer spend on operator billing was only £20 million.

The market we now regulate is fundamentally different. Fixed-line services are in relative decline – we estimate that more than 80% of consumer spend will be mobile-based this financial year, with operator billing by far the largest market segment. Major digital-service providers offer phone-payment as an option to their customers. Charities now raise £50 million per year via text. Broadcast competitions are an industry success story. We believe these changes will continue.

Consumer behaviour and expectations have also changed. Nearly two-thirds of all internet browsing is now conducted on a smartphone. Influenced by other online experiences, consumers have clear expectations about what a digital payment should look like. Phone-payment, in the eyes of consumers, should be no different from other forms of digital payment with the same level of ease in use and protection from harm.

With this in mind, I believe it is essential to update the PSA Code which underpins our regulation. The new strategic purpose in December set out our intention to take a more standards-based approach to regulation.

A new Code of Practice is a critical component of this strategy. A revised Code must meet the needs of consumers by raising standards in the market, be simpler to implement for industry and be underpinned by effective enforcement. We are also very conscious that Code 15 should support the delivery of services that consumers enjoy, and we want to minimise barriers to the introduction of valuable and innovative services by reputable providers.

This document is the start of the process. Over the next months, we will work with all those involved – consumers, service providers, networks – to deliver a new Code. We are very open to new ideas and new approaches. Our aim is a Code that is fit for purpose – which meets the needs of consumers and creates the right environment for good services to flourish.

David Edmonds

February 2020

## About the Phone-paid Services Authority

1. We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.
2. Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS).
3. We carry out the day-to-day regulation of phone-paid services in the UK, primarily through a Code of Practice approved by Ofcom.
4. Our role, working in close collaboration with Ofcom and other regulators, is to build consumer trust in the phone-paid services sector, and ensure they are well-served through supporting a healthy market that is innovative and dynamic. We do this by:
  - establishing standards for the phone-paid services industry
  - verifying and supervising organisations and services operating in the market
  - gathering intelligence about the market and individual services
  - engaging closely with all stakeholders
  - enforcing our Code of Practice
  - delivering organisational excellence.

## Executive summary

5. We are undertaking a comprehensive review of our regulation. It has been ten years since we last undertook a review of this nature, and in this time the market and consumer expectations have changed significantly. We have gone from a market dominated by voice-based services to a market dominated by mobile, with the majority of purchases being made online. This shift looks set to continue, with large blue-chip brands entering the market and having a key role in shaping consumer expectations.
6. As a proactive regulator, it is important that we continue to evolve our regulatory approach, taking account of these market developments and changing consumer behaviours, expectations and needs, or we risk becoming out of date with the market.
7. Our Code is at the heart of how we do this. We want to make sure our Code provides the right incentives for businesses to operate responsibly and the right deterrents for those firms that seek to enter the market to exploit consumers or who do not put the right consumer protections in place.
8. It is timely for us to undertake a review now. We have a new strategic purpose which clearly sets out our purpose for today and into the future and we want to make sure that

our regulatory approach is fit for the market we regulate. This document sets out our existing regulatory framework, our objectives for the review and the scope of the review.

## **Market context**

9. Our assessment of the market is that it has undergone a significant transition over the past decade, from a market comprised of mostly voice-based services, to one which is dominated by mobile. More and more purchases are being made online as consumers spend more time using smartphones to access the internet.
10. In the phone-paid services market, we have seen significant growth in operator billing, which is consistent with the broader trend of consumers being increasingly connected and engaging in an increasingly online marketplace. There is a broad range of content available to consumers. As predicted, we have seen an increase in the number of games being offered, which alongside continued growth in the charity sector, are key drivers of overall market growth.
11. Consumer engagement with content types has also changed over time. For example, we previously saw a decline in radio and television competition services, but these have recently grown significantly as broadcasters look for new ways to monetise content that consumers want.
12. All this suggests there are significant opportunities for continued market growth as consumers become increasingly confident making online purchases with their smartphones.

## **Consumer behaviours, experience, and expectations**

13. Our assessment is that consumer expectations of phone-payment are informed by their experience of using other forms of digital payment. Generally, we see that consumers' experiences of using phone-payment are positive when they are engaging with larger, more well-known brands who offer phone-payment as one payment option among others. Consumers' experiences can be less positive or less certain when they are engaging with a lesser-known service and in circumstances where they may not have sought the service out.
14. While consumers are now more familiar with paying for things online, they still sometimes find themselves inadvertently signed up to a phone-paid service with a lack of awareness of how to get a refund.
15. It is clear that phone-paid services, while offering a lot of potential value to consumers, are not as well-known as other forms of digital payment. We consider that there are opportunities to ensure that the consumer experience is improved and better aligned with other digital payment experiences.

## Assessment framework for Code 15 development

16. We have developed an assessment framework for our development of Code 15, to ensure we are following a consistent and transparent approach and to be clear about the factors we are taking into account. We are proposing to base this framework on three regulatory stages that we will use to identify opportunities, as follows:

- *pre-operational* – ensuring that market-entry requirements are set at an appropriate and effective level
- *operational* – ensuring there are robust regulatory requirements across pre-purchase, purchase and post-purchase
- *investigations and sanctions* – ensuring we can uphold the reputation of the market through early intervention.

17. We have also developed a set of general principles against which we will assess the effectiveness of our proposals. These are: effectiveness, fairness, proportionality, balance and transparency.

## Our early thinking

18. We have set out our initial thinking on what changes we need to make to our regulatory approach to better reflect the market and to ensure our regulation remains fit for purpose, now and into the future. We have identified five broad themes which we are keen to explore:

- moving from a regulatory approach based on outcomes to one based on raising market standards
- moving to a model based on verification and supervision of organisations and services operating in the market
- increased focus on prevention rather than cure
- delivering broader consumer benefit and support
- increasing the effectiveness of our investigatory and enforcement procedures.

19. We also set out our initial thinking on the types of changes we want to explore in moving to a new Code, broken down into pre-operational, operational and investigations and sanctions.

20. The final section of this document sets out some general considerations that sit outside of the assessment framework. These include general funding requirements, definitions, the role, purpose and structure of the Code, and the regulatory impact assessment.

## Background

### Introduction

21. We are undertaking a review of our current Code of Practice (Code 14)<sup>1</sup> to ensure our regulation remains fit for purpose and relevant. As a proactive regulator it is important that we continue to evolve our regulatory approach to reflect the market we are regulating, or we risk becoming out of date with the market. Our Code is at the heart of how we do this. We want to make sure our Code provides the right incentives for businesses to operate responsibly and the right deterrents for those firms that seek to enter the market to exploit consumers or who do not put the right consumer protections in place.
22. Through this review, we will carry out a strategic assessment of our current regulatory approach, taking account of market developments and changing consumer behaviours, expectations and needs.
23. This will be the most comprehensive review of our regulatory approach in ten years. Our last significant Code review commenced in 2009, with a revised Code (Code 12) taking force on 1 September 2011. Code 12 was significant as it shifted our regulatory approach from a prescriptive rules-based approach, to one based on consumer outcomes.
24. Our current Code came into force on 12 July 2016. This followed a review which was narrowly focussed on Part 4 of the Code, namely investigations, adjudications and appeals procedures.
25. The reason we are carrying out a review of our regulatory approach now is because the market is currently in a state of transition. In common with the wider communications market, voice-based services have generally declined, while the share of services delivered to mobile devices and delivered over the internet has increased steadily for several years. The phone-paid services market has been largely made up of small to medium players for a number of years, but growth in the market in recent years has been driven by the entry of some major, larger new players to the market.
26. These changes have already had significant implications for the way the industry operates. For example, there are more services that offer phone-payment as one of multiple payment options, and the majority of services are using operator billing to charge consumers (as opposed to other methods such as Premium SMS (PSMS)). Further changes are likely in the near future, with the potential for a more fundamental transformation of the industry in the longer term.

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<sup>1</sup> [https://psauthority.org.uk/for-business/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA\\_Code\\_of\\_Practice\\_14th\\_Digital.ashx?la=en&hash=49BE1A6A76303EEBCF254A692015059D4D4171A3](https://psauthority.org.uk/for-business/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Code-of-Practice/PSA_Code_of_Practice_14th_Digital.ashx?la=en&hash=49BE1A6A76303EEBCF254A692015059D4D4171A3)

27. In addition, the entry of bigger and more well-known players has supported the establishment of consumer expectations around what the experience of engaging with phone-payment should look like. These expectations are also based on their experiences of engaging with other digital payment methods.
28. In recognition of this changing market, and based on our intelligence, market data and consumer research, the PSA Board approved our new strategic purpose<sup>2</sup> in September 2019. Our new strategic purpose builds on what we have achieved under our previous vision and mission, and also replaces it. We believe our new strategic purpose provides a better articulation of our purpose today and going forward.
29. We published our Terms of Reference<sup>3</sup> for the review on 8 January 2020. This set out the planned objectives, scope, timelines and key milestones. Following our consideration of the input received on the questions set out in this discussion document, we intend to formally consult on proposals in Autumn 2020. After that we plan to issue our Statement in Summer 2021. Our intention is that the new Code would then come into force by the end of 2021.

### **Aim and objectives of the review**

30. Our intention is to develop a new Code that:

- builds public trust and confidence in the sector, through driving up standards of conduct and boosting consumer protection
- can be used confidently and with ease and support the development of services that provide value to consumers
- is simpler and clearer for industry to comply with
- makes it easier for us to enforce our rules where we identify non-compliance.

31. In order to achieve this, we have set ourselves the following objectives:

- regulation remains fit for purpose for the market
- regulation is aligned to our new strategic purpose and current priorities
- the PSA gathers and understands the views of a full range of interested stakeholders
- the PSA's effectiveness and capability are maintained and enhanced, where possible
- the PSA's thinking is evidence based and clearly articulated.

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<sup>2</sup> <https://psauthority.org.uk/news/news/2019/december/psa-publishes-its-new-strategic-purpose>

<sup>3</sup> <https://psauthority.org.uk/news/news/2020/january/psa-publishes-terms-of-reference-for-the-review-of-its-current-code-of-practice>

## Scope of the review

32. This is a wide-ranging review of our regulatory strategy and, as such, will include the following areas within the proposed scope:

- our powers and remit
- our regulatory approach
- standards for the market (across all the key areas, including market entry, registration, marketing, purchase and post purchase)
- the role, purpose and structure of the Code (including the supporting regulatory framework of Special conditions and Guidance)
- investigations, sanctions and procedures
- consumer refunds and redress
- the roles and responsibilities of different players in the value chain
- general funding requirements.

## Purpose of this document

33. The purpose of this document is to seek early input from stakeholders to inform the development of proposals on which we will consult in Autumn 2020. We want to ensure that any proposals we develop are based on a sound understanding and accurate assessment of all available information and evidence and informed by stakeholder input.

34. We are not including formal proposals for changes to the Code at this stage. Rather, we are seeking to develop proposals with consideration of the early views of stakeholders, both on our approach and early thinking.

35. This is the first external engagement we have undertaken. The Code development process will include other forms of engagement. These include the industry forum on 12 March 2020, and a series of workshops with interested stakeholders, such as industry and consumer groups, other regulators and government departments, both ahead of and as part of the formal consultation process.

36. We would very much welcome evidence from stakeholders that will assist us in developing a new Code. This includes evidence about likely cost/benefit impacts, so we can factor this into our detailed Code development and drafting and related assessment of the impact on consumers and businesses.

37. We are particularly interested to hear stakeholder views on the scope and breadth of the review, and any areas where stakeholders consider the Code might be improved.

38. We hope to hear from everyone with an interest in the phone-paid services market, including consumers, businesses and public bodies. We are also interested in the views of policy makers and legislators who set the statutory framework in which we operate. We will carefully consider all stakeholder inputs and will provide clear reasoning as to

how we have taken these into account, or where we do not take input forward our reasons for taking an alternative approach.

39. This discussion document also includes a number of questions to which we welcome responses. Details about how to respond can be found at Annex A.

40. The closing date for responses is **Thursday 9 April 2020**.

***Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.***

***Q2 Is there anything else we should be considering?***

## The regulatory framework and our current regulatory approach

### The regulatory framework

41. The Communications Act 2003 (“the Act”) established the regulatory regime for telecommunications services, and established Ofcom as the regulatory body for such services.
42. In respect of phone-paid services (referred to in law as Premium Rate Services (PRS)), section 121 of the Act provides Ofcom with the power to approve a Code for the purposes of regulating phone-paid services. The scope of our remit is set out in the definition of “controlled PRS”, contained within the PRS Condition made by Ofcom<sup>4</sup>.
43. Ofcom has designated us, through approval of the Code, as the body to deliver the day-to-day regulation of the PRS market. We regulate the content, promotion and overall operation of controlled PRS through the imposition of responsibilities on providers of PRS in the Code.
44. In general terms, the regulatory framework for phone-paid services in the UK consists of a hierarchy with three components:
  - **the Act:** the relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. These provisions provide Ofcom with the power to set a PRS Condition that binds the persons to whom it applies, for the purposes of regulating the provision, content, promotion and marketing of PRS
  - **the PRS Condition:** the PRS Condition requires a person to whom the PRS Condition applies to comply with the PSA Code and with directions given by the PSA in accordance with the PSA Code for the purposes of enforcing its provisions
  - **the PSA Code:** the PSA Code is approved by Ofcom under section 121 of the Act and outlines wide-ranging rules to protect consumers and sets the processes that the PSA applies when enforcing the Code.

