

# aimm response to the 15<sup>th</sup> Code Discussion Document

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## Introduction to aimm

The Association for Interactive Media and Micropayments (aimm) is the specialist UK-based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and micropayment industries - where consumers interact or engage with services across converged media platforms and may pay for those services or content using a variety of micropayment technologies including premium rate. We are a not for profit organisation, funded by our members, run for our members. We create conditions for growth and protect the regulatory environment in which our members operate.

aimm has a membership that represents the entire value chain – from the providers and promoters of information to the network operators and technical service providers that deliver and bill them to customers. No other organisation has such reach or representation. Members of aimm work collaboratively to address key industry issues and to build a trusted business environment, encouraging investment, creating new opportunities and developing business partnerships.

aimm promotes excellence in the world of interactive media and micropayments. The purpose of aimm is to create an environment of consumer confidence and trust within which our members' commerce can flourish. aimm promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive service experience should be perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

## Membership input

aimm welcomes the opportunity to respond to the 15th Code Discussion Document. To assist aimm in providing a comprehensive input to the Phone-paid Services Authority, aimm communicated with its Members in the following manner;

- Members workshop (moved online due to Government advice on social distancing)
- Written input from Members
- One-to-one telephone discussions
- Conference calls
- Individual meetings

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Information gathered from all those who attended meetings/submitted feedback in all these ways is presented below.

aimm Members who operate in the Phone Paid Services markets are broadly split into seven categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks who are often Fixed line L1
- Mobile Networks
- Mobile L1 aggregators
- L2 providers of traditional PRS services (fixed line, PSMS, and DCB)
- Broadcasters (who are often L2 providers)
- Charities and Charity enablers (who are often L2 providers)
- Industry Support companies

aimm sought responses from Members across the MNOs, L1 community, L2 community, Third Party Verification and Anti-Fraud Specialists, Broadcasters and Charities and in this paper varying views are represented.

Some of aimm's Members may input their response directly to the PSA through their regulatory staff or regulatory representatives. Wherever possible, we ensure that views of members made through independent responses are in synergy with aimm's collective views.

As our response is guided and supported by Members' input, some views may be expressed that are not necessarily those of the aimm Executive or aimm's Board of Directors.

#### Input from Research

As well as consulting comprehensively with Members, aimm also commissioned research into the regulation of Phone Paid Services in other territories which have parity to the UK market. Having read some research carried out by analysis mason on behalf of the PSA (then PhonePay Plus) in 2011, it was decided that a similar piece of work, with equal impartiality and authority, would be very useful to inform and contextualise our response. As such, as part of our submission we include alongside this document, an additional paper entitled "Fladgate aimm 15<sup>th</sup> Code Research Paper", and we ask that you give this research full consideration.

## Response to PSA questions

### INTRODUCTION

The PSA have invited industry to respond to their Discussion Document on the development of Code 15; however, following Member consultation aimm believes there is a more fundamental question, than those included here, which needs to be answered first: How the UK market should be regulated. aimm believes that this more fundamental question should be robustly debated and informed/contextualised with research carried out to gather information and learnings about the regulation of similar markets in Europe.

As such, we are pleased to provide – for inclusion within our response – research detailing the regulation of phone paid services on a more global scale. The document, prepared by Fladgate LLP for aimm, seeks not only to provide context around our response, but also provide strong evidence to demonstrate that there are

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other successful frameworks beyond either that which is currently utilised within the UK for regulating this market, or that which is being proposed. As a regulator with an intention delivered in the Chairman's speech to "do things differently", we present in this research several frameworks which are simpler, more efficient, more collaborative and on a smaller budget. Whilst this is not asked within the 21 questions below, we view this as a vital consideration, before the formal consultation is launched, we will be keen to understand what consideration has been given to each model – and other international models potentially considered – before the consultation begins in a formal capacity.

That said, please find below our responses to the specific questions which the PSA asks regarding the development of the next Code.

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

Members generally feel that an outcomes based Code is good for industry and for the consumer as it covers all eventualities and doesn't allow for any service types that could 'fall through the cracks'. They worry that a set of more prescriptive rules could not possibly cover every scenario required and as such, this leaves room for exploitation by unscrupulous players.

From this view, there stemmed two main strands of thought.

