

1<sup>st</sup> July 2020

Dear PSA,

Donr is a charity donations platform, serving approximately 3,000 UK registered charities. We are directly connected with the UK mobile networks (EE, O2, Three and Vodafone). We have operated Premium Rate Services ("PRS") for over 10 years, through ImpulsePay and latterly, Donr where our focus is expected to be for the lifecycle of code 15.

Over the next 5 years, we are aiming to grow the Text Giving market ten-fold. Just 6 TV appeals accounted for nearly 80% of the total raised by Text Giving in 2019. Our goal with Donr is to make this simple yet effective fundraising mechanic a key tool for the other 200,000 UK registered charities.

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

Recognising the challenges of Covid-19 interrupting the planned timescales, along with a challenging outlook for the remainder of 2020, the approach taken appears pragmatic and the use of smaller workshops on Teams should be encouraged. Timescales should remain flexible, as there remains significant challenges to all participants in the PRS eco-system and whilst there is a desire to implement code 15, it should be recognised there is no urgency to do so with complaints being low, should further extensions be necessary.

A point of disagreement with the approach is the scale and scope of changes appear to be un-costed. Whilst we recognise the need for effective regulation, a recurring theme over previous years is the PSA budget and levy being a source of concern. It is already suggested the levy may double and based on the proposals for code 15, it remains unclear if we would expect the levy to increase further still. Our expectation would be for code 15 to build on the recent success of lowering complaints, by introducing more streamlined processes that build a road map for the levy to stay at 2020 levels.

It would not be unreasonable to expect, due to better use of technology and streamlining the PSA's functions though code 15, that the levy could in fact be decreased as a result of code 15.

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

There appears to be little consideration for the role the FCA should have, with regards to safeguarding funds and protecting consumer interests (particularly in light of the recent Wirecard collapse). In our view, it remains entirely plausible that an L1 provider could enter administration. Should this happen, consumer funds would be in jeopardy from other creditors, meaning for example a charity donation could be used to settle an outstanding HMRC liability during administration, due to debt seniority.

The PSA should be concerned about the risk bankruptcy poses on any party holding consumer funds. If, for example, a sub-L1 or L1 was to go bust then any consumer funds they hold would not legally be required to be paid to the charity – causing consumer issues as their payment has not legally reached the desired party. This example features a charity, but can be applied to any compliant PRS activity.

The FCA should be seen as an enabler of strong safeguards (backed with statutory powers) to ring fence funds correctly. As a side benefit, the FCA can also enable e-money services, allowing PRS to expand beyond the current digital only restrictions.

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

The market assessment talks of 10 year trends but appears to have skipped the changes in the advertising market, such as the near dominance of Facebook and Google for online advertising. Code 15 should align with the realities of operating within these platforms and recognise that a successful code 15 should allow charities to advertise online with confidence.

There also appears to be little recognition to competing payment mechanics such as ApplePay, GooglePay etc. Over the next few years, these will continue to become stronger and the success metric of market growth will depend on PRS staying relevant to charities and businesses, in light of this increased competition.

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

Whilst it is not for us to produce evidence to support your assumptions, it should be noted that charity services had been valued until recently at £100m+ per year due to inaccurate information. Whilst there appears to be no repercussions following the discovery of this error, it should be considered entirely unacceptable that charity services had been miss-handled in this way.

Treating charities as an after-thought appears common, during the recent subscription special conditions the scope was widened to include charity donations after the consultation phase, resulting in charities being forced to accept changes without adequate consultation at the beginning of the process; or justification that change was in fact required.

We would like to see better evidence to support changes to charity services. For example, paragraph 121 references two-factor authentication becoming the norm yet in our experience this is not typical for charity donations. Indeed, NFP Synergy report Text Giving at its highest levels and given the demonstrable lack of complaints, it is hard to envisage what benefit adopting two-factor authentication would give; instead it would raise the cost for consumers and charities.

<https://nfpsynergy.net/blog/number-giving-lowest-level-over-decade>

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

For any research to remain relevant, it should have a maximum shelf life of 18 months. We also note that you have not differentiated between the donation experience and purchasing experience, which are very different. Whilst people inexperienced with fundraising may not understand this, those with experience are acutely aware of the vast differences in approach required.