### Our regulatory approach

45. We regulate phone-paid services in the UK, primarily through the Code. The Code sets outcomes and rules to protect consumers as well as the processes we apply when regulating phone-paid services. We have responsibility for enforcing and administering the Code.

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<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0015/131046/Statement-Review-of-the-premium-rate-services-condition.pdf)

46. As well as broad outcomes, the Code also includes a range of more prescriptive rules, including Special conditions, as well as Guidance, to support compliance in line with consumer expectations and protection requirements. The Code also enables us to exempt providers from strict adherence to Code provisions where a Code objective can be achieved in other ways. This enables us to support the development of services that provide value to consumers.
47. From time to time, we review the Code to ensure it continues to operate in consumers' best interests and provides a fair and proportionate regulatory regime for industry. Ofcom has powers to approve the Code, provided it meets certain legal tests.
48. Our new strategic purpose, as set out below, was published in December 2019. This sets out our purpose and what we strive to achieve in the future. It replaced our previous vision, mission and strategic priorities.
49. Our new strategic purpose is that we:

*"build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive."*

50. We do this by:

#### **Establishing regulatory standards for the phone-paid services industry**

51. We set standards to ensure that consumers who charge a purchase to their phone bill do so knowingly and willingly and receive good customer service.
52. These standards are designed to ensure all consumers have a similar positive experience of phone-paid services, including consumers who may be considered vulnerable.
53. Our standards are clearly set out in our Code of Practice. They deliver the necessary technical and operational protections in the market and are aligned with consumer expectations, including those based on experiences with other payment mechanisms. We evolve these standards in response to industry best practice, advances in technology, risk, and consumer behaviour and expectations.
54. The Code standards are supported by Guidance, free compliance advice, and examples of best practice.

#### **Verifying and supervising organisations and services operating in the market**

55. Consumers should be able to trust that they are dealing with genuine service providers. We require all organisations operating in the phone-paid services market to register comprehensive details about themselves and the services they provide.

56. We support consumers to access this information easily, helping them to have sufficient details to be able to resolve any individual issues.
57. We require all parties in the phone-paid services industry to check the credentials and behaviour of who they work with, and to have systems in place to identify and deal quickly with issues affecting consumers.
58. We work with networks and intermediaries to ensure they meet our requirements around due diligence, risk assessment and control. We do this by actively monitoring and regularly auditing for compliance with the Code.

### **Gathering intelligence about consumers, the market and individual services**

59. We invest in research and our expert monitoring capabilities to improve our understanding of market trends, consumer behaviour, experience and expectations, and use this to inform and enforce the standards we set.
60. We continually receive and assess information about individual services, including complaints. We engage directly with consumers to understand the issues they are raising, we undertake detailed monitoring of individual services, and we ask service providers for further information when necessary.
61. We actively monitor the wider market to identify potential consumer harm, address issues early and share information.

### **Engaging closely with all stakeholders**

62. We engage with all stakeholders – consumers, industry, government and other regulators, and the media – to inform and facilitate our regulatory approach.
63. We support industry to understand what our regulatory approach means for them in practice. This support is driven by our desire for consumers to be able to access services that they want, in a market that competes on price, product innovation, quality and customer service.
64. Where service providers have successfully applied for an exemption on behalf of the merchants they represent (e.g. App stores), then only that service provider needs to register.
65. We work to identify and remedy any instances where our approach may unnecessarily hinder consumers who knowingly and willingly want to charge a purchase to their phone bill from doing so.

66. We promote consumer choice by enabling credible organisations to enter the market with ease and by creating the conditions where providers can innovate safely and invest with confidence.
67. We communicate with consumers to improve understanding and awareness of phone-payment, and the various ways consumers can charge content, goods or services to their phone bill.
68. We work with Ofcom, DCMS and other regulators to ensure that consumer interests are best served through a co-ordinated approach to regulation.

### **Enforcing our Code of Practice**

69. Where apparent breaches of the Code are committed, we investigate and enforce, where appropriate, in the most efficient and effective way possible. We aim to eliminate sharp practices, negligent behaviour and the deliberate use of phone-payment as a way to exploit consumers.
70. We ensure we are fair and proportionate, with enforcement delivered through the appropriate means. We will always be transparent in our decision-making, and our approach to investigations and sanctioning, including fines and ordering consumer redress, is detailed in the Supporting Procedures<sup>5</sup> to the Code of Practice.
71. Where our remit and sanctions are unable to hold to account those providers causing consumer harm, we will refer them to the relevant enforcement authorities.

### **Delivering organisational excellence**

72. As a regulator, we are committed to acting in a transparent, accountable, proportionate, consistent and targeted manner in everything we do. We uphold high standards in our governance, legal, finance, human resources, information systems, and customer service functions.

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<sup>5</sup> <https://psauthority.org.uk/for-business/-/media/DABA6ED9531F424AB561F527B5CCF11C.ashx>

## Market context

73. Our last strategic assessment took place in 2009, in the context of a fundamentally different market. We want to evolve our approach and activities to reflect the market we are regulating, and to ensure that our regulation is relevant and fit for purpose for today and tomorrow's market. This requires us to consider market developments and what might need to change in our regulation for us to keep pace.
74. In this section we set out the market context, including an overview of relevant consumer and market developments since our last strategic assessment, and what we know about consumers' experiences, behaviours and expectations.
75. We also consider some potential future trends and how they may influence the phone-paid services sector. Our aim is to understand current and future challenges to achieving good consumer outcomes, to develop an effective regulatory response.

### Shifts in the wider communications industry

76. Since our last strategic assessment, we have seen proliferation of the internet, smartphones, and smartphone capability, all of which have impacted on the communications market, and more specifically the telecoms market.
77. When we look across the communications market, we can see that fixed-line call minutes have dropped over the past ten years, the number of consumers subscribed to 4G has increased every year since its inception, and people are using more and more mobile data, as demonstrated by Figure 1 below.

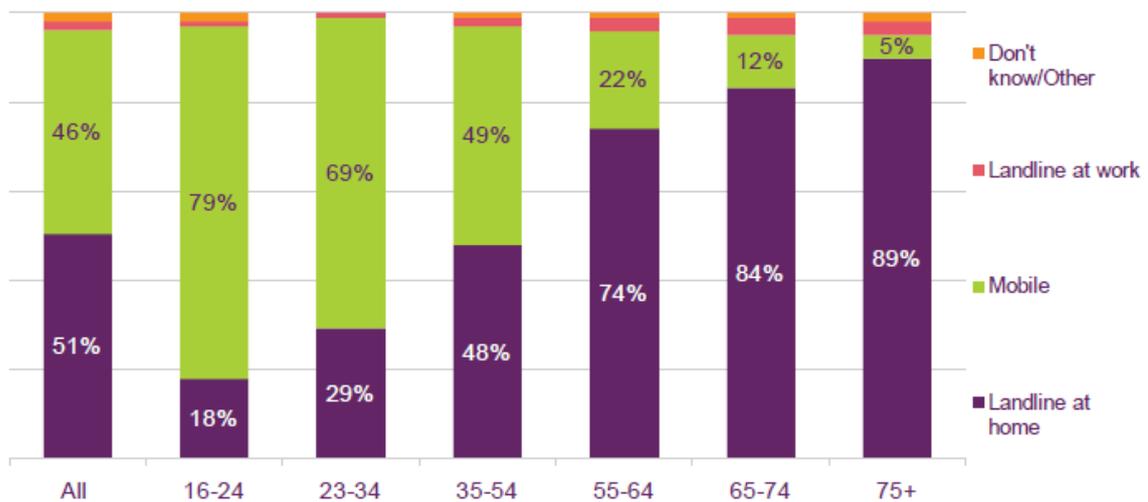
Figure 1: UK Telecoms Market Key Statistics 2018<sup>6</sup>

	2012	2013	2014	2015	2016	2017
<b>Total operator-reported revenue (£bn)</b>	38.8	36.9	35.4	35.8	36.1	35.6
<b>Operator-reported retail revenue (£bn)</b>	30.4	29.5	29.2	29.7	30.5	30.3
<b>Operator-reported wholesale revenue (£bn)</b>	8.4	7.3	6.2	6.1	5.6	5.4
<b>Average monthly household telecoms spend (£)</b>	86.00	83.21	84.21	86.63	87.84	87.13
<b>Retail fixed voice and data revenues (£bn)</b>	13.4	13.2	13.4	14.0	14.7	14.7
<b>Fixed lines (millions)</b>	33.3	33.4	33.5	33.7	33.6	33.1
<b>Fixed broadband connections (millions)</b>	21.8	22.8	23.7	24.7	25.4	26.0
<b>Superfast broadband connections (≥30Mbit/s, millions)</b>	3.1	5.3	7.1	9.2	10.8	12.8
<b>Average actual residential fixed broadband download speed (Mbit/s)</b>	12.0	17.8	22.8	28.9	36.2	46.2
<b>Fixed voice call minutes (billions)</b>	103	93	82	74	65	54
<b>Retail mobile voice &amp; data revenues (£bn)</b>	17.0	16.3	15.7	15.7	15.8	15.6
<b>Active mobile subscribers (millions)</b>	88.1	88.4	89.9	92.0	91.5	92.0
<b>4G subscribers (millions)</b>	-	2.7	23.6	39.5	52.4	58.4
<b>M2M subscribers (millions)</b>	5.0	5.7	6.3	6.7	7.6	7.9
<b>Average monthly mobile data per active connection (GB)</b>	0.2	0.4	0.5	0.9	1.3	1.9
<b>Average monthly outbound mobile call minutes per subscription</b>	142	143	147	151	159	157
<b>Average monthly outbound mobile messages (SMS&amp;MMS) per subscription</b>	162	139	117	106	96	82

<sup>6</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2018/report>

78. In 2011, 85% of UK adults had a landline at home, and 51% of consumers reported that this was their main method of making and receiving telephone calls. There was some variation in the methods used by consumers to make calls depending on the age of the consumer, as demonstrated by figure 2 below.

**Figure 2: Methods used by consumers to make calls (by age), 2011<sup>7</sup>**



79. Since 2011, we have seen a number of changes in the market. There has been a general decline in voice-based services and these services have moved away from being predominantly used on fixed lines, to being predominantly used on mobiles.

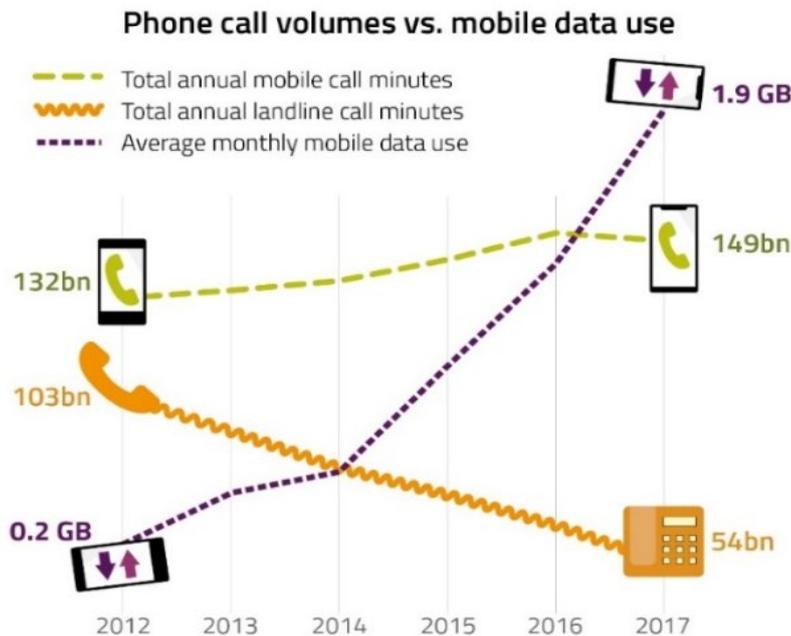
80. In 2012, UK consumers made 103 billion minutes of landline calls – by 2017 this had fallen by almost half to 54 billion. Over the same period, mobile call minutes increased steadily, and the average consumer’s monthly data use has gone from 0.2 gigabytes, to 1.9 gigabytes.

81. The increased data use is largely driven by consumer engagement with online video, with 58% of consumers reporting they had watched on-demand video services in 2019<sup>8</sup>. Figure 3 below illustrates these shifts.

<sup>7</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/28484/uk\\_cmr\\_2011\\_final.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/28484/uk_cmr_2011_final.pdf) There was some variation by age, with younger adults aged 16 – 24 more likely to have a mobile phone than a fixedline (98% v 67%) and older people, particularly those aged 75+, are more likely to have a fixed line (94%) than a mobile (51%).

<sup>8</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/117065/communications-market-report-2019.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/117065/communications-market-report-2019.pdf)

Figure 3: Comparison of phone call volumes vs mobile data use (2012 vs 2017)<sup>9</sup>



82. An Ofcom report<sup>10</sup> published in 2018 found that:

- UK consumers now spend half as much time on their landline phones, and use ten times more data, than they did in 2012
- between 2017 and 2018 the total volume of outgoing calls from fixed lines fell by 17%, while calls from mobiles increased by 5%
- 75% of people reported that using a mobile for calls is important, compared to 92% who considered web browsing to be important.