One is that the option of 'do nothing' is explored further, as – following the recent Phone Paid Subscriptions and Consent to Charge Publications - there has been a significant reduction in consumer contacts to the PSA. Therefore, the impact of these two large changes in regulation need to be thoroughly understood to ensure that change to the Code is still justified. Additionally on this point, Members would encourage the PSA to ensure that existing processes are being followed - as this alone might lead to a decision that the existing Code is sufficient at the current time. Examples of this might be; working more closely with - and acting on - feedback from industry, making sure consumers really do speak to merchants before contacting the PSA to ensure that any complaint is based on all the facts, regularly reviewing the effect of all Special Conditions regulations at milestones agreed with industry and – before moving ahead with the 15<sup>th</sup> Code - wait for all industry work to be completed, and the impact assessed, on the review of refunds.

The other view was that whilst an outcomes based Code works well, the current Code does need to be reviewed as – with multiple sets of Special Conditions - it is no longer outcomes based. These Members note that, in the PSA Forum Slide Deck, the slide entitled Assessing Code 14 –facilitated discussion 1 asks; 1. What has your experience been of outcomes-based regulation? 2. Has it delivered the right incentives and deterrents? They note that this question needs to be framed in the context of the existence of the PSA Code, PSA Guidance and Special Conditions, PFI scheme rules and MNO Codes. The PSA may have aimed for an outcomes based-approach when they initially moved away from prescription, but in practice, as an industry, we have had prescription in one way or another. These prescriptive measures (particularly Special Conditions, which result in a 'high risk' label being applied to a service) are not routinely and comprehensively reviewed to assess their impact so we can only guess in part at how successful they have been.

The Chairman noted in his speech that compliance with the Code should be simple. This is absolutely feasible and indeed within the Fladgate research it was noted that in Sweden the Code of Practice is 11 pages long.

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Additionally there was a feeling amongst some Members that regulation could be done in a more collaborative way, with industry engagement. There is a wealth of specialist compliance skills in the value chain, and everyone can take an active role in helping to regulate the market, without the need for a more prescriptive Code. This is seen working well in the models adopted in France, The Netherlands, Sweden and South Africa where collaboration on Code development and changes is demonstrably progressive.

Members consulted all note that the approach is focused on protection (and rightly so) but that there also needs to be more consideration in the approach for flexibility, innovation, commercial opportunity and growth. This is not a trade off (protection vs flexibility). Rather, some form of regulation can achieve similar or higher levels of protection while simultaneously offering flexibility. Some Members also felt strongly that standards in their areas are already very high, not attracting any consumer contacts and do not need to become more prescriptive. Members urged caution in regulating to the lowest possible denominator, as “rogue” businesses will not follow the Code anyway.

Some Members ask whether the large budget assigned to the current year is due to this Code review, and that in fact – with complaints set to decrease - a period of calm and a thorough review of how recent regulation has affected the industry, could save industry much of this cost (in the form of a reduced levy).

On this note, the Fladgate report did not explicitly address the “value for money” of different regulatory frameworks. Nonetheless, there were intriguing allusions to increasing consumer protection while at the same time increasing commercial flexibility and reducing the cost of regulation.

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

We again draw the PSA’s attention to the research presented from other territories. There would appear to be successful models that operate at a lower cost, yet still achieve efficient and effective enforcement processes.

Additionally, there was a general feeling amongst Members consulted that a simpler, more slimmed down Code would be useful in helping assure compliance to it, as well as making it easier to attract new, good quality business to the value chain. This works well in Sweden and this model should definitely be considered. This was felt particularly in areas which have always attracted very small numbers of complaints, for example, in the charity sector. One MNO Member consulted suggested that a simpler Code with easy to follow Guidance could negate some areas of their own Codes and might be welcome, however for that to be the case it would need to mirror their own Network rules.

Some Members felt strongly that there should be provision in the approach to protect merchants from consumers who play the system – and the regulator – and take advantage of the multiple ways to gain a refund in our value chain. This could include stipulating where refunds are not due, and will not be provided unless under a goodwill gesture.

Members suggest that the PSA are proposing that a Code change is justified because customers expect certain standards which would bring phone-paid services in line with other payment mechanisms. However, noted throughout the Discussion Document is the reliance on impulse purchases and the convenience required in order for the sector to grow. By this very nature, this “small ticket” payment mechanism differs from others and

as such should not be regulated in line with those other mechanisms. A salient example is a debit card. Consumers can tap it to spend up to £45; however, a PIN code is required for larger purchases. This reliance on impulse purchasing of “small ticket” items - and how to facilitate that opportunity, not hinder it, should be fully considered in the PSA’s approach to the new Code. It is also very interesting to note that whilst this document talks about “raising standards” in premium-rate to match Visa, MasterCard, and other payment mechanics, Visa is rolling out Click-to-pay. In essence, very soon you will not need to set up a separate account with each merchant, and you will not need to enter your 16-digits as a guest with a new merchant.