For example, the research from Jigsaw in 2014 is significantly dated and we have certainly not seen any evidence to suggest consumers are less likely to donate to smaller charities versus bigger one. In fact, often smaller charities have stronger relationships with their supporters which challenges the assumption made in paragraph 168 about consumers generally being more positive when engaging with larger, more well-known brands. In fact, there appears to be little research into the positive use-cases of PRS (for example, charity giving) and only assumptions in how regulation should encourage compliant services.

It is also worth noting that the research is heavily skewed to problem areas such as the subscription research to tackle the special condition changes and there appears to be very little addressing growth and making PRS services relevant again.

We would be happy to undertake research across our client base for the charity sector to help formulate regulation that supports the growth of this sector. This would need to be planned appropriately and sufficient time allocated during the code 15 development process for this to be completed.



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

We disagree with the statement made in paragraph 170 about the reasons consumers are unhappy with PRS services.

One in ten donations now fail due to a PRS bar on a handset (we are happy to provide confidential evidence to support this). This is very frustrating for a consumer attempting to donate to a charity and will result in a call to the MNO to lift the bar, which is a painful experience.

Whilst accepting issues around consent to charge and fraud have largely been resolved via special conditions etc, the PSA will need to address during the lifecycle of code 15 a change in approach that educates consumers to either lift PRS bars or enable MNOs to offer more granular control to temporarily lift a bar to allow a charity donation, to improve the holistic PRS experience for brands and services that code 15 aspires to encourage.

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

It is not our view that code 15 should address sector types. Indeed, charity donations appear to have been missed out from the future analysis and should be included.

We also have great concern that betting and gambling services appear to be classified as ‘blue chip’ given the serious risk of harm these services cause. Whilst society lotteries and incidental lotteries are very much a force for good, it is difficult to see how the pressure tactics and coercive marketing tactics of a betting service is considered beneficial for the PRS industry, especially given the spotlight amongst various MP groups.

Given the PSA’s approach of a blanket change for subscription services, it would not be unreasonable to assume any eventual restriction on betting/ gambling would apply to society lotteries, potentially restricting this area of opportunity, due to the misdemeanours of unrelated gambling service operators.

**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?**

With the advent of e-money services, there should be consideration given to services outside the scope of digital goods and services, which features as part of multiple L1s business development plans.

This is not an area we are able to attribute a financial value to, but will continue to grow as the expectations of “blue chip” companies rarely align with the nuances of the current PRS industry.

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

The assessment framework appears well constructed.

We understand that additional consideration is being given to fixed line based services, and we would also recommend charity donations (and related charity services such as society lotteries) also be considered separately.

A donation to a charity is very different to a game purchase. Charities are regulated by the Charity Commission, the Fundraising Regulator and in the case of a society lottery, also the Gambling Commission. Additional layers of regulation will cause unnecessary bureaucracy for charities.

A separate stance for charities will ensure effective alignment of risk whilst not creating any unnecessary barriers for donating. There is also evidence to support this approach from the recent subscriptions work, that shared a dataset of complaints that showed charities had just two complaints from c. £50m of donations.

A very simplistic example of the benefit for a separate stance is the requirement for charities to register as an L2. Charities are already registered with the Charity Commission, so their registered charity number could replace the PSA service registration entirely, removing a layer of bureaucracy for the charity, without any material impact on the service operation or application of penalties.

It is important to note that registering with the Charity Commission is not trivial, and is significantly more challenging than registering a company with Companies House. Our experience is that it can take many months to register and appoint trustees, and following the various governance requirements once operational is a significant undertaking.

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

A recurring theme of significant cases is the length of time (typically measured in years) that it takes to bring a service to tribunal and effective termination/ remedy. Whilst recognising the majority of serious cases have been operated by companies with malicious intentions [REDACTED]

[REDACTED] it is important to understand how code 15 will prevent bad actors manipulating the code for their gain.

This is a double hit for compliant services, as for example the Veoo case resulted in negative exposure for the PRS industry and an unwarranted change in regulation, affecting companies like Donr despite protests Veoo had been allowed to operate in the first place.