83. This data is illustrative of the overall decline that we have seen in fixed-line services, and the significant growth in mobile-based services which now dominate the communications market.

84. Alongside a shift from fixed line to mobile, we have seen a corresponding increase in consumers' use of the internet and, in particular, use of the internet on a smartphone. 2010/11 was a landmark year – household internet take-up exceeded PC ownership for the first time<sup>11</sup>, with one in three consumers at that time accessing the internet on their phones, increasing to more than half of all adults under the age of 34<sup>12</sup>.

<sup>9</sup> <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/decade-of-digital-dependency>

<sup>10</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2019/ringing-changes-do-phone-numbers-still-matter>

<sup>11</sup> 78% and 77% respectively

<sup>12</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/28484/uk\\_cmr\\_2011\\_final.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/28484/uk_cmr_2011_final.pdf)

85. Fast-forward to 2018 and the smartphone became the overall preferred device for consumers to access the internet, due to its portability and penetration, with 62% of all consumer time spent on the internet being through mobile devices<sup>13</sup>.
86. Mobile has become the main tool for communication in recent years. A 2017 Deloitte report noted that *'mobile devices are now a fixture of modern life. So much so, that people without access to mobile devices are severely limited in their ability to participate in the full spectrum of today's economic and societal activities'*<sup>14</sup>.
87. In addition, the way that consumers engage with different technologies (including their mobiles) has changed dramatically. For example, the amount of time consumers spent making calls on their mobile phones has continued to fall, and there has been an increase in the use of internet-based services such as WhatsApp and Facebook Messenger. These services have contributed to a continued decline in the use of SMS and MMS messages which declined by 6% (more than 5 billion messages) in 2018<sup>15</sup>.
88. A 2018 report by Ofcom<sup>16</sup> notes some key shifts that have occurred over the past ten years in relation to consumer engagement with smartphones:
- the amount of time that consumers spent online doubled between 2007 and 2018 – in 2018 the average amount of time adults estimated that they spent online on a smartphone was two hours and 28 minutes a day, rising to three hours 14 minutes for 18 to 24-year-olds
  - in 2013, 51% of adults in the UK were reported to be using a smartphone to access the internet. This can be compared to a reported 78% in 2018, making smartphones the most popular internet-connected device
  - in 2010, 2% of total internet advertising revenues were on mobile – this went up to 45% in 2017
  - 72% of adults said that their smartphone was their most important device for accessing the internet, with 71% reporting that they never turn off their phone, and 78% saying they could not live without it.
89. We also know that mobile phones now have near universal reach, reaching 96% of UK households in 2018. In addition, different demographics use their mobiles in different ways. For example, in 2018, 41% of adults said that they like the convenience of being able to shop online using their phone, increasing to 70% of under 35-year-olds<sup>17</sup>.
90. More and more consumers are making purchases online using a range of purchasing methods, such as debit cards, credit cards and PayPal. There are a number of reasons behind this, including: improved connectivity through the likes of 3G and 4G, enhanced

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<sup>13</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2018/report>

<sup>14</sup> <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-global-mobile-consumer-survey-second-edition.pdf>

<sup>15</sup> <https://www.ofcom.org.uk/research-and-data/multi-sector-research/cmr/cmr-2019>

<sup>16</sup> <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/decade-of-digital-dependency>

<sup>17</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/117256/CMR-2018-narrative-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf)

devices, and the emergence of new services like those offered by Apple, Amazon, Facebook and Google.

91. This shift to an increasingly online environment has also provided opportunities for phone-payment, and consumer engagement with other digital payment methods has shaped what they expect from phone-payment.

### The evolution of the phone-paid services market

92. The broader technological and the wider communications market changes set out above have impacted the phone-paid services market, which has mirrored this shift, with many more services now being purchased and consumed online.

93. In 2011, when we concluded our last strategic assessment, the phone-paid services market was significantly different to how it looks today:

- voice-based services still dominated the market, with:
  - Directory Enquiries the service type generating the largest revenue share (£177.4 million)
  - Voice 09 and Voice 087 generating combined revenues of £269.9 million<sup>18</sup>
- PSMS was the largest payment mechanism by revenue, generating £323.1 million (largely stagnant compared to 2010)
- operator billing comprised 2.64% of the market<sup>19</sup>
- only 9.3% of people said that they regularly use the internet on their mobile phone.

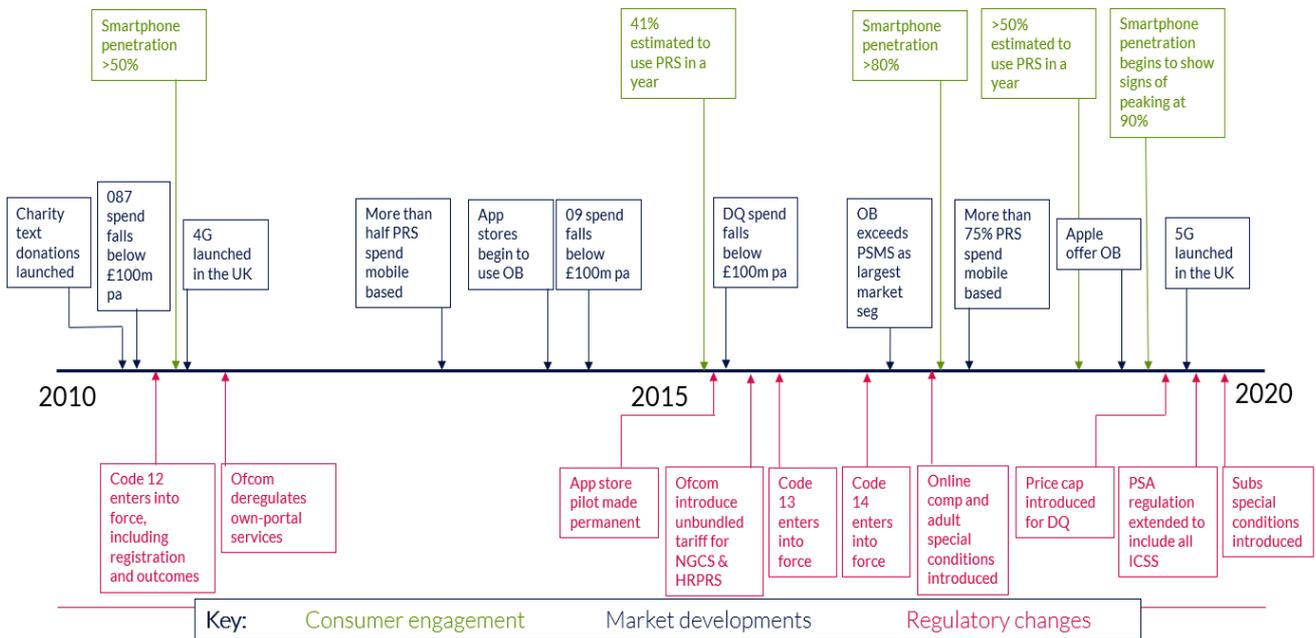
94. Figure 4 below provides an overview of key market and regulatory changes over the past ten years.

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<sup>18</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Research-Briefings/Research-Briefing-1-Current-and-Future-Market-for-PRS-2011.pdf>

<sup>19</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Mason-International-Markets.pdf?la=en&hash=3AAF54A57288481AE77FA4727BF4226020033F47>

**Figure 4 – Consumer, market and regulatory trends over the past ten years**

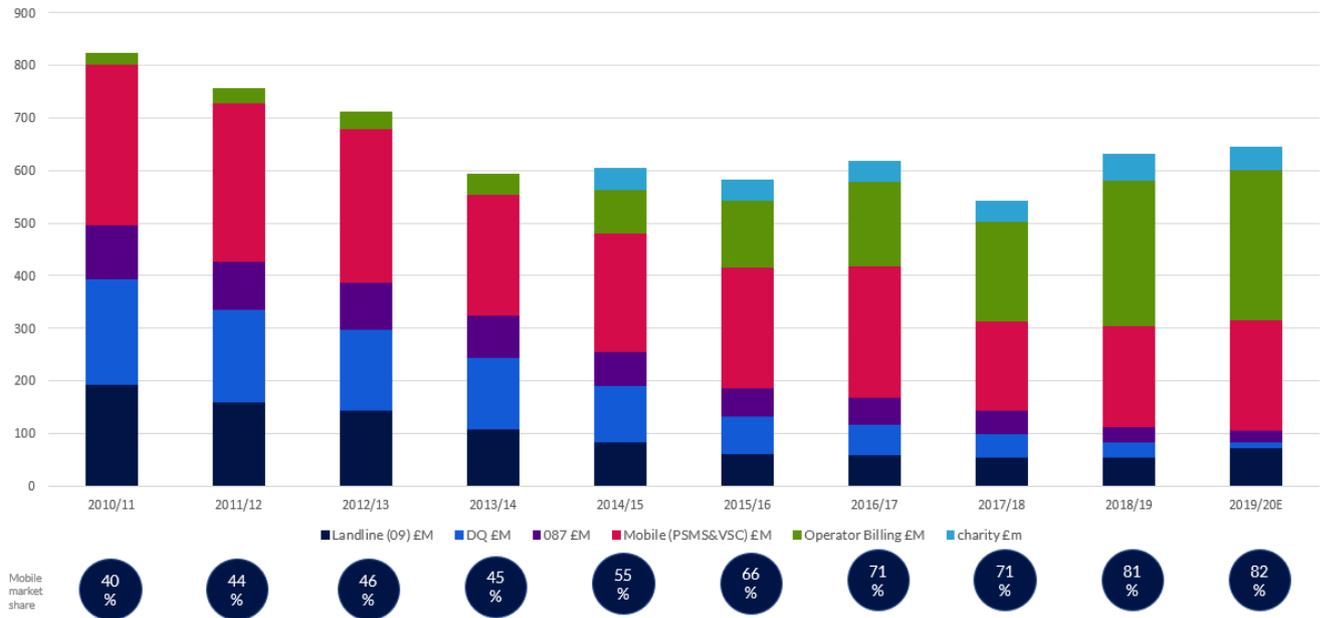


95. As the above highlights, over the past ten years there has been a general shift away from a market dominated by voice-based services to one that is largely mobile based and which uses operator billing. We have also seen the emergence and significant growth of new business models, such as services offered on a subscription basis, or through App Stores by larger brands.

96. This shift aligns with more general changes in consumer behaviours and expectations around online payments, as a result of consumers wanting greater convenience, value, and options (expanded on in the next section).

97. Figure 5 below illustrates the shift in consumer spend – from voice-based services to operator billing in the phone-paid services market.

98. Figure 5: Ten-year trend of consumer spend



99. This information provides useful insights into how market changes have impacted on consumer spend over time, and how the shifts in the broader telecoms market compare to those in the phone-paid services market.

100. In phone-paid services, we can see significant growth in the mobile space, particularly operator billing. In terms of PSMS overall, we have seen a decline, including a sharp decline between 2016/17 and 2017/18. However, we have seen some growth in this area in recent years, which is largely driven by the growth in TV and radio engagement and charity text donations paid for via PSMS<sup>20</sup>.

101. Regulatory changes implemented over the past ten years will also have impacted the market and consumer engagement, as we have taken appropriate steps to protect consumers from harm or a significant risk of harm by making regulatory changes or updating our best practice expectations.

### Annual Market Review – key findings

102. We have a clear understanding of market trends in the phone-paid services market through our Annual Market Reviews. These provide us with an overview of the market, including its size, drivers of change and an outlook for the following year(s).

103. Some key findings which reflect the broader communications and telecoms market shifts include that in the phone-paid services market:

<sup>20</sup> <https://psauthority.org.uk/research-and-consultations/research/2019/august/amr-201819> - see page 7

- voice-based services are declining:
  - Directory Enquiries revenue has continued on a downward trend, with revenues (excluding VAT) of £65 million in 2016/17 dropping to £29.5 million in 2018/19. This is as a result of both a decline in call volumes, and price cuts
  - 087 and 09 (including ICSS) are also declining, with revenues falling by 41% year-on-year between 2017/18 and 2018/19
- games and entertainment services are growing, and legacy services such as device personalisation are declining
- operator billing continues to be the largest and fastest-growing spending channel:
  - in 2014/15 it was 10% of total PRS revenues generated, with mobile (comprising of PSMS, charitable donations, and voice shortcodes) accounting for 50% of PRS revenues in 2014
  - in 2017/18 operator billing was 35% of total consumer spend, and 2018/19 it was 44% of total spend (£275.7 million in revenue)
  - there was an increase in the content available on operator billing as an option, and improved consumer perception of this option in 2018/19
  - games, entertainment, betting, gambling and lotteries were the three largest service categories using operator billing as a spending channel in 2018/19.
  
- the cyclical nature of biannual charity telethon events contributed to overall market growth between 2017/18 and 2018/19
- in 2018/19, premium SMS was the second fastest growing spend channel. This growth was driven largely by broadcast competitions and follows a previous decline. For example, in 2015/16 it was the lowest spending category and in 2018/19, it was the second largest category, holding 27.7% of the market
- the growth in radio and competition revenues is as a result of more competitions run by TV and radio broadcasters, increased consumer engagement, and higher end-user spend
- in 2015/16 it was projected that games had the greatest potential for revenue generation in the coming years, and in 2018/19 games accounted for 70% of consumer spend by operator billing, the largest service category
- much of the growth in operator billing in 2018/19 was driven by both the increased popularity of this payment mechanism, and the agreements between (i) EE and Apple, and (ii) O2 and Apple.