In their blog (found here: <https://usa.visa.com/visa-everywhere/blog/bdp/2020/01/21/click-to-pay-1579631493834.html>) they state: “Visa is committed to improving the way we pay and get paid around the world. The click to pay experience is just one example of the many ways Visa works in the payments ecosystem to move payments forward, laying the groundwork for the next 25 years of simple, secure, better ways to pay.” It is safe to suggest that this will lead consumers to see less of those traditional signals that you are in a shopping/purchasing environment. So, conversely, as the discussion document seems to suggest that the PSA is considering a move towards standards equated with traditional credit/debit card payments, the credit/debit card world is jumping to where PRS is now.

Members would be very keen to see consumer education feature in any review of the Code, and would welcome help from the PSA in promoting consumer confidence in phone-paid services. They suggest that this could be done in various ways such as providing accurate, myth busting advice on the website, rebutting negative untruths and publishing good news stories and events.

aimm firmly believes that consumer education yields both consumer confidence and consumer protection. As such, the PSA should view myth busting and spreading real-world examples of good practice as core functions of a consumer protection regulator.

## 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?

Members consulted generally agreed that there has been growth in operator billing as stated in the Discussion Document, however suggest that this is less about consumer demand and more due to a shift in the focus of Operators and their priorities – meaning it has been driven more by them and less by consumers. It should also be noted that the latest industry figures show a decline in operator billing in the first full quarter after the implementation of the Subscription Special Conditions, with little evidence to suggest that the likes of app store billing can fill the gap.

Some Members consulted in the Broadcast space felt that voice based services are still an important channel for them and that even with voice and PSMS covering the majority of their traffic, there was little recognition for either of these channels in the new Code approach. Some Charity Members also suggested that there seemed to be little within the document around the use of Phone-Paid services for donations and the obligations that come with a donation rather than a payment.

Members discussed at length the assertion made by the PSA that the shift from small/medium players to large blue chip companies is seen as good growth for industry and question whether these businesses have historically looked after their consumers and offered them robust protection. For example, whilst app stores themselves may behave responsibly and provide a robust customer care journey, there are many apps available via those stores that cause considerable consumer harm with - it seems - little redress.

There are related concerns around US-based technology companies' (which the PSA appears to view as good growth) apparent lack of interest in European regulation, let alone UK regulation; and their lack of interest in paying their fair share of tax. In parallel, the importance of in-country SMEs as drivers of employment should not be overlooked.

There is a need for SMEs to join our industry to ensure healthy competition and competitive growth. The blue chips do not tend to engage with industry. Members are keen for reassurance that regulation won't be tailored to the blue chips (on the assumption that they will join the market) at the possible expense of SMEs. For example, some app stores are keeping a two click flow behind a username and password - which is set up when you get access to the handset and therefore completely disconnected from the carrier billing purchase event. The industry is in competition with other payment mechanics which are a real threat to mobile payments and Members are keen to gain assurance that the new Code will help them to compete.

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

Members consulted had nothing to add here.

### **Consumer expectations and experience**

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

Members consulted feel that – whilst some relevant research topics have been covered - studies need to go deeper, and with more numbers. Members also feel that some of the research (e.g. online competitions and adult services) has a limited shelf life and is now several years old. To ensure balance and relevance, research should be relatively recent or should be re-run. Additionally, where the research has been qualitative in nature, Members have concerns if it is to be used to shape the Code. The Futuresight research for example states that: "It is important to note that the qualitative findings of this report are not statistically representative of the views of the general public."

Some Members consulted feel that much of the research that has been conducted in recent years has been lacking in consumers who have had good experiences, despite the many satisfactory transactions that occur every day. Whilst they are confident that the bad experiences quoted have impacted consumers, they feel that consumer education is the preferred route to stamping out bad experiences rather than draconian rules.

Members also pointed out that the Consumer Panel are not actually industry consumers, and don't add value if that is how we are expected to perceive them. Whilst they are clearly experts in their fields, and can add a fresh view, Members suggest that there are areas where they are misguided or lacking in knowledge.

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

Some Members consulted feel that research is needed into why consumers complain globally, and how best to protect industry (perhaps with consumer education) against fraudulent customers or those that experience buyer's remorse and expect a refund when none is due. Members would be pleased to see the PSA use their social media outlets look to positively engage with individuals online who are misinformed but very active in attacking the industry and spreading false information. This would deliver an effective method of consumer education when done in tandem with highlighting security and regulatory developments within the industry. It would also boost consumer confidence that phone paid services can be used securely and safely.

This type of research could involve looking at how other UK-based regulators handle consumer complaints and what role other UK-based regulators take in what is in reality a customer services situation.