One approach is to put the proposed code 15 through various war gaming scenarios to see how long cases take to reach tribunal. Effective regulation should mean that harmful services are shut down quickly, and as a suggested KPI, if a service causing harm cannot be suspended within 30 days then we would struggle to understand how code 15 is fit for purpose.

As an observation of code 14, the final stages of David Edmonds second tenure as chair is marked by the Veoo case, which concerned illicit activity from one year before the start of his chairing. A more appropriate code 15 should at the least resolve cases classified as serious speedily, not 6+ years.

**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.**

On the face of it parts of the proposed thinking appear rational whilst other parts are contradictory.

We would strongly support a model based on “verification and supervision” of L1s; similar to the FCAs approach for e-money registration. Done correctly, this would prevent and safeguard against a repeat of a Veoo case by the PSA having a deep-seated knowledge of the company and its attitude to PRS services.

However, this approach is contradictory to the suggestion of moving away from a broad outcome based approach. By increasing the transparency and supervision of a service, prescriptive rules can be reduced as the level 1 provider becomes trusted, allowing charity services to innovate as required. If, however, the transparency is used to check compliance to an ever-increasing set of prescriptive rules then it is difficult to see how services can innovate and open up to new areas.

It is our view that detailed prescription is not required and would have no bearing on the services operated by Veoo et al, and that verification and supervision, along with more realistic timescales for service suspension would prevent consumer harm, whilst enabling charities to grow fundraising activities unhindered.

To use an analogy, when someone learns to drive they are tested in depth to ensure they meet a suitable standard. This would be the verification stage under code 15. Once passed, they are allowed to drive as these see fit. Should they exceed the speed limit, they would get penalty points until they lose their license to drive. Within code 15, the supervision role would allow the PSA to check certain activities to ensure the L1 continues to operate PRS services safely. Should a misdemeanour occur, this can be resolved appropriately until a series of problems puts the whole license at risk.

This is different to the code 14 approach of handing over the car keys and only investigating once a car crash has occurred.

**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?**

The PSA should ensure all level 1 providers take full responsibility for services (as the gatekeepers to the market) and operate in a manner that encourages compliant behaviour with deep understanding between the PSA and the L1 provider of the metrics and issues behind individual service types.

The L2 registration should be considered light touch, ideally just using a charity commission number when this is available. The responsibility for the L2 would rest with the L1 and a more in-depth service analysis is handled through the PSAs relationship with the L1.

As an example, registering with the FCA is a 27-page application form and a 3-12 month process (typically 6 months). The Gambling commission is a 16-week process. Once complete, the associated regulator has a good understanding of the service and on-going dialogue is used to monitor activity.

Should an issue occur, various sanctions can be applied, restricting activity on an individual L1 basis to appropriately regulate with soft-options rather than the hammer blows currently employed.

As an example, it would have been clear Veoo had not employed a sufficient approach to compliance early on, which the PSA could have stepped in to prevent further harm until rectified.

This approach envisages wholesale changes to the relationship the PSA has with the L1 community and we would expect significant redeployment of staff to create long term, deep seated relationships with each L1 provider.

There are additional comments on the role of 'Sub L1s' in Q19.

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

It is our view that anecdotal evidence based on code 14 (such as signing up for a subscription without consent) is irrelevant for code 15. The issues of code 14 such as fraud, insufficient consent to charge standards and the inclusion of additional special conditions have fixed issues from previous years and code 15 should focus on the future instead.

Indeed, there is little evidence to suggest that charity services are a cause for concern. If there is cause for concern, our view is the Fundraising Regulator is better suited to monitoring the full spectrum of charity services with the Charity Commission serving as the ultimate back stop, leaving the PSA to focus on the safeguarding activities of the L1.

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

This section is contradictory to the approach raised in ‘Initial Thinking’ (paragraph 193-216). Using a verification and supervision model, the proposed purchase standards are entirely unnecessary as the in-depth relationship with the level 1 provider would give oversight and control over market activity.

If, however the verification and supervision model is not adopted then clearly prescriptive regulation is required, as per the current special conditions. An addition to this for charity services is short code based donations (eg text WATER to 70000 to donate £5). This should remain as is, given there is no justification to move to double opt in. We do not believe that unrelated services which flouted regulation should be considered as evidence for charity services to adopt unnecessary and expensive safeguards.