104. In terms of other market impacts, when we last undertook a strategic assessment, the market was largely comprised of small and medium-sized businesses. While this continues, a number of larger blue-chip organisations have also entered the market, driven growth, contributed to a more compliant market and raised consumer awareness of phone-payment.

105. These organisations have played a key role in influencing consumer expectations and best practice around what a digital payment experience should look like, including in relation to the sign-up process, service experience, and customer care and refund practices. These larger brands often offer phone-payment as a payment option alongside other payment methods, such as debit or credit card.

## Trends in adjacent payment mechanisms and markets

106. It is helpful for us to consider trends in respect of adjacent payment mechanisms and markets to understand whether and how they compare to phone-paid services market activities and trends.

107. One key trend is that there has been significant growth in the use of digital payment methods over time. A UK Finance report released in 2019<sup>21</sup> noted:

*“the speed and efficiency of instant payments has proved appealing to both consumers and businesses...[and that] over the next decade further market developments, such as those brought about through Open Banking, the advent of PSD2, Secure Customer Authentication and the anticipated New Payments Architecture for the UK, may bring extensive changes to the UK’s payment landscape”.*

108. PSD2 came into effect on 13 January 2018 and introduced more secure authentication for payments. This involved the use of two or more elements categorised as knowledge (i.e. something only the user knows), possession (something the user possesses), or inherence (something the user is)<sup>22</sup>.

109. These requirements have further supported the development of norms and expectations for consumers who generally expect there to be a degree of friction in a digital payment experience, in circumstances where they are not using contactless. These consumer expectations are discussed in the next section.

110. The UK also ranks as the third most cashless country in the world<sup>23</sup> and there has been a growing trend towards the use of contactless payments. Cards first overtook cash payments in 2018, and the frequency of contactless payments has since overtaken chip and PIN. Worldpay has reported that 51% of all in-store card payments in the UK were contactless in June 2018, and TFL reported in April 2018 that there are 17 million journeys per week where consumers use contactless. This indicates that consumers in the UK value payments that they can make with assurance about security and with ease, and that can be completed more quickly than payments made with chip and PIN.

111. A 2018 report from Ofcom<sup>24</sup>:

- revealed that 84% of consumers think online shopping and online banking have made their lives easier
- noted that positive consumer experiences are critical in generating loyalty and repeat purchase, and that in an era of social media and increasingly trusted peer

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<sup>21</sup> <https://www.ukfinance.org.uk/sites/default/files/uploads/pdf/UK-Finance-UK-Payment-Markets-Report-2019-SUMMARY.pdf>

<sup>22</sup> <https://gdpr.report/news/2017/12/21/psd2-ready-strong-customer-authentication-sca/> - there are exemptions from these requirements in certain circumstances to allow for more frictionless payments

<sup>23</sup> <https://www.forexbonuses.org/cashless-countries/>

<sup>24</sup> <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2018/decade-of-digital-dependency>

reviews, voicing consumer experiences can significantly influence future buying decisions, both positively and negatively

- stated that the number one driver for consumers to shop online rather than going into a store was convenience.

112. Alongside these trends, we have also seen services offered on a subscription basis continuing to grow in popularity in both the phone-paid services market and adjacent markets. Offering services on a subscription basis can be advantageous for a business in terms of an ongoing revenue stream, as well as for consumers who see the benefits in terms of convenience and potential cost savings. However, there is also a risk of financial detriment to consumers if the terms of any such subscription are not made clear to them.

113. In the phone-paid services market, we saw ongoing consumer harm, both actual and potential, in relation to subscription services. We put measures in place which came into effect in November 2019. These changes were intended to ensure that the consumer experience of engaging with a phone-paid subscription is more closely aligned to what they are used to in adjacent payment markets, to create greater consistency of payment experience and to ensure that consumer expectations are met.

114. Large blue-chip companies like Spotify and Microsoft already use subscription-based models and offer phone-payment as one payment option. Other businesses have moved to a subscription model but are not yet offering phone-payment – Amazon Prime is one example.

115. Newer services offered by big brands such as Spotify, or services offered through App Stores, typically offer a variety of different payment options of which phone-payment is one. There are also differences in how the service or provider engages with the consumer. For example, engagement often takes place through an app or portal, and an ongoing relationship is often established through the creation of an account.

### **Initial conclusions about the market context**

116. As the above section demonstrates, the telecoms market has undergone a significant transition over the past ten years, from a market heavily dominated by voice-based services, to one which is dominated by mobile, with more and more purchases being made online as consumers spend more time using smartphones to access the internet.

117. In the phone-paid services market, we have seen significant growth in operator-billing, which is consistent with the broader trend of consumers being increasingly connected and an increasingly online marketplace. There is a broad range of content available to consumers. As predicted, we have seen an increase in the number of games being offered, and continued growth in the charity sector, both of which have been key drivers of overall market growth.

118. Consumer engagement with content types has also changed over time. For example, we previously saw a decline in radio and television competition services, but these have recently grown significantly as broadcasters look for new ways to monetise content that consumers want.

119. All this suggests there are significant opportunities for continued market growth as consumers become increasingly confident making online purchases with their smartphones. In addition, some merchants that offer phone-payment as one of many payment options, have phone-payment set as the default option, Spotify being one example. This is likely to lead to more awareness of phone-payment.

120. This information also suggests that we need to look to broader market trends and activities and seek to align the regulation of phone-payment with these. This will support a consistent experience for consumers, which will help build consumers' confidence and trust in the market. We recently took this approach when introducing a double opt-in requirement for subscription services, and through our amended consent to charge Guidance which set technical standards for industry.

121. The key market trends and shifts that we will consider will include:

- the role of two-factor authentication as a generally accepted norm for digital payments
- the impact of the shift to operator billing and predominant consumer engagement with phone-paid services through smartphones
- the shift in the market composition – from many small to medium players, to a market which now includes large blue-chip brands
- many new market players offering phone-payment as one of multiple payment options.

122. The next section sets out an overview of relevant research on the consumer expectations and experience of phone-paid services.

**Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?**

**Q4 Do you have any evidence of the market to share with us that you think would support our assessment?**

## Consumer behaviour, experience and expectations

123. Since our last strategic assessment, we have commissioned various pieces of research to enable us to better understand consumer behaviours, experience and expectations of phone-paid services, and to support evidence-based regulatory interventions in the interests of consumers.

124. In addition to research, we also established a Consumer Panel at the end of 2018 to provide advice and challenge on aspects of our work, from a consumer perspective.

125. This section provides an overview of the insights we have gained from each of these sources, as well as from consumers who have contacted us to report an issue, over the last five years, and our initial conclusions about what this means for consumers and the phone-paid services market.

### Setting the scene

126. In 2010, as part of our last strategic review, we commissioned a report titled *The Consumer Experience of Phone-paid Services*<sup>25</sup>. The report drew on various pieces of research that we had commissioned. Some of the key findings of the report were that:

- consumers need clarity in promotions and clear terms and conditions
- lack of interest is the main reason for not using phone-paid services, followed by misleading advertising that may not describe the service well or be lacking in contact details
- age is an important indicator of use of phone-paid services
- consumers see Network operators as a safety net and expect them to step in and help when things go wrong. For example, they expect help to obtain a refund
- consumers did not see the collection of phone-paid services as a single market, but rather they regarded phone-paid services as a set of unconnected activities that happen to be paid for using a phone
- consumers generally understand that numbers beginning with 09 are more expensive (which correlates with research undertaken by Analysys Mason finding that only 15% of consumers knew the cost of calling an 0871 number from a landline)
- engagement with a service depends on either the consumer's interest in the service and whether or not they are confident paying via the platform that the service is billed on
- the most popular services at that time were SMS-based competitions, with 41% of those surveyed stating they had entered one in the previous six months
- the service type with the least use by consumers was adult entertainment, with 3-4% stating they had used a service of this type in the previous six months.

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<sup>25</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Consumer-Research/TheConsumerExperienceofPremiumRateServices2010.pdf>

127. This report provides useful context to assist us in understanding how the market and consumer experience, including usage of phone-paid services, has changed over the past ten years.

128. The next sections set out in more detail what we know about consumer behaviour, experience and expectations now.

### Consumer use of phone-paid services

129. In 2011, there was some familiarity with using text message as a way to pay. Our research found that 9% of consumers in the survey had paid for something by entering their mobile number online and receiving an Mobile Terminating (MT) message, and between 14–15% of those consumers surveyed had used other micropayment and phone-paid services methods. However, not many consumers were aware of Payforit as a payment option. Consumers indicated that paying by text offers convenience and ease. Consumer attitudes were in part due to their familiarity with voting or donating to charity by text<sup>26</sup>.

130. In 2012/13 it was noted that convenience, trust, value for money and the anonymous nature of the payment method drive this choice for consumers. Of consumers who had previously used a phone-paid service who no longer did, 45% said they could no longer afford it and 36% noted they were using free services instead<sup>27</sup>.

131. In 2015/16 these trends continued, with the Annual Market Review reporting that convenience and occasional use are the core reasons that consumers continued to use phone-paid services. 58% of users surveyed either continued or maintained their usage, but 25% decreased their usage, and 17% stopped using phone-paid services altogether. It was reported that consumer usage increased in the areas of adult content, dating or flirt chat services, and virtual gifts or payments<sup>28</sup>.

132. Comparatively, in 2018/19 the Annual Market Review found that approximately 58% of respondents aged 16 or above used at least one phone-paid service in 2018/19. This represents an increase of 9% compared to that reported in the 2017/18 Annual Market Review, and a significant increase from the 2010/11 findings. Penetration is highest between those aged 21–30, and this is likely due to the large number of services in the entertainment and games category that are likely to appeal to younger age groups.

133. Convenience was the main driver for use, followed by impulse purchasing and price. Consumers surveyed who had not used a phone-paid service in the past 12 months gave a number of reasons as to why this was, including that they could find cheaper or free

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<sup>26</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Research-Briefings/Research-Briefing-1-Current-and-Future-Market-for-PRS-2011.pdf>

<sup>27</sup> [https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Consumer-Research/2013\\_Consumer\\_Engagement\\_with\\_PRS\\_2012\\_2013.pdf](https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Consumer-Research/2013_Consumer_Engagement_with_PRS_2012_2013.pdf)

<sup>28</sup> <https://psauthority.org.uk/research-and-consultations/~/-/link.aspx?id=0E56B3964A9349099F8C3BC6C21796C3&z=z>

alternatives (29%) or could use a different payment mechanism (24%). 6% cited the poor reputation of phone-paid services as a reason for not using them.

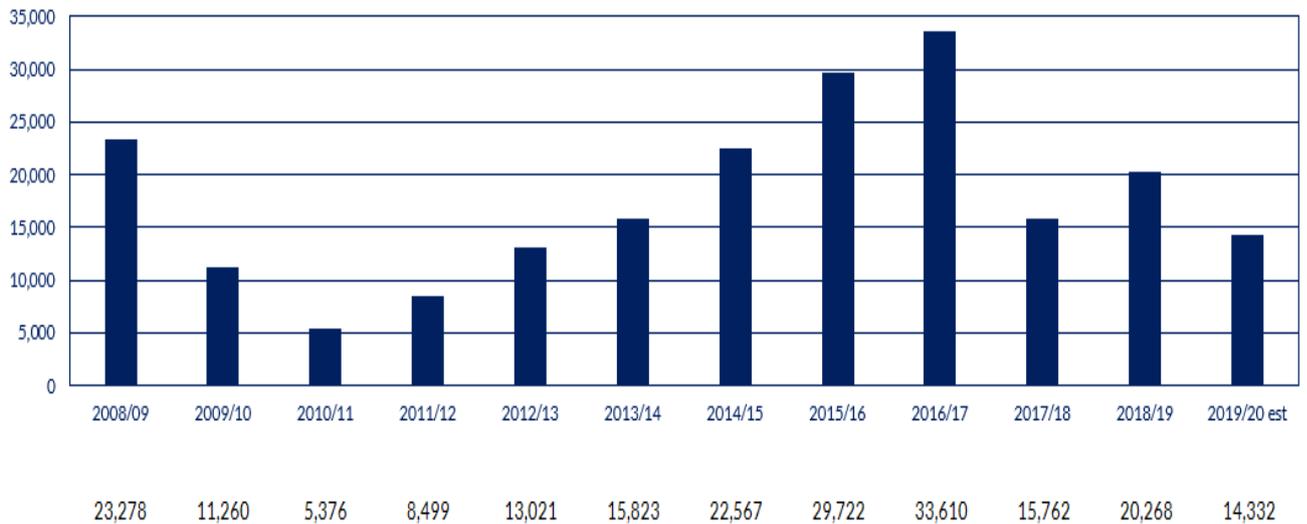
134. Increased consumer use and an increase in the addressable market was noted, as a result of mobile Network operator deals with Apple to offer phone-payment for its App Store services, as well as charity biannual telethons taking place in 2018/19<sup>29</sup>.

**Key issues reported to us by consumers**

135. Over the past few years, subscription services have caused the greatest number of issues for consumers of phone-paid services. As we have previously reported, phone-paid subscription services accounted for 90% of our complaints in 2018/19. Consumers who contacted us to report an issue commonly reported that they did not sign up for the service.