Additionally, Members suggest that they require more information from the PSA on fraud and what they are experiencing in their contacts from consumers in this area, as this has not been considered. Until the scale of this problem has been assessed, then punitive regulation might continue to be applied in areas where anti-fraud solutions could be the more appropriate solution.

**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.**

As previously mentioned, Members are unsure whether the suggested increase in blue chip organisations is entirely substantiated or indeed a net positive. They again advise caution on basing a Code around those businesses that could impact on SMEs.

One popular blue chip has recently moved operator billing from their top way to pay, to another payment method. The expectation that blue chips will support operator billing will not stand up if these other mechanics become easier for them to manage due to the swathes of regulation around phone-paid services and Members are keen to ensure that there is not too much prescription that will make phone-paid services less attractive as an option for brands to utilise.

Likewise, Members raised again the assumption that consumer engagement will be driven by convenience and impulse purchasing, and worry that this unique identifier will be driven out by over regulation.

Some Members ask that the impact of recent regulatory changes be properly assessed before the Code is developed. These changes may make further regulation unnecessary, or may prove to have not been successful and should be measured appropriately in advance of any changes here.

Finally Members feel that this is a limited assessment, with a look ahead that is rather short. They would like to see more research into what might be coming along the track that could/should be covered in the Code, to avoid further changes to it down the line.

Q8 Are there 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?

Members are surprised that there is no mention of RCS in this document and how it could work alongside other payment methods. Whilst this is still being developed it could well change the way in which the market works and needs consideration.

Additionally some Members suggested that Voice shortcodes, although older technology, avoid heavy access charges to consumers and should be factored in to this document.

Members also wonder if any consideration has been given to restrictions on Gambling (using credit) which are due to come into force.

Finally, in the current climate where cashless payments are so important, Members strongly believe that positive change from the regulator that will help make quality cashless phone paid services easier to implement, could be a major boost to industry and ultimately the economy now and for some time to come.

### **Assessment framework**

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

Members consulted generally suggest that as a framework this seems to be an acceptable way to work through the Code development, though note there is no check on whether any action is practical/possible and whether a more cost-effective approach could achieve the same outcome. Members seek reassurance that this framework be followed transparently and with shared updates throughout. Members ask for clarity on whether stage gate decisions will be published with their reasoning before proceeding onwards. This could include the assessment to show which action has been taken at each stage and what outcomes have been anticipated before sign off. This would seem like an ideal way to engage with industry at each point during this vital area of development. Working with industry in this way would give confidence throughout the value chain that the Code has been developed with protection, education and innovation/growth all in mind. Confidence like this would – Members believe – attract more new business into the market.

Members suggest that additionally within the framework, the PSA should be benchmarking successful models that are being utilised in other territories that have parity with the UK. At each key stage gate, comparisons to consultation proposals should be measured against those alternative models to ensure that the PSA are giving due consideration to what is proven to be working elsewhere.

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

Some Members suggest that the current Code be considered alongside Code 15 development so that “doing nothing” can be measured as an alternative against making change. Members would be interested to see how that would affect the budget and proposed levy increase.

aimm would strongly recommend that our research into regulatory frameworks in other territories should be taken into account and would ask that the PSA take the time to parse this research thoroughly. There are key takeaways proven to work elsewhere that could be well utilised in the UK market. These include short and simple Code documents (Sweden), elements of a self-regulating industry (France, Sweden, The Netherlands), collaboration with industry on Code reviews and agreement from industry on Code changes (France, Sweden, The Netherlands and South Africa), clear communication pathways, swift processes and quick turnaround times (France, Sweden, The Netherlands and South Africa), a mainly informal process for dealing with initial issues (The Netherlands and South Africa), a thorough Registration process (The Netherlands) and a considerably lower budget model (Sweden, The Netherlands and South Africa).

## 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.**

Members suggest that the justification for an outcomes based Code was that it was future-proofed. Technology, people and flows change, therefore regulation should not be prescriptive. If "raising market standards" becomes a set of hard and fast rules which are being created for various technology then maybe it is not appropriate here. aimm also suggests, according to our research into regulation in other territories, that there are other approaches which work elsewhere, in markets which have parity to that in the UK. As such, these approaches should be included within the initial thinking on Code 15 development, before radical, and potentially more complex and more expensive regulation is proposed here.

In this respect, there are concerns around making a prescriptive set of standards and then increasing the amount of verification and supervision around those. Members would want to be fully included in any process that results in a set of standards, and then the monitoring suggested, to ensure they remain future proof, technologically possible and consumer friendly. Indeed, the collaborative approach to Code development - with all levels of stakeholder inputting into, and agreeing on, regulatory change - enjoyed in some form in all territories within our research - is key to forming a Code that achieves both consumer protection and commercial growth.