Should the PSA enter this route then it will require a complex and extensive range of purchasing standards to enable the wide range of PRS services that continues to operate without concern.

As an example, the above short code donation could be advertised at a festival, live streamed online. In this case, should offline or online prescriptive rules apply? What then happens if the festival moves entirely online (as per the Covid-19 responses) but the promoter and audience demographic want to use the offline donation model? When considering an answer, keep in mind that guidance will be interpreted literally by audit houses, meaning the answer must explicitly state any permitted scenarios.

It is worth noting that compliant PRS services have many USPs over rival billing mechanics, which should not be given up due to regulatory challenges of the 14<sup>th</sup> code. The emphasis should be on the regulation and the regulator to get code 15 right for the market, rather than changing the compliant market to fit the constraints of a streamlined code 15 aimed at the bad actors of code 14.

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

Within charity services, we have not seen a requirement or inclination to offer ‘no-quibble’ refunds and would query the logic supporting this. Clearly bogus services offering no-quibble refunds would assist consumers impacted by that service but for legitimate services such as charity donations, consumers are entirely happy with the service. In fact, they often call us to complain when a donation cannot be made due to a service bar. You should therefore conclude that no-quibble refunds are a façade and services requiring this should not be permitted to operate under code 15.

That said, we recognise that ADR can play a role should a complex complaint emerge. With regards to increasing adoption, it currently remains unclear if ADR is an alternative to the tribunal process or operates on an “as well as” basis; along with the role the Fundraising Regulator has in an ADR process.

With regards to data for monitoring the service, under GDPR we have an obligation to store the minimal amount of data necessary. It is therefore more appropriate to understand what data you feel is needed for adoption of code 15 (and our preferred central plank of suspending/resolving serious cases within 30 days), before asking if it is then acceptable for us to collect and pass on this data under GDPR.

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

We are generally supportive of the high-level principles outlined in paragraph 237 but would comment there is a necessary level of detail missing before we can comment on how it would work in practice and would welcome further dialogue during this process to understand the thinking and how charities are expected to fit into this, given the additional regulators covering charity services.

One part we can comment on is the concept of allowing the executive to directly sanction services. There does not appear to be justification as to why the executive is better trained or qualified than the Code Adjudication Panel. The CAP has experience, qualifications and sufficient operational separation to perform this role and our view is that it simply needs to be reconfigured to allow smaller cases to be managed, much like the small claims court is able to fast track cases below a certain threshold.

This separation of duties would support the verification and supervision model and ensure concerns raised by the executive are suitable handled, without questioning the operational integrity of the PSA executive, should a decision be challenged (for example, by a judicial review process).

**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?**

Given no sanctions currently exist and the format for code 15 regulation is still to be decided, it is not possible to give an appropriate list of sanctions at this time.

However, to inform your thinking we believe that should a service produce a complaint ratio above 2% of the total number of service users over 30 days, this service should be paused for new signups (whilst allowing existing subscriptions to continue) until a remedy is found. If the L1 has multiple similar services exceeding this threshold then they should be restricted until the services are at an acceptable level.

This would allow new L1 entrants into the charity market and if services generate negligible complaints, it is allowed to trade further. However, should they attract complaints, then within 30 days they are paused. If they are unable to include sufficient safeguards (which is entirely their prerogative), then there is a pathway to remove them, before generating harm that would impact the remaining providers.

Clearly speed of action is at the heart of this process, and if the PSA is unable to match the necessary speed and depth of service understanding then this would not be an appropriate sanction for code 15.

**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?**

Our view is the funding model needs to be considered in line with the aspirations of code 15. The levy at the current level is clearly sustainable and accepted by the MNOs.

If the discussion around code 15 (when fully costed) results in a lower budget, then a discussion needs to take place about either lowering the levy or best use for the surplus funds.

If the result of code 15 is to materially increase the levy then a revised approach to the levy may be necessary, with substantial consideration and justification given to the benefits of the increased costs.

In our view, a successful outcome of code 15 is for the PSA to become a leaner organisation with deep seated relationships and understanding of the L1 gatekeepers for the PRS industry, by an executive that is well versed and experienced in the nuances of operating in the commercial world of the PRS industry, with a range of smaller sanctions to prevent unwarranted activities.

It should also be noted that the fine collection rates appear to demonstrate that large fines for services are impractical and do little to stop illicit behaviour such as those used by Veoo, Salvatet Inversiones, MobBill (UK) etc. It remains to be seen how the PSA would impose such a fine on a charity, potentially rendering this a moot point for charity services.



**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.**

Within charity services, the role of the Level 1 provider is clear. The role of the Level 2 provider (ie a registered charity) is also clear, albeit registration is somewhat surplus to requirements given they are registered with the charity commission (our view is that the PSA registration requirement should be dropped).

The role of 'sub L1' appears to have been created to bypass full L1 status. Following the money, a donation to a charity should be paid directly to the charity by the L1 rather than to a middle company, as this can create additional safeguarding risks for those funds. If a 'sub L1' was to enter administration, the charity donations would be lost and consumers would rightly be aggrieved.

By safeguarding, we mean that consumer funds are legally protected during transit. This includes storing them in designated bank accounts with third party rights relinquished. Additionally, reporting and reconciliation records need to be sufficiently robust that an appointed agent could step in to facilitate a payment to the appropriate parties, should the regulated party become unresponsive.

To become a true L1 is not an insurmountable obstacle and is largely process driven, based on MNOs requirements. In our view, the role of sub L1 is not required and existing sub L1s should simply undertake the process to become a fully-fledged L1, along with all the safeguarding requirements, security, compliance and capital spending that entails.

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

It should be recognised that code 14 (and to a large part the preceding 13<sup>th</sup> and 12<sup>th</sup> code) has remained largely "future proof" and has enabled the PSA to bring all the issues of the last 5 years under control.

By this logic, the code remains fit for purpose. It should be noted that no code can predict the next 5 years, so it is to be entirely expected that code 15 will reach a point when the PSA of 2025 will want to replace it. Furthermore, the fact there are 14 special conditions is of no concern given 6 of these are largely irrelevant and could be dropped. An outcome based code 15, with special conditions would be entirely suitable in our opinion.

Of concern is the timescale to terminate/ suspend services. The ability for the PSA to swiftly navigate a code breach through the various stages of their code remains somewhat a mystery and we would welcome insight into the challenges faced when trying to suspend a harmful service within 30 days.

Recently "guidance" has been morphed into "guidance" and "best practice". Our consideration is that guidance is not fit for purpose as it is often forgotten about as times move on\*. In our view, guidance should not be prescriptive and should inform the reader about how special conditions and the code can be interpreted, much in the same way as the FCA handbook (<https://www.handbook.fca.org.uk/>).

\* For example, the Promoting Premium Rate Services guidance - 11.1 (bullet 1) - would indicate a charity should state the amount they receive from a donation, even if the charity does not wish to do so. This is out of alignment with donations made by direct debit, card, cash, cheque etc that do not typically state how much a charity would receive, creating additional unnecessary bureaucracy for the charity to follow.



**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.**

Without causing offence, there sometimes appear to be an experience gap between the PSA and the realities of operating charity services. To address this gap, the PSA should consider a person with charity fundraising PRS experience on their board, to navigate and separate the rogue services from the positive, inspirational uses of premium rate charity fundraising that we should be encouraging.

Clearly code 15 is a long-term project, for which implementation should be measured in years. If the PSA elect for wholesale changes then there should be recognition for the time it will take to administer, for which guidance should come from parties such as ourselves and not a timescale created by the PSA arbitrarily.

These comments have been made in good faith and we would welcome the opportunity to discuss in further detail when appropriate. No part of this response is confidential.

It should be noted that since Covid-19, charities have seen their service demand increase significantly, yet their income drop. We have seen first-hand the role that Text Giving has played for many charities during Covid-19 emergency appeals to help replace this income. The green shoots of recovery indicate Text Giving is set to become an important tool for charity fundraisers.

Given the near non-existent level of complaints for charity donation services, the current regulation is working well for both consumers and charities. We understand the need to regulate the wider PRS market, and we hope the PSA share our view that code 15 should protect charity services from the bad actors influencing other areas of PRS that may curtail the growth of PRS fundraising by charities.

Yours Sincerely

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CEO – Donr