136. Figure 6, below, provides a ten-year overview of complaints we have received. We note that the complaint numbers for 2019/20 are an estimate only.

**Figure 6: Consumer complaints about phone-paid services made to the PSA (2008/09 to 2019/2020 – 2019 / 20 is an estimate)**



137. Anecdotal evidence gained from consumers who contact us to report an issue shows that consumers’ concerns are broadly similar between our complaints and the findings of the Annual Market Review. For example, consumers who contact us often report they did not sign up to a service, are having trouble contacting a provider, or do not know who to contact. An overview of consumer issues as reported in the Annual Market review is provided in the next section.

<sup>29</sup> <https://psauthority.org.uk/research-and-consultations/research/2019/august/amr-201819>

138. Other issues reported to us by consumers have included that:

- it can be difficult for a consumer to determine who to contact to receive a refund, or they can have difficulty accessing a refund once one has been agreed with a provider
- consumers report that they did not sign up to a service
- consumers complain following bill shock where they had not checked their phone bill
- consumers are unable to identify the service that had charged them from the information that was provided on their bill.

139. Over the past ten years, where consumers have contacted us to report an issue, this has been, in part, a result of market activity as some providers changed their content offerings over time. For example, between 2015/16 and 2017/18 we saw a significant rise in complaints as a result of:

- consumer issues in relation to online adult and competition services
- consumer issues with subscription services which made up 90% of all consumer complaints to us over 2017/18.

140. When these issues were identified we took regulatory and/or enforcement action as appropriate which has resulted in more positive consumer outcomes, including significant reductions in consumer complaints about these service types/payment methods.

## Overview of consumer research

141. Since our last strategic assessment, we have undertaken or commissioned a range of research to understand more about the consumer experience of using phone-paid services.

142. This section sets out some of the key findings from across the research.

### Jigsaw research on consumer journeys<sup>30</sup>

143. In 2014, we commissioned Jigsaw research as we wanted to find out more about the consumer experience of engaging with phone-paid services, and some of the issues or challenges arising from a consumer perspective. At that time, the phone-paid services market was almost a 50/50 split between mobile and voice-based services.

144. Some of the key findings were that:

- 61% of consumers involved in the research agreed that phone-paid services offer a convenient way of paying, but almost half of participants also felt that elements of phone-paid services can be misleading, or that payment methods can be confusing
- consumers are equally as likely to contact their Network operator as they are the merchant/service provider
- of the issues that were reported:
  - 33% of people said that they called a premium rate number, but the costs were not clear
  - 21% said that their issue was in relation to follow-up marketing
  - 16% reported an issue with an unsolicited chargeable SMS
  - 9% were charged to view internet pages
  - 6% were billed in-app but not aware that there was a charge associated with the content.

145. This research suggests that, in 2014, consumers were not always clear on who to contact when they experienced an issue, and costs were not always clear. In addition, while consumers identified that phone-payment would offer more convenience, they also thought it could be confusing.

### Craft research on online competition and adult services<sup>31</sup>

146. In 2016, we commissioned Craft research to explore the causes of the high levels of complaints being seen in relation to online competition services and adult services. By this time, more than half of the market was mobile based. The research found that:

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<sup>30</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/Consumer-Research/PhonepayPlus-Consumer-Journey-February-2014.pdf>

<sup>31</sup> <https://psauthority.org.uk/-/media/Files/PhonepayPlus/Research/2016/Summary-report-on-A-study-of-consumer-journeys-relating-to-online-competition-and-adultPRS.pdf?la=en&hash=111B04731C6165098B9833689F26A6B6E8276169>

- it is quite possible for a consumer to provide unintentional consent to an online competition or adult service. In relation to subscription-based competition and adult services, the research suggested that consumers can, and do, remain unaware that such consent has been given<sup>32</sup>
- a given consumer's desire for friction within a particular purchase journey is linked to their perception of the risk that the journey poses – one of these attributes being the transaction type, i.e. whether the service is a one-off or a subscription service<sup>33</sup>
- consumers who subscribe to an online competition or adult service may think that confirmation messages are unsolicited SMS, where they are unaware that a service has been initiated.

147. This research was instructive in that it provided information about consumer expectations in an online environment, including that there were issues with consumers unwittingly providing consent to a service. This research supported the implementation of Special conditions for Online Competition and Adult services which set the requirement of double opt-in for all services of this type.

#### **Futuresight research on customer care and complaint handling<sup>34</sup>**

148. In 2017, we commissioned Futuresight to produce research on customer care and complaint handling. Some of the key findings from that research were that:

- it is easy for consumers to share personal data online, and in doing so provide consent and authorisation for phone-paid services without really realising
- a perceived or actual lack of consent could make it difficult for consumers to prove consent and relatively easy for merchants to avoid having to prove that the consumer did consent to a service
- issues resulting from a lack of diligence on the part of consumers (e.g. in checking their bills) can be exacerbated by the following issues
  - the use of subscription models to debit relatively small amounts of money on a regular basis from consumers
  - some merchants relying on the fact that many people delete subscription service spend reminders, thinking that they are spam
- many complainants do not recognise subscription service messages from merchants and can ignore or delete them.

149. The research found that these issues could lead to a serious erosion of confidence and trust, not only in the service itself but the phone-paid services market as a whole. In

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<sup>32</sup>These findings were prior to the introduction of Special conditions for these service types. The consumer journeys tested in this research have similarities to some current consumer journeys in the phone-paid subscriptions market.

<sup>33</sup>The others being the trigger (how the purchase is authorised), the product (the type of product or service offered) and the provider.

<sup>34</sup><https://psauthority.org.uk/research-and-consultations/~link.aspx?id=21C3342FCF154D99BB142E9DCB8C1B89&z=z>

addition, the research found that confidence and trust was maintained or increased by merchants who operated in a way that was considered fair to consumers.

### **Jigsaw research on consumer experiences and expectations of phone-paid subscription services<sup>35</sup>**

150. In 2018, we commissioned Jigsaw research to understand consumer expectations of engaging with a phone-paid subscription service. The headline findings from that research were that:

- from consumers' perspective, payment for a phone-paid subscription is an emerging payment method, so attitudes and behaviours are not fully established – generally people were more familiar with one-off payments (such as text donations to charity)
- the way consumers come across a service has an influence on their expectations as to the level of friction required – where a service is pushed to a consumer they expect more friction, and where they have purposely sought out a service they are more likely to be expecting to make a payment
- consumers expect to be clearly informed about what they are signing up to, that a payment is being made, that it is a subscription (not a one-off), and that the charge would appear on their mobile bill
- consumers would like to see the norms established from other forms of mobile payments being used – this includes there being multiple steps in a sign-up process (including a validation step), followed by a confirmation and receipt.

151. The research found that consumers welcome multiple steps in a sign-up process to ensure that it is clear to them what they are signing up to, so they can make an informed purchasing decision based on all relevant information.

### **Futuresight research on consumer expectations and experiences of seeking refunds<sup>36</sup>**

152. In 2019, we commissioned Futuresight to conduct research into consumer expectations and experiences of seeking refunds in the phone-paid services market.

153. The research sought to understand consumers' expectations and experiences of refunds in the phone-paid market, and how these expectations and experiences compare to those of consumers seeking refunds for purchases made using other forms of digital payment.

154. The research found that consumer experiences of seeking a refund in the phone-paid market can be good and comparable to non-phone-paid experiences. This was often the case with well-known brands which utilise phone-paid billing options. Consumers who

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<sup>35</sup> <https://psauthority.org.uk/-/media/Files/PSA/00NEW-website/Research-and-consultations/Research/Jigsaw-consumer-research-19-Feb-2019.pdf?la=en&hash=730898B16BF2197325361FDF6D645D0AF58A8BF4>

<sup>36</sup> <https://psauthority.org.uk/research-and-consultations/research/2019/august/psa-and-futuresight-research-on-refunds>

sought refunds from well-known brands had confidence that they would receive a refund, their expectations were high, and they had a good record of success.

155. In contrast, the research also found that some consumers had poor experiences of seeking refunds for phone-paid services. It found consumer experiences to be especially poor when phone-paid charges were unexpected or unknown to the consumer. This was particularly so with subscription services.

156. With unknown and unexpected subscription charges, the research found that, in many instances, consumers did not know who to contact to complain to and to seek a refund from. Consumers would therefore contact their telephone company or mobile Network operator in the first instance.

157. The research found that typically expectations are lower and less developed among consumers who made a phone-paid purchase unknowingly. Over a third of all phone-paid consumers in the research believed they had fewer consumer rights in this market, compared to the rights that the non-phone-paid consumers understood they had.

158. Overall, levels of satisfaction, trust and loyalty were significantly higher for non-phone-paid consumers compared to consumers of phone-paid services. Almost half of all phone-paid consumers surveyed claimed that phone-payment is less trustworthy than other payment methods. Nearly eight out of ten of these consumers stated they would not use a phone-paid service in the future or would only do so from a reputable, well-known brand. In contrast, 98% of non-phone-paid consumers who were surveyed said they would use a non-phone-paid method in the future for any kind of purchase.

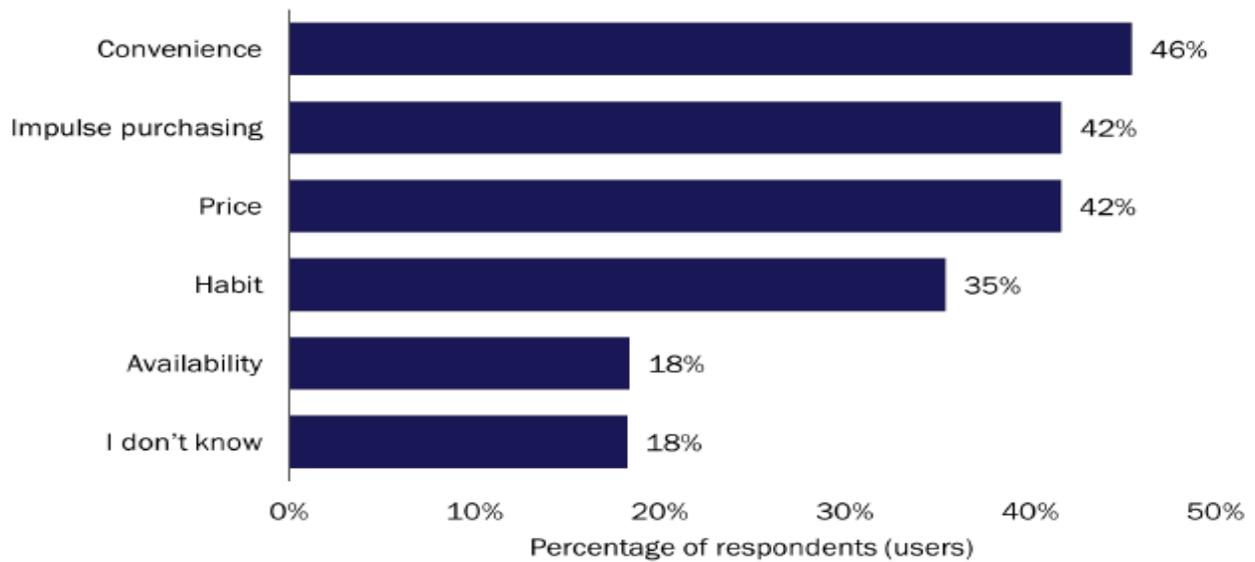
### **2018/19 Annual Market Review findings on consumer experiences and expectations of phone-paid services<sup>37</sup>**

159. Our 2018/19 Annual Market Review found that 58% of the UK population aged 16 or over had used at least one phone-paid service in 2018/19. The report noted that key factors influencing usage included price, convenience and impulse purchasing. Consumers that do not use them have indicated that this is because they do not need them, or they use alternative payment methods. Figure 7 illustrates the drivers of use among phone-paid services users in 2018/19.

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<sup>37</sup> <https://psauthority.org.uk/research-and-consultations/research/2019/august/amr-201819>

Figure 7 Drivers of use among phone-paid services uses, 2018-19



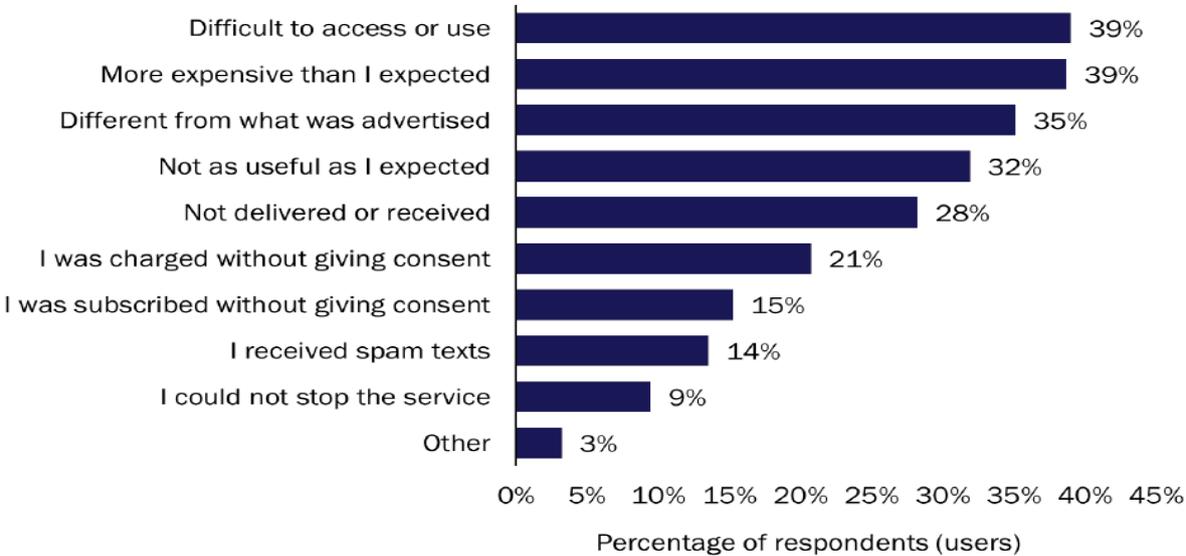
160. In terms of issues reported, on average, 25% of users reported experiencing an issue with their service in the previous 12 months. The highest percentage of issues reported were in the sexual entertainment and personal and relationship services categories (33% and 30% respectively), followed by assistance services (27%).