Generally it was agreed that more details are needed on this point before any consensus can be reached. Members can't put their view forward on moving from outcomes based to standards based without knowing what shape this will take and what data will be used to formulate the standards. We note that some examples have been given at the latest round of webinars, which has been helpful to give a flavour of how they might work, however until all standards are fleshed out, industry cannot agree on the feasibility of upholding them, or the time, resource and potential cost attached to each one.

To this end it may be helpful if the PSA could identify another PRS regulator in the world or another UK-regulator (in a different) industry who utilises the proposed "raise the standards" approach. This exercise would help illuminate hidden benefits and hidden pitfalls.

Additionally, whilst this is an introductory document, Members feel that there are gaps within it around PSMS, voice and anti-fraud measures that are essential in the value chain. Members mentioned the monthly statistics

that were historically distributed out to the value chain by the PSA and suggest that these should be reinstated, as they were both a useful and a transparent form of data which shed light on regulatory decision making.

Some Members felt that a degree of standard setting in the form of rules might be a good thing, but that it must be balanced with the PSA providing greater confidence in how they set these rules, engagement with industry before setting these rules, and how they will deal with industry. This is particularly felt in the areas of process and communication, such as RFI requests and ongoing responses, investigation durations and communication around how RFI's/investigations are proceeding. Within our research we present examples of a swifter, more concise way of managing this process and a more collaborative way of communicating that is shown to be working in practice in some measure within all territories in the document.

### **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?

When discussing the Code 15 options Members spent a long time considering the area of 'fit and proper persons'. It was generally agreed that improper persons are the main threat to industry professionalism and hence reputation. Members suggested that they would appreciate more help from the PSA up front in putting up barriers to registration until 'fit and proper' person tests are concluded successfully and that Registration with the PSA should be a marker of a positive entity who has been assessed by the PSA and approved to proceed in the marketplace.

However, Members do seek clarity on what this test would be and how long it would take. Whilst it should be a barrier for unscrupulous businesses looking to damage the market, it shouldn't be an onerous task for Members who would bring about healthy growth and innovation but are put off due to timescales. Members asked whether the probationary period would be used whilst the 'fit and proper' test was underway. They also question how long this period would be and how it would be decided. This seems like a large undertaking and Members would be keen to receive assurance that the PSA have the confidence in their ability to administer it.

In our research, we note the Registration approach taken in the Netherlands where the Compliance Officer oversees the process to ensure that all direct and indirect beneficial owners pass a series of tests and background information is acquired on the service itself before that service can be provided to end users. This information is then used to establish a risk profile for the business which in turn forms a basis for a supervision process. This process is completed within a maximum of 3 weeks and the results passed on to the Service Providers up the chain (as well as the Provider).

Members consulted generally felt that Bonds can work if they are applied sensibly and fairly, however it was agreed that they could create a high barrier of entry to the market to SME's (especially if it were decided that blue chips were not required to put up bonds) and would therefore advantage bigger brands or blue chip companies.

Members ask whether any research has been done by the PSA looking at the regulation of other payment mechanics to see how they approach this area. Are there efficiencies/learnings to be taken from other sectors in how we introduce new businesses to the market?

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

Members generally were not forthcoming about any additional information that should be given to consumers other than that which affects their decision to purchase, as is currently the case.

Some Members would not necessarily be opposed to the PSA being fairly prescriptive on pricing placement, assuming that comprehensive, collaborative research had been done to evidence the proposal, and engagement with industry sought. This would give some comfort that there could be no RFI requests or Investigations heading their way, and no refunds due where the agreed placement has been implemented. However, Members did caution that this could not be a 'one size fits all' approach, owing to the fact that consumers use a wide variety of devices and screen sizes, and that there are many types of promotion publicised via many different mediums. They suggest that this is the main problem with prescriptive regulation and is why, usually, an outcomes based approach is more appropriate in this market.

Members ask for clarity on this paragraph:

*233. • 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?*

Are the PSA are suggesting that regulated parties' responsibility for organisations in the value chain should be referenced and made clear, or that the responsibilities are set to change. This is a point of grave concern to some Members, particularly where they do their own Due Diligence on contracted parties but simply cannot and will not be held responsible for those further distanced from themselves, whose acts they can't foresee or control.

Some Members expressed the view that the PSA's current regulatory reach may already go beyond the written or intended remit of the Communications Act – specifically the PSA's strict liability interpretation on advertising responsibility. Given that the legal position may not be settled, some Members would object to being forced to publish the PSA's untested position under penalty of a breach.