161. Across service and spend-type categories:

- respondents who had used a subscription services were more likely to report encountering a problem than those respondents that used a service on a one-off basis
- in terms of spending channel, voice and voice shortcodes were the spending channel where consumers reported the most issues.

162. The types of problems reported were consistent across spend channel and service category. The most reported problem was difficulty accessing or using a service. This includes the payment process, difficulties navigating through options, or issues related to the price or bill shock. This is demonstrated by Figure 8.

**Figure 8 share of respondents that encountered a problem, by the type of problem 2018-19**



## Consumer Panel<sup>38</sup>

163. We established a Consumer Panel in December 2018. The Panel's role is to provide advice and challenge on aspects of our work to support and enhance the interests of consumers engaging with phone-paid services by:

- providing advice and comment from a consumer perspective on specific matters brought by the Panel to us. For example, on consultations and research, as appropriate
- being active in bringing to our attention issues that are or are likely to be of significance to consumers of phone-paid services, and providing advice and comment on those issues
- being aware of the strategic context in which it is operating
- developing objectives and an annual workplan, in consultation with the PSA Executive and updating these as required
- providing regular updates to our leadership team and Board on its work, through the PSA Executive.

164. Panel input has been sought across a number of key projects and work-streams since its inception, including changes to the regulation of phone-paid subscription services, new Guidance on refunds and ICSS, our service checker tool, our website, work on our approach to vulnerability, and our Business Plan and Budget.

165. The Panel has also offered more general advice on consumers, their experiences and expectations of phone-payment, and how these relate or compare to other markets.

166. The Panel has been focused on:

- the important role of consumer education in ensuring that consumers understand what phone-paid services are and their benefits, our role, and what a consumer should do if they experience an issue
- the importance of looking across other sectors and payment mechanisms when considering regulatory changes, to understand what has worked well, to align the experience of phone-payment with the consumer experience of other digital payment methods and grow consumer trust
- our consumer priorities – including representing the consumer voice in regulation, understanding the consumer experience and expectations of phone-paid services, and communicating effectively with consumers.

167. The Panel's insights have supported us to ensure that the consumer voice is at the heart of the work we do.

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<sup>38</sup> <https://psauthority.org.uk/about-us/consumer-panel>

## Initial conclusions about the consumer experience and consumer expectations

168. This body of evidence shows that consumers' expectations are informed by their experience of using other forms of digital payment, and that their experiences of using phone-payment:

- are generally positive when they are engaging with larger and more well-known brands who offer phone-payment as one payment option among others
- can be less positive or less certain when they are engaging with a lesser-known service and in circumstances where they may not have sought the service out.

169. While consumers are now more familiar with paying for things online, they still sometimes find themselves inadvertently signed up to a phone-paid service with a lack of awareness of how to seek a refund for that service. It is clear that phone-paid services, while offering a lot of potential value to consumers, are not as well-known as some other forms of digital payment.

170. Consumers' experience of phone-payment can be less positive than their experiences of other digital payment methods. In part, this is due to a lack of familiarity with phone-payment (particularly where the service is on a subscription basis). This is also, in part, because some brands offering phone-payment are less familiar to consumers or, in the consumer experience, do not always have a clear sign-up process or a clear process for consumers to follow when something goes wrong.

171. Research suggests that many consumers would be open to engaging with phone-paid services, particularly younger people who are more likely to use their smartphone to access the internet and to spend more time doing so.

172. This body of research tells us that while we are seeing growth in the market, driven by particular areas, there are opportunities to ensure that the consumer experience is improved and better aligned with other digital payment experiences.

***Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?***

***Q6 Do you have any other evidence in this area that we need to consider?***

## Likely future consumer and market trends

173. As set out in our Business Plan and Budget for 2020/21, we expect that the phone-paid services market will continue its transition to a new landscape for consumers. Over recent years, we have seen the following trends, which we expect to continue:

- more engagement from blue-chip organisations based on continued growth of app store purchases, including the possibility of new players entering the market
- financial growth in the mobile market, through continued growth of operator billing and some PSMS services (such as radio and broadcast competitions) – offset by expected continued decline in other some other services, such as voice-based services
- consumers will continue to engage with phone-paid services – driven by convenience, impulse purchasing and price, and that increased and ongoing blue-chip engagement will drive up consumer trust and confidence
- the addressable market for phone-paid services will grow as awareness and trust of the payment mechanism grows, particularly as a result of blue-chip companies offering phone-payment as an option, and in some cases as the default payment option on mobile.

174. We also expect that the market will become increasingly compliant and healthy as our work to raise market standards and clearly articulate best practice expectations supports consumer confidence and the entry of new players into the market. As set out above, we have implemented a range of regulatory changes to support compliance with our Code, meet consumer expectations of engaging with phone-paid services, and protect them from harm. This includes the implementation of Special conditions for subscription services, updated Guidance on consent to charge, and new, upcoming Guidance on refunds and due diligence risk assessment and control.

175. We expect that games and entertainment services will continue to drive growth. We also anticipate that betting and gambling services, as well as TV and radio engagement delivered through PSMS will continue to grow.

176. We anticipate that the trend of a decline in traditional voice-based services will continue and that charity donations may experience some decline due to the cyclical nature of biannual telethon events.

***Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.***

***Q8 Are there are market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?***

## Assessment framework for Code 15 development

177. In developing proposals for Code 15, we want to follow a consistent and transparent approach and be clear on the factors we are taking into account. In order to do this, we have established an assessment framework.

178. Our assessment framework is underpinned by our principal objective which is to protect the interests of consumers, both present and future, through effective regulation. We will keep the public and consumers at the forefront of our considerations, while developing a Code that supports the development of services and the market, so does not impose unnecessary burdens on industry.

179. Taking this into account, our assessment framework, which comprises three distinct stages, is as set out below.

### Stage 1- Identify the key regulatory stages

180. First, and to support the development of proposals for change, we have developed an initial framework to highlight the key stages of the regulatory lifecycle. Our view is that breaking down regulatory requirements in such a structured way will enable us to:

- provide clarity on the factors that we propose to consider and use to assess the current regulatory approach
- determine, taking into account stakeholder comments, whether the current regulatory approach remains appropriate to the phone-paid services sector or whether a new approach is required.

181. We have identified three broad regulatory stages, which are summarised in Figure 9 below:

*Figure 9: Key regulatory stages*



182. These are as set out in more details below.

### Pre-operational stage

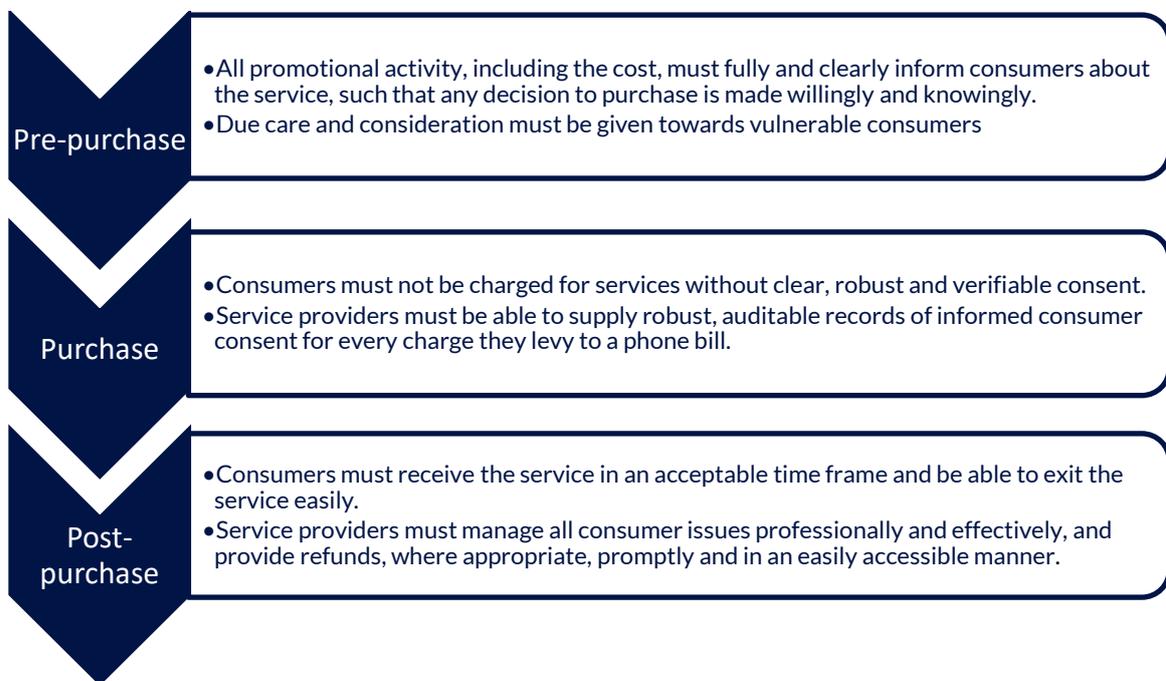
183. A key element of our regulatory approach is that consumers should be able to trust that they are dealing with genuine organisations. Therefore, we want to ensure that market entry is set at an appropriate and effective level so that consumers have complete confidence in all service providers who are active in the market. We believe this is best achieved through ensuring that providers throughout the value chain comply with all

requirements and take responsibility for enabling, facilitating and delivering compliant services.

### Operational requirements

184. Once service providers are active in the market, we expect that they operate compliantly within our regulatory framework, as appropriate to their role in providing phone-paid services. Under this stage, therefore, we want to ensure that there are sufficiently robust requirements in place which cover all aspects of the end-to-end provision of the service. This includes the content, promotion and marketing, and any technical matters, including those relating to delivery and the quality of the sound or picture. These requirements can be simplified by using the following broad three categories, as shown in Figure 10 below:

**Figure 10: Breakdown of operational requirements into three broad categories**



185. Under the operational stage, and to ensure that regulation is appropriately targeted, and that all parties in the value chain are clear about their roles and responsibilities, we want to simplify regulation as far as possible, ensure that regulatory responsibilities are appropriately set throughout the value chain and support regulatory certainty.

### Our investigations and sanctions

186. We want to ensure that our enforcement processes are effective and capable of producing a proportionate, consistent and reasonable outcome, and are clearly understood by industry.

187. We also want to ensure that there are real and meaningful consequences for firms and individuals who do not follow the rules. Where we identify wrongdoing, and sanctions are applied, we want to achieve the following outcomes:

- that parties do not, and are not seen to, benefit financially from a breach of the Code
- that sanctions are a credible deterrence, both to the individual party involved but also, more broadly, to other industry participants.

188. Another key principle of our enforcement strategy is that any party associated with services under investigation fully co-operate with us, including complying with requests for information.

## Stage 2 - Run potential Code options through various assessments

189. Second, and to help us identify and assess proposals for the new Code, we want to develop a set of general principles against which we will be able to assess the effectiveness of these proposals. These general principles are as described in Figure 11 below:

**Figure 11: Proposed principles against which to assess options**

General Principles	Regulatory considerations
<b>Effectiveness</b>	<ul style="list-style-type: none"> <li>• Is it effective in terms of protecting consumers from the risks of harm (both actual and potential) arising from use of phone-paid services? <ul style="list-style-type: none"> <li>○ <i>Does it meet likely consumer expectations in terms of the level of protection they expect?</i></li> <li>○ <i>Will it provide the right tools to enforce effectively?</i></li> <li>○ <i>Does it incentivise compliance? Will it provide the right deterrents?</i></li> <li>○ <i>How does it compare to standards of consumer protection in other, adjacent, markets?</i></li> </ul> </li> </ul>
<b>Balance</b>	<ul style="list-style-type: none"> <li>• Is it objectively justifiable in relation to the services to which it relates? <ul style="list-style-type: none"> <li>○ <i>Does it provide for an effective regulatory regime without unnecessarily increasing the regulatory burden?</i></li> <li>○ <i>Does it simplify regulation? Will it contribute to a simpler Code and framework?</i></li> <li>○ <i>Will it be easily understood by stakeholders (consumers and industry)?</i></li> <li>○ <i>Will it lead to healthy innovation and consumer choice?</i></li> <li>○ <i>Does it provide for flexibility in the way in which it is applied?</i></li> </ul> </li> </ul>
<b>Fairness/non-discrimination</b>	<ul style="list-style-type: none"> <li>• Does it create a level playing field, thereby enabling providers to compete fairly with one another?</li> <li>• Does it impact differently on different market sectors/providers?</li> <li>• Are the provisions such as to not unduly discriminate particular persons or against particular descriptions of persons?</li> </ul>
<b>Proportionality</b>	<ul style="list-style-type: none"> <li>• Is it proportionate to the nature of the consumer harm being addressed?</li> <li>• Are costs identified and minimised?</li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• Is it transparent in relation to what it is intended to achieve?</li> <li>• Does it provide sufficient certainty and clarity to stakeholders?</li> </ul>

190. As part of our Code development, we also propose to have regard to established best practice and, in particular, whether there are useful learnings and insights from other forms of digital payment and other regulators who operate in similar, adjacent markets.