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

Some Members were surprised to see the inclusion of proof of technical standards included in this area. They feel that these have already been covered off by the security framework project and are more than adequate.

Members note with some trepidation the suggestion that customer authentication could be expected to align with that of other payment mechanics. In the first instance, some Operators have indicated that their platforms have technical limitations which may not allow this. Secondly, once again Members look back at the expectations of the future of the market identified earlier in the document. They suggest again that making the flows more complex will undermine the key reason consumers choose to engage using phone-paid services – convenience and impulse - and additionally will potentially make it harder for industry to compete with other payment mechanics that have more attractive commercial models. Again, contactless payments were mentioned. Although not a substitute for PRS, they do point to the fact that less onerous flows are accepted by consumers and regulators where purchases are impulsive in nature and lower priced.

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Once again Members urge caution in trying to compare and align phone-paid services to purchasing mechanics in other sectors in terms of consumer expectations. Phone-paid services cannot be compared on a like for like basis and should not be expected to align where it is a) not technically possible b) onerous for the sake of it c) for no consumer benefit, based on – again – the convenience aspect that consumers enjoy when using these services.

Broadcast Members seek clarity on the double opt in requirements and consent to charge obligations within the purchase standards for their PSMS and Voice services. They are looking for assurance that they do not need to demonstrate these for services initiated by the consumer in response to a competition/voting format call to action – particularly when sometimes those call to action windows are relatively short in duration. Additionally, Broadcast Members note that there is little in the way of discussion within this document on Voice or PSMS, and that it appears geared to Operator Billing.

Operator Members would like to remind the PSA that they initially laid out a set of Best Practice templates within the PayForIt management group. This was amended to incorporate Principles based templates as there were simply too many templates to consider and there was a greater degree of flexibility needed to cover off all requirements. If the templates are flexible (Outcomes based) then these might work. Industry has the skills, and would be happy to design these themselves, to save the PSA the time and financial cost of creating them. This would also ensure they were technically possible to implement. Flexible templates will also allow for creative and commercial difference.

Members note that exemptions can be useful – particularly in sectors which generate low levels of complaints - but there are concerns everyone will apply for one, rendering them less valuable.

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

aimm has recently – following research and Member engagement - published a Best Practice Guide to Customer Service. This gives L2s a flexible approach to offering a positive consumer journey and encourages the publication of a customer complaints handling procedure. As such some Members feel that this has been addressed and does not need further regulation.

However, there was a view that customer care also includes customer education, and Members fully support the ongoing accurate publication of advice that consumers can use to establish if they have cause for complaint/refund. Additionally, strong communication from the PSA on who the consumer should approach regarding any query would be valuable. Consumers contacting the PSA may be querying the consent to charge around a payment appearing on their bill, when in fact it is the lack of information and education around phone paid services that means they don't have the information available which they need to be able to identify the purchase.

Members across the board were strongly opposed to the following paragraph:

*233. whether we should require automatic refunds (on a 'no quibble' basis) which default to bank account (where economically viable) or phone bill?*

This opposition is on the basis of several reasons;

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- Now that Special Conditions and Consent to Charge Guidance are in place, it is not in the PSA's remit to decide if a refund is due, as Consent to Charge is robust
- Refunds are at the discretion of the merchant. Buyer's remorse, unsuccessful competition entries or bill payers not being in control of their handsets, for example, are not necessarily reasons to expect anything other than a goodwill gesture at best. L2s must be able to assess individual cases and a 'no quibble' policy would not allow this.
- Consumers using phone-paid services (for example to enter competitions) and then requesting a no-quibble refund if they do not win opens the sector up to thousands of fraudulent entries. It also invalidates winner picking which is done on the exact count of entries to ensure it is fair.
- No quibble refunds have the propensity to severely financially damage merchants if consumers take no accountability for their actions and full advantage of the policy.
- For other payment mechanics, such as credit cards, any 'no quibble' refund policy is totally offset by revenue generated in the form of interest on balances, of which there is no equivalent in phone-paid services.
- Refunding to bank accounts/phone bills is not technically possible across all in the value chain.
- Many L2s do not want to take bank details from consumers, as they then have additional GDPR responsibilities around the storage and use of this data.
- Consumers are unlikely to want to give their bank details to an L2 who they think has wrongly taken money from them. Additionally some may be unbanked.
- Some Charity Members express concern over refunding donations that are – at the point of giving – a gift. Their primary responsibility is to put that gift to good use, so more research will need to be done to ensure that this policy does not contradict regulation in that area.
- The Consumer Contract Regulations 2013 already provide for a 14 day "cooling-off period" that provides consumers with the right to a refund for up to 14 days after a purchase made through distance selling. This is part of a European Act that was extensively consulted on. There should be little need to add to this requirement.