191. We will also ensure that all options identified meet the principles of good regulation, namely proportionality, accountability, consistency, transparency and targeting.

### **Stage 3 - Begin to shape the new Code**

192. Once we have identified the options which we propose to consult on for the purpose of developing Code 15, we will then start to begin to shape the new Code, including the following assessments:

- **What are the expected standards?**
- **What powers are needed?**

***Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree***

***Q10 Are there are factors we have not taken account which we should?***

## Our initial thinking

193. In this section, we set our initial thinking on the development of Code 15 and invite early input from stakeholders to inform our more detailed development of proposals. In setting out our initial thinking, we have taken account of consumer and market developments, our experience of applying Code 14 and our new strategic purpose.

## Our regulatory approach

194. As we set out in this document, the market is currently in a state of transition. This has already had significant implications for the way the industry operates, what consumers expect, and how they engage with phone-paid services. Our expectation is that the market will remain in a state of transition in the medium to longer term.

195. In light of these factors, we think it is important to consider whether our current regulatory approach will continue to be effective.

196. We have a new strategic purpose. We now need to consider what changes we need to make to our regulatory approach to better reflect the market and to ensure our regulation remains fit for purpose now and into the future, aligned to our new strategic purpose and current priorities.

197. This will lead to positive benefits to UK consumers and businesses operating in this sector, including the following:

- first, it will mean that our rules continue to meet the needs of UK consumers and businesses who operate in the market, leading to regulatory and enforcement outcomes that promote consumer trust, confidence and protection while delivering on competition, innovation and growth in the market
- second, it will enable us to set out clearly what good looks like and what our evolving regulatory strategy and approach is in order to deliver good consumer outcomes. This will give regulatory certainty to UK businesses who operate in the market.

198. We have identified a number of limitations to our current regulatory approach, which lead us to question the extent to which it is capable of continuing to deliver effective regulation both now and in the future.

199. We have summarised these limitations, and our initial thinking about their impacts and where we want to get to, under five broad areas, below.

## Moving from broad outcomes to a regulatory approach based on raising market standards

200. As already stated, we currently operate a broad outcomes-based Code which is primarily focussed on the way things turn out, but with a range of more prescriptive rules, built in over time, to ensure compliance in line with consumer expectations and protection requirements.

201. While this approach has served us well, we are increasingly finding that it does not always deliver good consumer outcomes as it can lead to a lack of clarity in terms of our requirements and expectations of industry. Our experience is that this approach allows for significantly different interpretations by organisations as to how best to achieve the desired outcomes, potentially leading to harmful practices and necessary regulatory action to ensure consumers are protected from harm.

202. A common criticism of our current approach is that it results in a relatively complex regulatory system because it relies on reactive and responsive regulatory action in order to clarify expectations, either through policy or enforcement-based interventions. Consequently, regulation is built up bit by bit over many years, resulting in unnecessary cost and uncertainty. It is argued that our supporting regulatory framework, which sits alongside the Code, is evidence of these concerns, which includes 14 sets of Special conditions and 21 Guidance notes, which are regularly amended to respond to new and emerging concerns, or updated to reflect best practice.

203. Through this review, therefore, we want to consider the merits of moving to a regulatory regime that is built around establishing market standards. Our initial view is that this will deliver a number of benefits, including:

- greater clarity of what is expected from industry in line with market best practice in the phone-paid and other relevant adjacent markets
- a more effective way of meeting consumer expectations, leading to increased trust and confidence in the market
- greater flexibility in how regulation is applied, including the ability to consider lighter touch regulation, such as exemptions from certain Code requirements, for those organisations who commit to meeting the agreed standards.

204. Our recent experience is that our regulatory interventions have increasingly shifted to one of raising standards and maintaining compliance in each of the different sectors of the market. This includes the implementation of Special conditions for subscription services, updated Guidance on consent to charge, and new incoming Guidance on refunds and due diligence, risk assessment and control.

## **Moving to a model based on verification and supervision of organisations and services operating in the market**

205. Under Code 14, entry to the phone-paid services market is relatively open, with limited PSA registration requirements and responsibility for enabling, facilitating and delivering compliant services by various regulated parties throughout the value chain. Our experience is that this means it is far too easy for non-reputable firms to enter the market and cause consumer harm, resulting in trust and confidence in the market being damaged. This is highlighted by the fact a number of parties who have been subject to enforcement action have simply exited the market following the imposition of sanctions against them.

206. Accordingly, through this review, we want to explore the benefits of moving to a model which has an increased focus on verification and ongoing supervision.

207. Again, this is an area which we have become increasingly focussed on recently, including:

- revised Guidance on due diligence checks, risk assessment of clients and their services, and ongoing control of the same, that we will soon be consulting on
- enhancing the due diligence reporting available through the PSA, by utilising the updated registration database (which includes greater verification requirements) and providing additional investigation and enforcement data
- updating our approach to stakeholder management, including more proactive stakeholder engagement
- increasing our focus on compliance advice and market monitoring, to ensure greater regulatory compliance
- incorporating this emphasis into our enforcement strategy.

208. We also note that verification and supervision is something that larger firms who operate in other markets are used to, and that this approach mirrors regulatory approaches adopted by other regulators.

## **Increased focus on prevention rather than cure**

209. Under Code 14, we have found that the balance of our regulatory activities is focussed on reacting to issues where the harm has already occurred. Our current broad organisational structure and resource allocation is predominantly based around the maintenance and enforcement of our Code. Consequently, we subsequently spend a disproportionate amount of attention on addressing issues arising from bad practice from a small part of the market, after the harm has already occurred.

210. Accordingly, we are keen to examine the opportunity to move to a more proactive approach, which is focussed on preventing issues arising in the first place rather than dealing with issues reactively. Among others, we are keen to consider whether the following activities would help us achieve this:

- smarter engagement with key parts of the value chain
- an increased focus on best practice and mitigation of risk
- utilising our full range of regulatory interventions, including the use of more informal powers to influence outcomes and behaviours. delivering broader consumer benefit and support.

### **Delivering broader consumer benefit and support**

211. Our current engagement with individual consumers is relatively reactive. This means that we can find it challenging to deliver consumer benefit, whether that be through information and advice, education and regulatory support and ensuring consumers have a positive experience when contacting providers, including complaints handling and consumer redress.

212. Under Code 14, we also find ourselves having to respond to a range of consumer criticisms, particularly driven by the limited remit we have around individual consumer redress, with consumers frustrated by the lack of routes to seeking redress, including having effective recourse to alternative dispute resolution in this sector.

213. We are, therefore, also keen to consider the benefits of moving towards a more proactive approach that delivers increased consumer benefit and support. This may include the following:

- providing more targeted advice and education
- increased monitoring and intelligence gathering to identify and address issues earlier
- increased regulatory support for consumers when things go wrong, including in relation to complaint handling and consumer redress.

### **Increasing the effectiveness of our investigatory and enforcement procedures**

214. Where we need to tackle cases of potentially serious harm, we want to be able to investigate and enforce in a robust, fair and proportionate manner. It is important that we are effectively prioritising our limited resources to pursue the most impactful enforcement outcomes, building on our enforcement strategy.

215. Under Code 14, we have identified a number of areas where we believe our investigations and enforcement can be made more effective. These include:

- while we are able to require a phone-paid services provider to produce information for the purposes of an investigation, our powers to sanction providers that fail to comply with our requests are significantly weaker than those of other regulators. This sometimes means parties under investigations do not comply with our requests for information
- a lack of personal liability means that where we open investigations or impose sanctions on companies for breaking the rules, directors sometimes evade liability by liquidating these companies and/or declaring bankruptcy, leaving the fines unpaid. They are then able to start again elsewhere
- we are currently able to impose fines of up to £250,000 per breach where there are multiple breaches and only up to £250,000 for a single breach or a case overall. This can lead to a significant reduction in the deterrent effect of fines where, for example, significant revenue has been generated from non-compliant and harmful activity but the relevant breach (or breaches) are capped at £250,000.

216. Under this review, therefore, we will assess the effectiveness of our investigatory and enforcement procedures by considering the following:

- the investigative powers needed to effectively regulate the market now and in the longer term, including further reaching and more flexible information gathering powers
- the range of investigative options required in addition to our current investigative tracks and processes for Tribunal adjudications, and the ability to investigate systematic market issues (not just specific services)
- the effectiveness of our deterrents by considering the range of sanctions available to us.

***Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.***

## Potential Code 15 options

217. In this section, we set out our initial thinking in terms of the types of changes we want to explore as we move to a new Code, broken down into pre-operational, operational and our investigations and sanctions, as set out earlier in this document.

### Pre-operational

#### Overarching principles

218. The overarching principles with regards to 'pre-operational' requirements are that:

- consumers should be able to trust that they are dealing with reputable service providers and individuals
- organisations who want to operate in the market must register comprehensive details about themselves and the services they provide.

#### Code 14 approach

219. We require all organisations operating in the phone-paid services market to register details about themselves and the services they provide. We also require all parties in the phone-paid services industry to check the credentials and behaviour of who they work with, and to have systems in place to identify and deal quickly with issues affecting consumers.

220. We also expect that consumers should be able to access this information easily, helping them to have sufficient details to be able to resolve any individual issues with the relevant organisations.

#### Code 15 considerations

221. We are concerned that it is currently too easy for organisations to enter the market without the necessary protections for consumers always being in place. While we have recently strengthened requirements in this area, including new requirements around registration and due diligence, risk assessment and control reporting as part of registration, we want to consider the benefits of more stringent, or alternative, controls to ensure that market entry is set at an appropriate and effective level.

222. Alongside this, we also want to consider whether we need to have more effective oversight of parties involved in the provision of phone-paid services including an increased focus on verification, supervision and, potentially, inspection. This might include, for example, increased compliance monitoring, such as requiring information about organisations' customer care and refunds processes as part of the registration process and/or annual compliance reporting.

223. We consider that such an approach may have a number of benefits, including reducing costs of other parties in the value chain, such as networks, as there may potentially be fewer costs associated with compliance monitoring, including reducing our costs of

enforcement. It will also help ensure that all firms operating in the sector will follow, and be held to, the same standard of professionalism.

224. Some early considerations, for which we would welcome stakeholder views, include:

- developing qualifying standards (where relevant) for networks, aggregators and merchants, including expected behaviours
- consideration of more effective and practical up-front checks through optimisation of registration and due diligence, risk assessment and control measures
- more qualifying requirements to enter the market, including consideration of the following:
  - "fit and proper" tests on individuals
  - financial viability checks/bonds
  - checks on technical and other necessary capabilities
  - probationary period before full acceptance into market
  - authorisation of relevant firms and services
  - requirements to provide more comprehensive organisational and service information, including regular compliance auditing.

***Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?***

## **Operational**

### **Overarching principles**

225. As already explained, when we refer to 'operational' requirements, we mean all aspects of the end-to-end provision of the service, including content, promotion and marketing and any technical matters, including those relating to delivery and quality. For the purpose of our assessment, we have broken them down into three broad categories: pre-purchase, purchase and post-purchase.

226. In terms of the overarching principles behind these requirements, we would describe them as follows:

#### *Pre-purchase*

- all promotional activity, including the cost, must fully and clearly inform consumers about the service, such that any decision to purchase is made willingly and knowingly
- due care and attention must be given towards vulnerable consumers.

### *Purchase*

- consumers must not be charged for services without clear, robust and verifiable consent. Standards of consent must be clearly set out, such as where 'double opt-in' is used
- service providers must be able to supply robust, auditable records of informed consumer consent for every charge they levy to a phone bill.

### *Post-purchase*

#### *Delivery/aftersales*

- consumers must receive the service they thought they were buying, in an acceptable time frame
- consumers must be clearly informed about how to exit a service, and it is easy for them to do so.

#### *Complaints handling/redress/ADR*

- regulated parties must manage all consumer issues professionally and effectively
- where refunds are provided to consumers they must be provided promptly and in an easily accessible manner
- where consumers remain dissatisfied with the handling of their complaint, they should have the right to escalate their complaint by referring complaints to ADR for independent adjudication.

## **Code 14 approach**

227.Code 14 includes a number of requirements relating to what organisations need to do once they are active in the market. This includes the following:

### *Pre-purchase*

228.There are requirements that key information is present in promotions, and that presentation must be clear and not misleading. There are also requirements relating to the need to ensure vulnerable consumers are protected.

### *Purchase*

229.Code 14 currently includes a number of requirements relating to the purchase environment, including that consumer consent must be auditable and that service providers must be able to demonstrate consent.

### *Post-purchase*

230. Code 14 currently sets out a number of requirements with regards to 'Post-purchase' obligations. This includes: service fulfilment; customer service requirements; methods of exit; speed and quality of response; and ease of refund.