In terms of ADR, this can still be an expensive option for L2s when the refund amount may only be a few pounds, however some Members feel that it does have a place in the chain.

**Q16 What are your views with regards to how we can make our investigations and enforcement procedures more effective?**

Some Members feel that a review of how investigations and enforcement has run under Code 14 would show an imbalance in the process. Members feel that information is required from the value chain very quickly, yet feedback is slow in return. These delays in the investigation process cause financial harm as inevitably all marketing for the service under investigation is paused. Members have reported investigations going on for months and even years with little or no feedback. This is disconcerting for those who have no idea where they are in the process or whether the investigation is ongoing or closed. Members would welcome a more streamlined process with better communication channels. Additionally, some L2 Members report that they were informed in 2019 that they would receive an 'Account Manager' type contact at the PSA - to improve channels of communication - but that this has not materialised as yet.

We would ask that the PSA give particular attention to our research which shows the enforcement processes used in Sweden and The Netherlands, where the process is run swiftly and decisions are made in weeks.

Some Members are not convinced by the “building a case” argument. The PSA has stated in the past that a breach can be formally alleged in the absence of complaints. Therefore, “closing” a specific consumer complaint does not impede the PSA’s ability to regulate, whereas it can give valuable closure to the consumer and to the merchant. Some argue that the PSA’s slow approach to regulation dramatically reduces consumer confidence in the industry among individual complainants, their social media circle, and the media at large.

[REDACTED]

Members would like more transparency in general around the RFI process. Members would like to have information around what triggers an RFI, as on occasion they appear to be distributed with inaccurate facts (an example being a consumer suggesting they have been subscribed to a service they do not want when in fact they have entered multiple one off competitions). More clarity is also requested on whether RFIs are issued after a number of queries about a service, or – as seems to sometimes be the case – whether they are used as a tool by the PSA to ‘track and trace’ new services. Finally on this point, Members state that when they provide information in response to an RFI, they are rarely informed as to the progress of that RFI, or given the opportunity to resolve the query themselves. There are real opportunities to improve communication between parties in this area.

Members generally are concerned about the following paragraph:

*237. • 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*

The phrase “hold the whole value chain to account” has raised great concern across the board. Would this mean L1s being responsible for paying L2’s fines if they don’t pay? Would this mean Operators being responsible for Due Diligence on L2s? The value chain are ready to stand responsible for the elements which they can control but simply can’t and won’t be responsible for that which is outside of their remit and reach.

A faster, more open, streamlined process for breaches which are more administrative in nature was generally agreed to be a productive move forward. As mentioned above, this is shown to work very effectively in other territories with markets that have parity to the UK – keeping in mind that formal notification of breaches need not be tied to specific consumer complaints and therefore no benefit is gained from keeping consumers (and industry) “in the dark” .

Q17 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?

Members suggest that better consumer education would enhance the reputation of the market, as would the push back on any harmful, untrue publications/broadcasts and the promotion of good news stories. They would ask for help from the PSA in all of these areas. A better Registration site is useful and Members hope this continues to improve.

Again, Members suggest that ceasing the ability of rogue businesses being able to Register would help achieve better outcomes for consumers and uphold the reputation of the market. This works well in The Netherlands as shown in our research. Additionally, if they could share information which they have with value chains looking to contract with these businesses, this would be useful and would enable decisions to be made about forming new relationships. This could be by agreeing additional monitoring, for example or agreed site visits to L1's/L2's.

aimm has shown in our research into other territories, that outcomes for the consumer can be improved by helping them to self serve in a more efficient way, removing the requirement for regulatory intervention. In France we see an example of where, as well as being able to use STOP to opt out, a consumer who feels that they have received an unwanted message/content can send 'CONTACT' to the sender of the SMS message to receive a text containing the contact details of the merchant who they can then deal with directly to resolve the issue.

The Netherlands have taken the self service process even further and have a centralised system which enables consumers, through a dedicated website, to:

- opt-out of receiving PRS;
- view all PRS transactions relating to their MSISDN from the past 2 months;
- block their receiving any content from specific services.

The PSA is aware that in 2018 aimm was looking to develop a similar self service website but was not able to get the project off the ground.

Members demonstrated grave concern about extending liability throughout the value chain where parties may have no control over the actions of others and raised this again here.

There is interest among Members to learn more detail in terms of further sanctions that the PSA are considering, but initial thoughts are that penalty notices - which would streamline investigation processes and result in more considered fines and a higher rate of fine collection work well. This may also result in a cost saving to the PSA. There was also a suggestion that resulting guidance might suggest external expert support was sought to properly supervise associated services.

In terms of Universal Refunds, Members questioned when these would be appropriate, how these would operate and whether they would be paid by the whole value chain? They also asked whether Universal Refunds themselves are a sanction that closes a case, or whether further sanctions go alongside them.

Members also stress that whilst it is important to hold businesses to account for wrongdoing, this should not be publicised until it is proved, and any regulatory response to genuine mistakes should be reached in a measured manner.

### **Other general Code considerations**

Q18 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?

Whilst recognising there may be a minimum cost base for any organisation, Members have noted in the PSA Consultation on Business Plan and Budget, their concerns about the level of cost attributed to operating regulation at a time when Special Conditions have been brought in that expect to dramatically reduce customer contacts. They believe that the level of funding proposed is not proportionate to the expected decrease in workload. Members would also ask for more transparency on the spending set out in the budget and how, with fewer complaints, resources will be used. Some Members question whether this Code review is in fact making regulatory work which is justifying this budget.

‘Polluter pays’ appears to have reached a point where it is not working – with fine collection being low, due to investigation time and process being long, meaning that the levy is set to increase. This in turn means it is the responsible businesses that will pay, not the polluter.

In light of the PSA’s warning around changes due in levy, Operator Members may decide that they cannot bear the increased cost, and will either apply the cost down the value chain (making tight margins even tighter, and phone-paid services less commercially attractive against other payment mechanics) or will exit the market entirely.

Members in our Charity sector have asked whether research has been done to consider how other regulators are funded and whether any lessons can be learned from them. Our research into regulation in other territories with parity to the UK has shown that regulation in each of these locations is carried out at a significantly lower cost than that proposed by the PSA. This must be considered as a priority, to reduce the impending levy burden on the value chain and the risk that further cost will make phone paid services even less competitive commercially than alternative payment mechanics.

In the Netherlands, The Foundation has a regulatory budget of €250,000 per annum.

In Sweden, the ERB has a regulatory budget of €200,000 per annum.

In South Africa, WASPA has a regulatory budget of approximately £500,000 - £550,000 per annum.

**In the UK, the PSA is proposing a budget of £4,042,000 per annum.**

Members looking at these figures are keen to understand how the PSA see the future of their organisation with particular emphasis on staffing levels and how the 15<sup>th</sup> Code might deliver a more streamlined regulator.

Q19 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.

Members feel that the current short list is too simplistic. There are various other categories of provider that should be considered. These could include;

- Ad Placement Networks
- Affiliates
- Alternative Dispute Resolution providers
- Call handling companies

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- Compliance houses
- Sub L1s
- Technical suppliers
- Third Party PIN Providers
- Verification/monitoring businesses

However Members suggest that Registration should be tailored depending on category, and that depending on category, some should be lighter touch with less/no admin fee to pay.

Q20 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.

As mentioned in previous answers, Members feel that an outcomes based Code may still be the best way to regulate our industry. However the current Code is no longer outcomes based as it has many add-ons, in the form of Special Conditions and Guidance. There also appears to be no mechanism in place to assess the impact of Conditions/Guidance implemented and roll back Conditions/Guidance if there is an assessment that shows that there is reason to do so.

Again, we believe that simplicity is an objective in and of itself. Therefore, not only should Conditions/Guidance be assessed regularly but the presumption should be that they are no longer required unless proved otherwise.

Members would also greatly appreciate clarity in the relationship between the Code, Guidance and Special Conditions. Members feel that Guidance can be confusing. Is it Code or not? Members are concerned that this is not clear. Guidance is stated as not being binding but if it is not followed, can be used against a business during any investigation that may occur. Members would find Best Practice more useful as suggestions of ways in which to operate or implement areas of Code.

aimm would again ask that the PSA consider frameworks that are successfully in place in other territories with parity to the UK market.

Q21 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.

Members ask for more detail on timescales of this project which they feel are not yet clear. This should include implementation guidelines and an approach to phased implementation should regulatory changes be sizeable. Once the Code is finalised Members ask for a period of calm - following months of regulatory change – to allow the industry to stabilise and to allow managers of businesses to get back to their day jobs.

Our response has been made constructively, compiled from member input, and enhanced and contextualised by in depth research into regulation within other territories that have parity to the UK market, with the intent of achieving an effective, fair, economical and proportional regulatory regime for phone paid services in the UK. If any clarification to our response is required or if we can be of any further assistance please contact me personally at [REDACTED]

Regards,

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