### **Code 15 considerations**

231. In terms of Code 15, we are keen to consider how best to raise standards in these areas to ensure the market is delivering well for consumers. Our experience of applying Code 14 is that the market has not always worked well for consumers in this area, including:

- consumers complaining that they have been charged for a phone-paid service without giving their informed consent
- consumers alleging they have been charged by a service or signed up to a subscription without their knowledge
- poor complaints handling procedures, including difficulties for consumers contacting providers and/or were not treated fairly
- the consumer experience of receiving refunds is not as good as it could be and falls short of consumer expectations.

232. Another challenge we have identified under Code 14 relates to the growing complexity of the value chain. This is particularly the case given the increased use of third parties who are not directly regulated by us, such as those organisations providing verification or marketing services. In some circumstances, we have found it difficult to obtain the information needed to support an investigation where it may be held by these parties.

233. Accordingly, we are keen to examine what the 'operational' standards are likely to be. Some early considerations, for which we would welcome stakeholder views, include the following:

### *Pre-purchase*

- whether there is additional information that consumers should be made aware of which would help them make more informed decisions?
- whether there should be more specificity of location of key price information?
- whether there should be more explicit referencing of regulated parties' responsibilities for other organisations in the value chain, such as where they contract with third-party verification bodies or affiliate marketers and responsibilities in relation to consumers who may be vulnerable?

**Q13 What are your views with regards to developing appropriate 'Pre-purchase standards'?**

## *Purchase*

- whether there should be increased requirements relating to technical protections, such as:
  - proof of established technical standards for networks/Level 1 providers<sup>39</sup> and third-party verifiers?
  - the ability to require data to be stored and reported in required formats?
  - aligning customer authentication with standards of other payment mechanics?
- how best to ensure consumer expectations are being met, including consideration of:
  - the clarity of the purchasing environment?
  - other purchasing mechanics used in other sectors?
- whether there is benefit in developing ‘best practice’ purchasing templates
- whether it might be possible to provide various exemptions from other Code requirements for those companies who use clear ‘approved’ purchase methods that align with ‘best practice’ templates?

**Q14 What are your views with regards to developing appropriate ‘Purchase standards?’**

## *Post-purchase*

- whether we want to introduce greater requirements for high standards of customer service, including clear aftersales support and established complaints handling procedures in place?
- whether we should require automatic refunds (on a ‘no quibble’ basis) which default to bank account (where economically viable) or phone bill?
- how we can encourage greater take-up of alternative dispute resolution (ADR) schemes in the sector so that consumers have the right to escalate complaints where these are not resolved?
- what data we need to be able to better monitor the consumer experience (such as complaint volumes, customer referrals to PSA and/or ADR schemes)?

**Q15 What are your views with regards to developing appropriate ‘Post-purchase standards?’**

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<sup>39</sup> Those organisations who provide a platform or technical service for the phone-paid service to operate

## Our investigations and sanctions

### Overarching principles

234. The overarching principles with regards to our investigations and sanctions are that:

- our enforcement processes are effective and capable of producing a proportionate, consistent and reasonable outcome, and are clearly understood by industry
- parties associated with services under investigation must fully co-operate with us, including complying with requests for information
- regulated parties must comply with all sanctions imposed by us.

### Code 14 approach

235. Code 14 currently sets out the following requirements with regards to our investigations and sanctions:

#### *Our investigations*

- it is the responsibility of all regulated parties to comply with the Code, Special conditions and any issued Guidance:
  - Level 2 providers<sup>40</sup> are responsible for the content, promotion and operation of a service
  - Level 1 providers and Network operators must carry out a satisfactory level of due diligence and risk assessment when contracting with providers, to achieve the outcomes set out in the Code and supporting Guidance.
- where we find evidence of a failure in meeting these responsibilities, we may initiate an investigation into that party
- during an investigation, we expect that any party associated with services under investigation to fully co-operate with us and to comply with requests for information made.

#### *Our sanctions*

- sanctions are applied taking account of the need to: (a) ensure that a party is not seen to benefit financially from a breach of the Code; and (b) achieve credible deterrence
- depending on the severity of the breach, sanctions may include the following impositions: (a) order the company to refund consumer's costs; (b) impose a fine up to a maximum of £250,000 per breach; (c) close or suspend the service; (d) withhold revenue from the service; (e) bar a person from running phone-paid service.

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<sup>40</sup> The end provider of the phone-paid service.

## Code 15 considerations

236. As part of developing Code 15, we want to consider how best we can uphold the reputation of the market by intervening earlier and more robustly to prevent consumer detriment before it occurs, and to penalise and deter wrongdoing when it occurs.

237. Our early considerations include the following:

### *Our investigations*

- further reaching and more flexible information gathering powers
- exploring more effective ways to hold the whole value chain to account, such as expectations on due diligence, risk assessment and control of contracted parties, the level of publication of wider information about investigations and the role of parties in the value chain in supporting the implementation of relevant sanctions
- greater flexibility in terms of investigative decision-making models, including possible fast-tracked, more streamlined, processes for breaches which are more administrative in nature (such as introducing an Executive decision-making model to allow for the Executive to sanction directly).

### *Our sanctions*

- looking at the appropriateness, where merited, of more effective means to hold non-compliant providers to account, such as through the issuance of penalty notices/fines, publishing wider information about investigations (such as Track 1 procedures<sup>41</sup>) and extending liability to other parties in the value chain (networks/Level 1 providers)
- considering how to increase the range of effective deterrents, including developing an equivalent range of sanctions that other regulators have. This may include acquiring the ability to hold individuals (directors and or persons of significant control) to account and having greater flexibility in fine amounts
- improving the process for universal refunds, possibly giving us a consumer refunds function for adjudicated refunds.

***Q15 What are your views with regards to how we can make our investigations and enforcement procedures more effective?***

***Q16 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?***

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<sup>41</sup> An investigation of potential breaches of the Code, which may be resolved between the PSA and the relevant PRS provider via an agreed Action Plan. The Track 1 procedure does not require an adjudication by the CAT. The procedure is set out in the Code at section 4.4, and further details are set out in Section 7 of the Supporting Procedures.

## Other general Code considerations

### General funding requirements

238. We are currently funded through a levy funding model. The levy is applied to the actual size of the phone-paid services market, defined as total phone-paid services outpayments from Network operators to their PRS industry clients i.e. after retaining their network charges from total revenues received.

239. To date, a theoretical unadjusted levy has been set, which is the rate that would be required to recover the full cost of our budget<sup>42</sup> as a proportion of phone-paid services outpayments.

240. In practice, an adjusted levy has been applied as the rate required to recover the full cost of our budget after the following adjustments:

- Deductions made in respect of:
  - estimated over recovery of levy in previous year
  - retained funds available, based on estimated fines and administrative charges collected in the previous year.
  
- Additions made in respect of:
  - estimated under recovery of levy in previous year
  - exceptional need to increase our contingency reserves.

241. As we move to Code 15, we think it is appropriate to review the current funding model and consider whether alternative funding models may be more sustainable. There are a range of factors to be built into any discussions about future alternative funding models. These include:

- fair apportionment of the levy
- ease of levy calculation and collection
- transparency of the levy across the value chain
- how collected fines are used.

**Q17 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?**

### Definitions

242. In the context of our Code, there are three categories of defined providers. These are:

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<sup>42</sup> Total expenditure, less budgeted other income (Registration Scheme fees and bank interest).

- Network operators
- Level 1 providers
- Level 2 providers

243. Level 2 providers have responsibility for achieving the Code outcomes by complying with the rules in respect of the provision of the relevant phone-paid service. All Network operators and Level 1 providers involved in providing phone-paid services must take all reasonable steps in the context of their roles to ensure the rules are complied with (including suitable due diligence and risk control on parties they contract with).

244. As we move to Code 15, we think it is appropriate to review the current categories of defined providers of phone-paid services and whether the current definitions capture all relevant parties involved in the provision of phone-paid services and appropriately spread regulatory responsibility throughout the value chain.

**Q18 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.**

**The role, purpose and structure of the Code (including the supporting regulatory framework of Special conditions, exemptions and guidance)**

245. The current regulatory framework for phone-paid services is supported by Special conditions, exemptions and Guidance.

246. **Special conditions** are targeted requirements used to address higher risk services to ensure consumer protection is achieved under the Code. There are 14 sets of Special condition in place. Special conditions offer flexibility in terms of delivering targeted measures going beyond the Code for specific higher risk services. Furthermore, the Special conditions framework offers clarity to regulated parties transparently setting out expectations

247. **The Code** also enables us to exempt providers from strict adherence to Code provisions where a Code objective can be achieved in other ways. This enables us to support the development of services that provide value to consumers. We currently estimate that up to a third of the phone-paid service market is eligible for an exemption from registration with us or from paying the registration fee. There are also exemptions from specific Code provisions available for certain categories of services that we believe can comply with certain outcomes of the Code through other means

248. **Guidance** is to assist providers of phone-paid services by informing them about how the required rules will be expected to apply, both generally and in relation to specific

service types. It is non-binding and intended only to assist those involved in the provision of phone-paid services to comply with the Code.

249. As we move to Code 15, we think it is appropriate to review the role, purpose and structure of the new Code and, dependent on the design of the new Code, what the supporting regulatory framework should be.

**Q19 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.**

### Regulatory impact assessment

250. As set out in this document, the market is in a state of transition, and we want to ensure our regulation remains fit for purpose and relevant. As a proactive regulator it is important that we continue to evolve our regulatory approach to reflect the market we are regulating, or we risk becoming out of date with the market. Our Code is at the heart of how we do this. We want to make sure our Code provides the right incentives for businesses to operate responsibly and the right deterrents against those firms that seek to enter the market to exploit consumers or who do not put the right consumer protections in place.

251. We believe that the proposals which we are considering in this document will allow us to meet the needs of consumers in a changing market, not least by giving us greater scope to regulate more flexibly and proactively. We believe some of the benefits of this approach will include:

- providing increased certainty to industry stakeholders in terms of our requirements and expectations through the establishment of regulatory standards
- making it easier to update certain standards in response to market developments and changes in best practice
- the potential for lighter-touch regulation, such as exemptions from certain Code requirements, where regulated parties are willing to commit to meeting the agreed standards.

252. We recognise that the changes we are proposing in this document are likely to result in the need to amend existing requirements or introduce new requirements. We are keen to understand the potential impact (both in terms of benefits and costs) of these potential changes on industry participants and the wider market, consumers and us.

253. As described in this document, the changes we are considering can be grouped under the following five broad areas:

- moving from outcomes to a regulatory approach based on raising market standards

- moving to a model based on verification and supervision of organisations and services operating in the market
- increased focus on prevention rather than cure
- delivering broader consumer benefit and support
- increasing the effectiveness of our investigatory and enforcement procedures.

254. For each of these areas, we have set out our initial thinking in this document in terms of the types of changes we want to explore as we move to a new Code, broken down into pre-operational, operational and our investigations and sanctions. We would welcome comments on the likely impact of potential changes under these areas.

***Q20 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact.***

## Next steps

### Responding to this discussion document and next steps

255. We would welcome feedback on the matters raised in this document up until 9 April 2020. Where possible, we would encourage respondents to frame their responses through specifically responding to the questions asked in this document.

256. We believe that six weeks provides sufficient time for respondents to come back on the matters raised in this document. In particular, we note that this document is only one element of our stakeholder engagement in connection to this review; we will also be carrying out further stakeholder engagement, including our March Stakeholder Forum and bi-lateral meetings with interested stakeholders. This will culminate in publication of a formal consultation document which we plan to publish in Autumn 2020.

257. We also intend to continue to provide regular updates on progress and highlight opportunities as to how stakeholders are best able to input into the review, as the review progresses.

### How to respond to this discussion document

258. We welcome responses to the questions set out below, along with any other information, evidence, or views that respondents have in relation to this discussion document.

259. We plan to make available all responses received. If you want all, or part, of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

260. Personal data, such as your name and contact details, that you give or have given to the Phone-paid Services Authority is used, stored and otherwise processed, so that the PSA can obtain your views, and publish them along with other views.

261. Further information about the personal data you give to the PSA can be found at <https://psauthority.org.uk/privacy-policy>.

262. Where possible, comments should be submitted in writing and sent by email to: [consultations@psauthority.org.uk](mailto:consultations@psauthority.org.uk)

Copies may also be sent by mail to:

Gavin Daykin, Programme Director  
Phone-paid Services Authority  
25th Floor, 40 Bank Street  
Canary Wharf  
London E14 5NR

263.If you have any queries about this consultation, please email the consultations inbox using the email address set out above.

## **Annex A: Questions in this document**

### **Background**

Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.

Q2 Is there anything else we should be considering?

### **Market context**

Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?

Q4 Do you have any evidence of the market to share with us that you think would support our assessment?

### **Consumer expectations and experience**

Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

Q6 Do you have any other evidence in this area that we need to consider?

### **Likely future trends**

Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.

Q8 Are there any market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?

### **Assessment framework**

Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree.

Q10 Are there any factors we have not taken account of which we should?

### **Initial thinking**

Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.

### **Potential Code 15 options**

Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?

Q13 What are your views with regards to developing appropriate 'Pre-purchase standards?

Q14 What are your views with regards to developing appropriate 'Purchase standards?

Q15 What are your views with regards to developing appropriate 'Post-purchase standards?

Q16 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?

### **Other general Code considerations**

Q17 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?

Q18 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.

Q19 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.

Q20 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact.