

**Statement on guidance  
to support Code 15**

16 February 2022

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## About the PSA

We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.

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).

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

## 1. Introduction

1. In 2019 we embarked on a review of our regulatory framework – the Code of Practice. The Code of Practice (14<sup>th</sup> edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12<sup>th</sup> Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011. This review of the Code is, therefore, the first comprehensive one in more than a decade.
2. As we set out in our [discussion document](#) and [consultation document](#) on the Code, the market we regulate has changed significantly in that period and consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. Our aim was to develop a new Code of Practice (Code 15) more suited for this new market and which meets consumers' expectations. We said we wanted to deliver a Code that:
  - introduces Standards in place of outcomes
  - focuses on the prevention of harm rather than cure
  - is simpler and easier to comply with.
3. While an emphasis on the prevention of harm in the first place should reduce the need for enforcement, we also recognised that any new Code must be underpinned by efficient and effective enforcement.

### The process

4. After setting out our initial approach in a discussion document in February 2020, we formally consulted on our draft Code 15 from April until July 2021. Throughout the development of the draft Code 15 we consulted widely with industry and consumer

advocates holding 15 webinars and numerous one-to-one meetings. Following Ofcom's approval, [we published our final statement and new Code 15 on 20 October 2021](#).

5. On 27 October 2021 we published a [consultation](#) on guidance to support compliance with Code 15.

### About this document

6. This document is the statement following the formal consultation on the guidance we are publishing to support compliance with Code 15. This document sets out our final decision on Code 15 guidance.

## 2. Our approach to Code 15 guidance

### What we said in the Code 15 Consultation

7. In our Code 15 consultation document we set out our proposed regulatory approach to continue to provide guidance to set out the PSA's expectations and provide more detail on how phone-paid services providers can comply with the Standards and Requirements in Code 15.
8. We said that while the guidance will not be binding on providers, we will take into account whether or not providers have followed the guidance in considering any alleged breach of the Code and/or the imposition of sanctions. This would mean that attempting to follow guidance could be a mitigating factor; however, conversely, failure to follow guidance may amount to an aggravating factor. However, we also said that we would consider the extent to which providers have attempted to comply with the Code by using methods other than those set out in the guidance, and/or the extent to which providers have engaged with us as part of developing any such alternative methods.

### What we said in the Code 15 statement

9. In our Code 15 final statement we noted that [a number of respondents](#) to our consultation had highlighted some areas where potential guidance may be helpful. These included:
  - our approach to supervision; greater emphasis on the enablement of services, including concise regulatory wording which could be followed by charities with little to no familiarity of how phone-paid services work
  - a sector specific guide for the charity sector
  - DDRAC and guidance on 087, 118 and 09 number services
  - registration requirements and costs
  - ICSS.

We also noted that one respondent argued that all areas would benefit from guidance.

10. In response to these points, we noted that we will be publishing more information about our approach to supervision and our Procedures during the implementation period. We

also noted that we will be refreshing our registration help notes in light of the new Code 15 registration requirements and issuing a revised data retention notice.

11. While we noted the desire for sector specific guidance, especially around charities and ICSS, we were not of the view that full guidance is needed.
12. We explained that the purpose of the new Code is to provide as much clarity and certainty within the Code as possible. We said that we saw guidance under the new Code being targeted in areas where additional clarity and certainty are necessary. We also said that it was important to be clear that the primary purpose of guidance is to support compliance with the Code and does not add anything more to the Code.

### **Our approach to Code 15 guidance**

13. One of the objectives of Code 15 is to make the Code simpler and easier to comply with. Code 14 was supported by over 20 pieces of guidance; because we have introduced Standards and reduced regulatory uncertainty there is now far less need for guidance from the PSA. Under Code 15 we intend to only provide guidance where we think there is a need for further clarity to assist providers to comply with Code 15 Standards and Requirements.
14. The guidance we have published will be available to download from the PSA website as standalone documents and wherever possible integrated into the [digital version of the Code](#).

## **3. Code 15 Guidance**

### **Introduction**

15. We consulted on the following pieces of guidance:
  - Transparency Standard guidance (which covers content on promoting phone-paid services)
  - Fairness Standard guidance (which includes content on excessive spending which was previously covered in the enabling consumer spend control and some aspects of the previous consent to charge and payment platform security guidance)
  - Customer care Standard guidance
  - Vulnerable consumers Standard guidance
  - Due Diligence, Risk Assessment and Control on clients (DDRAC) guidance
  - Systems Standard guidance (which includes content from the previous consent to charge and payment platform security guidance)
  - Service-specific Requirement for competition services – relating to Requirement 3.13.3
16. We received [feedback from industry stakeholders on each of these pieces of guidance](#) and the following sections set out, what stakeholders said to us, our assessment of these inputs

and our final decision. The final guidance notes are not replicated within this document, but hyperlinks are provided to where these can be found on the PSA website.

17. As part of this consultation, we also received feedback from stakeholders on a range of issues not directly related to the guidance we were consulting on, often related to issues to which we have already responded to in our statement on Code 15. We do not intend to repeat all these discussions in this document which will focus on the comments relating specifically to the proposed guidance notes, our response to these and our final decision in relation to this consultation.
18. Some respondents also made suggestions around how they might comply with the Code and asking for clarity around whether their suggested approach would be acceptable. We are happy to pick these points up directly with individual providers as opposed to within this document. We are always happy to engage with providers directly with any compliance query they may have and encourage providers to get in touch with us via [compliance@psauthority.org.uk](mailto:compliance@psauthority.org.uk).

## Transparency Standard guidance

### Stakeholder comments

#### Network operators

19. **BT** largely supported the expectations set out in the guidance but wanted greater clarity in some areas. They noted that the guidance suggests that the use of the oblique stroke will always be considered to be unclear, even if paired with a clear description of the frequency of - or mechanics for - billing. They said they felt sure this was not the intention where use of shorthand methods of communication enhance rather than detract from consumer comprehension and asked for greater clarity on this.
20. They also asked that, in light of the risk of consumer harm caused by ICSS, the guidance should reinforce the clarity and transparency Requirements set out in paragraph 3.2.2 (a) of the Code. They suggested that the guidance be re-worded to: "... the vast majority of ICSS connect consumers to other organisations, therefore a recorded alert upon connection to the ICSS must clearly state the cost for continuing the call and being connected....".
21. **Telecom 2** said that the guidance was helpful but noted that in the suggested examples of pricing information there was no suggested wording for hybrid services, i.e. those that are charged on a pence per call basis followed by a pence per minute.

#### Intermediaries

22. **Donr** said that the guidance appeared to largely overlook charities. They said that the list of pricing wording examples should contain donation focused examples and that specific reference to recurring donation services should be made in subscription example. They also suggested including a suitable example for society lotteries and examples for peer-to-

peer fundraisers. They said that their preference would be for the examples to include all aspects required in Code Requirement 3.2.2 rather than just pricing statements.

23. They said that while the pricing section is useful for web-based scenarios, it does miss out offline scenarios, for example if a fundraiser put a text donation mechanic on a running vest and that a literal reading of the guidance would suggest this approach is not permitted. They also said that further consideration needed to be given to phone-paid services being displayed out of context, for example a *I'm a Celebrity... get me out of here!* contestant being shown in a press article or charity supporters engaging with a cause on social media making it difficult to police the exact wording supporters use.
24. They noted that method of exit phrases that contain the word "STOP" can easily be identified at scale, but more ambiguous statements need to be manually reviewed. They noted what they felt to be a disconnect between the range of wording permitted for the STOP command and seemingly, a simple "SKIP" term. They suggested that if a message contains the word "SKIP" or "STOP" then this should be sufficient. They also noted that the guidance did not appear to cover recurring donations to multiple charities on the same short code. They said it would be useful to rollover section 3.2 from the method of exit guidance to the new transparency standard guidance, to ensure these remain in place.
25. **Fonix** agreed that the guidance was clear.
26. **Mobile Commerce and Other Media Ltd** said they felt that some of the guidance could be condensed and included in the Code, for example guidance on what is meant by prominent and proximate. They said that the guidance on the wording of pricing information was extremely limiting and that the restrictions suggested in the guidance could result in longer or a bigger volume of messages being sent to consumers. They felt that the use of p/w, p/m, p/min are acceptable abbreviations within society and should be allowed. They agreed that it is harder to provide clear pricing information where network access charges are used, but as these service specific types are carried out by voice then recorded messages would effectively perform this function.
27. They felt that some of the colours the guidance suggests should not be used are in fact often used by people with dyslexia. They felt the guidance around ICSS was extremely worrying as it would mean ICSS providers are required to provide the main element of their service for free, i.e. providing the details of the contacts website, which would lead to the services no longer being used. They agreed that it is paramount that clear pricing information is provided but that giving the consumer the information for free, prior to the service being used should not be acceptable. They were also of the view that any service specific requirements should be contained in service-specific guidance.
28. They felt that the paragraph around non-phone-paid electronic communications and receipting for mobile network customers was not needed. They noted that the industry uses the STOP command as standard and said that the PSA should promote its use.
29. **Customer Calls Ltd** said that they felt the suggestion that pricing information should be 'ideally the same or a comparable size font' to the call to action was unhelpful and pointed out that for ICSS there is limited room above the page fold on a mobile device. They felt

that the guidance given in the preceding paragraph that pricing information should be 'presented in a font size that does not require close examination by a reader with average eyesight' was clear and readily understood. They said that mandating font size for pricing information reduces the scope of PRS design.

30. They also said that the guidance document does not make it clear how the Code Requirement 3.2.2(c) will apply to voice-based services and that guidance should make it clear that for voice-based services this information requirement is not applicable or is limited to add-on or connected purchases made by PRS rather than the cost of the phone call itself.

#### Trade associations

31. *aimm* said that the guidance was generally helpful but felt that the guidance around pricing was skewed towards web-based services and that broadcast or charity services do not appear to have been considered. They said that charity members sought reassurance that they are not expected to place the price of placing a vote, making a competition entry or giving a donation ahead of the call to action. They also noted that within the table of pricing examples there might be a requirement for standard network rate messages to be included in some subscription types. They also requested clarity on whether the use of the word "bold" referred to font type or whether it refers to making something "stand out".
32. In relation to methods of exit, they noted that members receive all sorts of messages into shortcodes and that responding to all possible variations sent in is impossible and noted that instructions to consumers about how to submit a legitimate cancellation are very clear. They said that some providers are able to send an alternative bounce-back when a message is received into a service that does not fit any of the automated parameters and this could potentially be used to provide consumers with correct instructions.

#### Broadcasters

33. *BBC Children in Need* agreed that the guidance was helpful and effective in supporting compliance with the Standard.

#### PSA assessment of inputs received

34. Regarding the feedback that Transparency guidance should reinforce Requirement 3.2.2(a) and state that ICSS should have pricing on connection, we do not believe this is necessary as pricing on connection does not correlate with 3.2.2(a) which is about providing a clear description of the service on offer. In our view, Requirement 3.2.10 of the Code sets out clearly that voice services which connect consumers to other organisations should state the cost of continuing the call, including information about access charges before onward connection. We think sufficient examples of how to comply with the Requirements are provided. The PSA does not consider it appropriate to replace "should" with "must" as this language is not appropriate for guidance.
35. We do not agree with the suggestion that the proposed guidance is limiting for SMS services due to character restrictions. PSA expectations have not changed in this respect,



we recognise that an SMS has limited character spaces, however, we believe there should always be ample space to present pricing information clearly.

36. Regarding use of shorthand terms, we are of the view that certain shorthand terms are not clear enough and this view has not changed i.e., “£1/m” or “£1/w” is not clear. This does not mean that the use of the oblique stroke will always be considered as unclear. The lists of examples in Transparency guidance are not exhaustive, they are there as a guide to help providers produce promotions with very clear key information. If providers wish to use shorthand but are unsure whether they are satisfying Transparency Requirements they can and should seek compliance advice.
37. We do not agree that guidance on what constitutes prominent and proximate is skewed towards web-based services. It focuses on the call to action which all types of phone-paid services must have in order for consumers to engage and consume services i.e., “text DONATE to...” “reply YES”, “Call now”, “buy now” are all calls to action and it is our view that the proposed guidance can easily be applied to all service types.
38. We acknowledge that standard rate message charges may apply to subscription services, therefore we agree with the suggestion and have amended the wording of the example to include this.
39. Regarding the feedback received on the clarity of the wording used in the proposed Transparency guidance, more specifically whether the use of the term “bold” is intended to be prescriptive and means that the bold font must be used, or if it simply means that the information should stand out, we can confirm that the intended use of the term “bold” is that pricing information should be presented boldly so that it cannot be missed, rather than a specific reference to any particular font, or bolding of any font. We have amended the wording to reflect this intention. Providers will continue to be free to design their promotional material with any font types they choose providing the Requirements of the Code are met.
40. In terms of the requests to include in the guidance more examples of pricing information for various different service types, as mentioned earlier in this section the purpose of guidance is to support and enable compliance rather than provide templates and prescriptive wording for all eventualities. However, based on this feedback we have added two more examples – one specific to charitable donations and one specific to “hybrid” tariffs that include a per call and per minute service charge. This should help to provide more clarity for those operating such services and tariffs. We think this is sufficiently clear without having to provide examples for other services such as society lotteries or peer to peer donations as suggested. Providing further examples would increase the length of the guidance and potentially make it over complicated and unhelpful. We have received feedback about guidance being too long and therefore we have tried to keep it as clear and concise as possible. We would again remind providers that if after reading guidance they are still uncertain about how to word pricing information then compliance advice can and should be sought.
41. We do not agree with the suggestion that Transparency guidance should include example wording for all elements of Requirement 3.2.2. Doing so would make guidance very long

and overly complex which is contrary to other feedback we have received. It is our view that the wording of Requirement 3.2.2. is sufficiently clear and does not require examples.

42. In terms of feedback which suggests that the examples do not address offline promotions such as calls to action on running vests, vests of contestants on TV shows or viral/social media promotions, we do not agree. In our view, the examples of pricing information can be easily applied to any service type and promotion type particularly with the amendments highlighted in paragraph 40 above. We do not believe it is appropriate to provide very niche or overly specific examples in general guidance, given that compliance advice can and should be requested for very specific scenarios.
43. We agree with the feedback regarding references to font size being comparable to the size of the call to action – our intention here was to emphasise that pricing prominence should be considered in comparison to the prominence of the call to action. For example, pricing information could be displayed boldly, in a standout colour and in close proximity to the call to action but if the call to action is a big flashing button this may reduce the prominence and result in consumers missing this key piece of information. We have amended the wording to reflect this and provide clarity.
44. We note the comments that the draft guidance doesn't make it clear how providers of voice-based services can comply with Requirement 3.2.2(c). We also received feedback on this Requirement during stakeholder meetings and following the recent industry webinar on Standards. Those stakeholders commented that guidance should explain what is expected in terms of informing consumers that the charge for a service will be added to the consumer's phone account particularly for voice-based and text-based services. We have considered this feedback and amended the Transparency Standard guidance to include clarification on how providers can meet the Requirement. This includes confirmation that prominent, clear, legible, visible and proximate pricing information which includes a reference to the standard network or access charge is sufficient to inform consumers of voice-based and text message-based services that a charge will be added to their phone bill.
45. We disagree with the feedback that it is worrying that ICSS promotions should advise consumers that the organisation they are seeking can be contacted directly for no or lower cost and providing a link to the homepage. ICSS providers should already be familiar with the need to advise consumers of this information as it is currently required by special conditions under Code 14. ICSS carry an increased risk of consumer harm due to the very nature of the service type, and as evidenced by several recent adjudications of ICSS that have been found to be in breach of the Code, therefore it is essential that ICSS promotions are as transparent as possible.
46. A couple of respondents suggested that service-specific guidance is necessary particularly for ICSS - we disagree with this suggestion. We have incorporated some of the Code 14 ICSS special conditions into Code 15 itself which underlines the importance we place on the issues associated with ICSS. In our view the Requirements are sufficiently clear and do not require further specific guidance. As we have previously set out in the Code 15 Statement, our approach to guidance is that it is aligned with the Standards, and we have

included service specific examples in the guidance where we believe it is appropriate and useful to do so.

47. In terms of the feedback received on the use of colour within promotional material and consideration of colour blindness and how this may be discriminatory for dyslexic consumers, it is not the PSA's intention to produce guidance that discriminates against any consumers. It is important that providers do consider the use of colour, fonts and general presentation of pricing and key information with regard to accessibility for all consumers. Importance should be placed on ensuring there is sufficient contrast between backgrounds and the information itself, and care should be taken to ensure that colour combinations do not adversely affect the clarity of the price, so as to ensure it is prominent for all consumers. We have therefore amended the guidance to reflect this and emphasise the need for sufficient contrast levels between backgrounds and text. We have also highlighted that providers should in general consider the accessibility of their promotions and services.
48. We disagree with the suggestion that receipting guidance is not needed, and this is based on feedback we received during the Code consultation period. We think it is important to set out that confirmation and service messages can also act as receipts where they are capable of doing so by containing all the information listed in Code Requirement 3.2.14.
49. Regarding the feedback received on method of exit, we recognise in the draft guidance that the STOP method is well understood by consumers and the most commonly used method of exit for phone-paid subscriptions. However, other methods may also be appropriate and more accessible for consumers depending on how a service is opted into and consumed, and the guidance seeks to clarify this.
50. In terms of the concerns raised about providers' mechanisms being set up to recognise any wording sent in by a consumer that suggests they are trying to exit a service; we understand that this may not always be possible and may involve considerable manual checking of messages which may be disproportionate to the risk given that the Code requires instructions on how to exit services to be clear and easily accessible. Therefore, we have removed this suggestion from the guidance, however, all versions of "STOP" should still be recognised, i.e., upper and lower case.
51. We agree with the suggestion that paragraph 3.2 from the existing [Code 14 'method of exit' guidance](#) should be included in the Transparency Standard guidance as this advises on how services can be exited where a shared mobile shortcode is used i.e. the 'STOP ALL' function. We have amended the Transparency Standard guidance to include this.

### **Final decision**

52. We have decided to proceed with the Transparency Standard guidance with the following amendments:
  - minor amendments to improve clarity on what constitutes prominent and proximate pricing
  - added example wording of pricing information for charitable donations and hybrid tariffs that charge on a per call and per minute basis

- added “plus standard network charge where applicable” to example pricing wording for subscription services
- amended the ‘presentation of pricing’ section to clarify that the presentation of pricing information must be clear and prominent in comparison to the call to action rather than equal size, added that there must be sufficient contrast between background and text and included a recommendation that providers generally consider the accessibility of their services when designing promotions
- clarified that operator billing/online services should include a statement which confirms to consumers that charges will be added to the consumers phone account and that pricing information alone would not be sufficient
- clarified that clear pricing information (which requires reference to the standard network/phone company access charge) is sufficient enough information to inform consumers that charges will be added to their phone accounts for voice-based and text-based services
- under ‘method of exit’ removed the recommendation that any exit trigger words are recognised and responded to and included guidance on use of STOP ALL for shared shortcodes.

## Fairness Standard guidance

### Stakeholder comments

#### Network operators

53. **BT** said they would welcome greater clarity in the guidance to ensure that ICSS consumers are better protected and that regulatory interventions are proportionate to the roles played by each participant in the value chain. They suggested that the general guidance for Code Requirement 3.3.2 should not use an ICSS based example but that the PSA should develop ICSS specific guidance demonstrating how such providers might comply with Code Requirements 3.2.3, 3.3.2 and 3.3.3.
54. They said they were concerned that the guidance around excessive use was overly paternalistic and would introduce unwanted friction which was likely to be particularly frustrating where engagement with services is time sensitive. They also said that the proposals in the guidance would load costs into the premium rate value chain, without reducing excessive use or avoiding bill shock. They were of this view because the guidance allows for consumers to use premium rate services - even after problematic usage has been identified - provided they are not billed until such time as they acknowledge their usage and spend levels. They said that this would require network operators to make substantial and costly changes to systems, processes and billing platforms. They also felt that this sort of approach could be easily “gamed” to reduce spend while still allowing (particularly vulnerable users) to engage in potentially impulsive or harmful consumption patterns.
55. They said that the requirement to contact consumers within 48 hours would require merchants to invest in new systems and processes to provide out of hours data analysis and

customer support. They felt that it would be simpler, more efficient, and less intrusive if the PSA's vulnerable consumer guidance were updated to include a specific requirement that providers devise policies, procedures, and risk controls (appropriate and relative to their role in the value chain) to mitigate excessive use that could cause or aggravate consumer vulnerabilities. They felt that maintaining separate guidance for excessive use and vulnerable customers is overly complicated and risks regulatory confusion.

56. **Telecom 2** said that while the guidance was helpful, they had some concerns, mainly around excessive usage. They did not agree that using the modal method for calculating standard usage was appropriate, especially for voting and competitions or other per cent per call services. They said that "one size fits all" rarely works and that it would be better to allow providers to set limits for excessive use. They also noted PSR2 already sets a cap for consumer spend. They also said that the requirements for notifying consumers of excess usage are not practical. They said that it would not be possible in many cases to meet the 48-hour deadline and that often when trying to contact consumers it takes several attempts over several days and when reached some think it's a scam and refuse to engage. They also noted that some consumers withhold their calling line identifier (CLI), making it impossible to make contact. They said that they would like to see a longer, more realistic, deadline, set in working days, for contacting consumers and then only for an initial attempt to contact consumers where contact details are available.
57. They also said that they did not understand why records of attempts to contact consumers should be recorded and maintained by a third party and were concerned about the cost and data protection implications. They also felt that the requirement to contact consumers conflicted with the Privacy Standard. They also said that in relation to the guidance around not billing consumers prior to their being contacted about excessive usage this was not possible as billing is entirely within the control of consumers' phone providers. They were also concerned that barring access to services would be discriminatory.

#### Intermediaries

58. **Donr** said that the guidance had little to offer for charities and questioned, what they saw as a focus on ICSS. They said that the guidance should be aligned with the Fundraising Regulators code and could contain a statement that references meeting the Fundraising Regulators code satisfies Code 15 requirements, or if there are any areas of divergence then the PSA should explain their expectations in greater detail.
59. They said that the section on excessive use was operationally challenging for charities and did not believe the suggested approach of providing specific metrics to gauge excessive use will work in a diverse field of service types – such as competitions, voting, gambling, psychic services, e-commerce, app stores and charity donations. They said that an alternative approach is to ensure that a suitable risk assessment has been performed for the service type, which is able to take into account factors such as audience type, time of year, historical activity, vulnerabilities and user experience.
60. **Fonix** said that the introduction of excessive spending controls was not clear in terms of the measurement of excessive. They felt that individual organisations should be responsible for determining their own profile of excessive use and associated risk assessment and that

blocking users based on a modal average would lead to consumer complaints. They also said that the proposed timeline of 48 hours to implement blocks on services could lead to extreme consumer frustration and complaints particularly over a weekend when customer care may not be available. They said that they already receive complaints from consumers who have been blocked from interacting with a service when they have hit spend limits set by the consumer with their MNO. They strongly believed that there are sufficient measures already in place to protect consumers and allow consumers to control their spend.

61. They did not agree with the introduction of a modal method and were deeply concerned that the modal average will falsely flag up a large number of potential examples of excessive use, for instance, a charity event may well see the majority of participants donating once to the campaign, as one would expect. This then means that the modal average will be one, and as such any donations over two could be potentially seen as excessive.
62. **Mobile Commerce and Other Media Ltd** felt the length of the guidance did not make compliance with the Code easier or simpler and felt it would be easier if “prompt(ly)” was defined in the Code. They said that the guidance on excessive use appeared to contradict itself by recommending using “100% higher than the modal average may be considered potentially excessive” and then saying that it can vary and (in footnotes) that it may not be the best method. They noted the existence of spend limits in EU law and that all UK networks have spend limits in place. They said that the requirement would result in more messages to the end user. They said that the data retention notice should have been published with the Code or within the guidance consultation. They felt that the suggestion that the PSA should be given access to a merchant’s platform was ludicrous and demonstrated a lack of trust by the PSA and does not take into account data protection issues since the provider could be releasing information and personal data to a third party that has not been agreed by the data subject.
63. **Customer Calls Ltd** said that the recommendation within guidance around excessive use that providers should not offer access to the service until a user has acknowledged their usage and associated spend, should not apply to all PRS. They said that this would constitute over-regulation if applied to ICSS since in their view there is no addictive or compulsive aspect to using ICSS.

#### Trade associations

64. **Aimm** agreed that the Fairness guidance was generally helpful but raised a number of concerns. In relation to excessive use, they felt that what they saw as a “one size fits all” approach did not work and that individual businesses should be responsible for determining their own profile of excessive use and associated risk assessment, within the already detailed PSR17 regulation. They felt that the PSD2/PSR regulations already cover this area and so it was not necessary for the PSA to develop detailed guidance. They also noted that controls such as spend levels and limits are already in place. They suggested that the PSA should retain guidance for businesses outside of PSR17 regulation.

65. They did not agree with the proposed modal method of assessing average use or spend and felt that it would falsely flag up a large number of potential examples of excessive use.
66. They noted that some providers already use spend reminders and limits effectively and wanted clarity that they would not need to abandon these tried and tested methods. They were also very concerned about the "no later than 48 hours" deadline proposed and the suggestion that providers should not continue to bill users/offer access to services until the user has acknowledged their usage. They said that this is a huge undertaking and not achievable. They were also concerned that there may be consumer harm caused and increased complaints that arise from automatically barring users from accessing a service.
67. They also sought reassurance that multi-factor authentication would not be required for charity services that do not fall under the recurring donation or society lottery headings and asked for clarity on how long consent to charge records should be kept for. They said that cost and resources needed for the data storage proposed was prohibitive and they were also concerned about GDPR implications.
68. They also said that the suggestion that the PSA may need direct access to systems goes beyond the powers set out Code 15 Section 4 which requires reports, not direct system access. They said that it was not possible to store data for an indeterminate amount of time and sought assurance that providers would not be penalised where data had been stored for a reasonable amount of time but deleted prior to a request from the PSA.

#### Broadcasters

69. **BBC Children in Need** said that the method set out for establishing excessive use could falsely flag excessive use for those choosing to donate twice, which is not uncommon. They also said that the proposed deadline of 48 hours for alerting users (not by receipting) is not feasible and felt that the proposal to "not continue to bill the user or offer access to the service until the user has acknowledged their usage and associated spend level to the provider directly" is prohibitive and automatically barring supporters would generate complaints. They also expressed concern about the GDPR and resource implications of maintaining a separate list of high-use individuals.
70. They also said that implementing multi-factor authentication for recurring donations would be prohibitive and sought clarity over how long evidence of consumers' consent to charge data should be kept.
71. **Channel 4** disagreed with the proposed modal method of assessing average use or spend as across a campaign the modal average could be one donation and anything over two would potentially be seen as excessive. They suggested that individual organisations should be responsible for undertaking their own risk assessments and determining what they would deem to be excessive use.

#### Others

72. **A confidential respondent** said that it thinks the "one size fits all" modal average approach was not the most appropriate method for identifying harm to consumers due to excessive

use and that this method would easily falsely flag a large number of potential examples of excessive use.

73. They also sought clarity over how long consumer consent to charge records need to be kept for.

#### **PSA assessment of input received**

74. Multiple respondents expressed concerns around the use of the modal average for calculating excessive use, stating that this approach does not work for all service types particularly voting, competitions and charitable donations. We are slightly surprised by this feedback since the recommendation around modal average has been contained within PSA guidance for a number of years and we have not heard these concerns from stakeholders previously. The proposed guidance also explicitly recognises that the modal average may not always be the most suitable method of establishing average spend and states that what may constitute excessive or problematic levels of service use can vary depending on the service type and context in which the service operates and includes some examples where this might be the case.
75. One respondent suggested an alternative approach which is to ensure that a suitable risk assessment has been performed for the service type, which is able to consider factors such as audience type, time of year, historical activity, vulnerabilities and user experience guidance on excessive use. This is exactly the sort of approach which we would expect providers to take as these would all be relevant factors for “taking the service type into account”.
76. Some respondents highlighted the existence of spend limits from other payment regulations and suggested that because of this those services should be exempted from the excessive use elements of the guidance. We do not agree with this approach as the guidance is to aid compliance with the Code Requirement 3.3.5 which applies to all phone-paid services. The spend limits in the Payment Services Regulations 2017 (PSR 2017) serve a different purpose – they are the limits of the exemption from the full requirements of PSR 2017 which allows phone-paid services to operate without being subject to full financial services regulation through the PSR 2017.
77. We also received extensive feedback that the recommendation to contact consumers about identified excessive use within 48 hours was not achievable and we have amended the guidance to state that consumers should be contacted as soon as reasonably possible and, in any event, no later than five working days.
78. We do not agree with the suggestion that excessive use should be included in the Vulnerable consumers Standard guidance. While we recognise that excessive use may often be linked to vulnerability, it may not always be the case and we think it is better to align all guidance material to the Standards to which they relate.
79. We note the comments made in relation to not billing consumers and potentially barring access to services until consumers have acknowledged their potentially excessive use and we have amended the guidance to make clear that barring access to services should take



place only once attempts have been made to contact the consumer and there has been no response

80. As noted in paragraph 46 above, we do not agree that we should develop specific guidance for ICSS. In our view, the Requirements are clear and underline the importance we place on the issues associated with the service type, specifically the potential to mislead through perceived “passing off” and potential lack of an accurate description of the service. Nor do we agree that the Fairness guidance focusses too much on ICSS; we believe that the inclusion of the ICSS examples provides the right balance given the potential for ICSS to mislead.
81. We note the comments that, to be useful for charities, the guidance should be aligned with the Fundraising Regulator’s code and could contain a statement that meeting the Fundraising Regulator’s Code satisfies Code 15 Requirements. We do not agree as it would not be appropriate for the PSA to make such statements about compliance with another regulator’s Code since we can only determine if providers are compliant with our own Code, not the Codes of other regulators.
82. We note the comments around the cost of implementing multi-factor authentication and need for clarity over whether this will apply to non-recurring donations but note that these are not new Requirements for subscriptions, recurring donations, society lotteries and online adult and online competition services. Multi-factor authentication has (via special conditions) been required for recurring donations since 2019. Multi-factor authentication would only apply to non-recurring donations where the service is accessed fully or in part via an online gateway. [Requirement 3.3.7 of the Code](#) sets out clearly the circumstances where multi-factor authentication applies.
83. We note the various concerns and questions raised around the data protection implications of storing data and providing the PSA with access to systems and data. The [data retention notice](#) clearly sets out the timescales for retaining data. Providers should not be concerned that they may be breaching data protection laws as these do not affect a phone-payment provider’s ability to provide PSA with personal data when requested under the Code. Article 6(1)(c) of the GDPR provides a lawful basis for processing personal data where “processing is necessary for compliance with a legal obligation to which the controller is subject”.
84. We also do not accept the view that the approach the guidance sets out regarding contacting customers about excessive use contradicts the Privacy Standard as we would expect that consent to being contacted (as required in that Standard) by a provider in respect of services being provided to consumers would have been sought and given by consumers on signing up or subscribing to the services. In addition, Code Requirement 3.6.2 clearly states that consumers must not be contacted “unless otherwise permitted by law” and both the GDPR and the Privacy and Electronic Communications (EC Directive)

Regulations 2003 provide lawful bases for contacting consumers, which would in our view extend to informing them of any excessive use.

## Final decision

85. We have decided to proceed with the Fairness Standard guidance with the following amendments:

- we have moved the footnote in relation to the modal average and contacting the PSA for further advice into the main body of the guidance
- we have amended the guidance around the timescales for contacting consumers regarding their excessive use and changed the recommendation from 48 hours to within five days
- we have amended the guidance around barring access to services for consumers who have not acknowledged their excessive use to make clear that this should only occur after attempts have been made to contact the consumer to which no response has been received.

## Customer care Standard guidance

### Stakeholder comments

Network operators

86. **BT** was broadly supportive of the proposed guidance.

87. **Telecom 2** said that they were happy with this guidance and in particular the section detailing what should be included in customer care, complaint and refund policies.

Intermediaries

88. **Donr** said that the guidance was confusing as the Code (Code Requirement 3.4.1) says that calls to helplines should be at no cost but the guidance suggests these can be at low or no cost and said that the guidance should set out a detailed view of how to meet this requirement.

89. **Fonix** said the guidance on customer care was clear.

90. **Mobile Commerce and Other Media Ltd** said that they found it strange that there was no requirement for customer care details to be updated with the PSA on a regular basis and for the PSA to ensure that the information on the service checker is up to date and easily accessible for consumers. They were also surprised by the requirements for the merchant provider to tell consumers about the PSA, their role and how to complain to the PSA since the PSA is not an ombudsman and cannot deal with individual complaints. They said that suggesting that a firm's complaints handling policy must include details of how the consumer can complain to the PSA is factually incorrect and should be removed from the guidance.

91. They also highlighted a discrepancy in the guidance which stated that “the full response should be sent within five working days (Code Requirement 3.4.4)”, whereas the Code states, “must respond to consumers who contact them promptly and in any event within five working days” and noted that a full response can take longer than the five days.
92. They also said that it was not always possible to have a consumer agreeing to a refund method since the merchant may not offer the refund method requested or the expectations of a consumer may be out of the control of the merchant. They suggested that the guidance should be amended to “where reasonably and commercially possible”.
93. **Customer Calls Ltd** highlighted a couple of Code Requirements which they felt would benefit from greater guidance. In relation to Code Requirement 3.4.8 they said that the guidance should say what types of information the PSA might request. In relation to refunds, they felt that clarity should be provided in guidance that any refund issued by the PRS provider does not include the relevant access charge. They believed that the issue of access charges has not been properly addressed in the guidance and the Code and did not think that was fair and reasonable for merchant providers to be required to refund network providers’ access charges.

#### Trade associations

94. **aimm** said its members were generally satisfied with the Customer care guidance but said that some of its members did not feel that it was appropriate to classify every query as a complaint as this would give a false picture of consumer satisfaction and drive up costs.
95. They said that mobile network operators agreed that ideally the consumer should have to make as few calls as possible to achieve redress. They went on to say that mobile network operators may be able to publish the expected hours of operation of the primary support provider (as per Code Requirement 3.4.2) but all businesses are entitled to use other routes to support high demand or out of hours support and it would be an impossible task to expect all of this information to be available.
96. They also requested clarity over whether calls to customer care helplines should be free or low-cost as the position set out in the Code and guidance appeared to vary.

#### Broadcasters

97. **BBC Children in Need** agreed that the guidance was helpful and effective.

#### PSA assessment of inputs received

98. In terms of the discrepancy noted between Code Requirement 3.4.1 and the proposed guidance around the cost of customer service helplines, this arose due to an error in the published web version of Code 15 and we are grateful to stakeholders for bringing this to our attention. We are happy to confirm that the Requirement is that “consumer enquiries and complaints are responded to and resolved promptly, easily and fairly, at no more than basic rate cost to the consumer”. The proposed guidance stated at “no more than basic rate” and we have amended the guidance to confirm what is meant by basic rate for ultimate clarity, i.e., that basic rate means costing no more than a UK geographic call.

99. We do not think that it is necessary to specify in this guidance note that customer care details on the PSA service checker should be kept up to date. This is covered clearly under the Organisation and service information Requirement 3.8.6 and does not need repeating.
100. Regarding the feedback around advising consumers about the PSA in customer care policies, this is a current requirement of Code 14 (paragraph 2.6.5) and we remain of the view that this is useful to do where a consumer believes they have a complaint or concerns regarding the compliance of any service. Regarding the comment that there is a discrepancy between the wording of Code Requirement 3.4.4 and the proposed guidance in relation to customer care response times we accept that resolution of consumer complaints can take longer than five days. To improve clarity and avoid any potential confusion about this, we have removed references to “full” from the guidance in relation to the response required. We believe the guidance remains clear an automatic acknowledgement does not constitute a response and is merely an acknowledgement of receipt which sets consumer expectations about when they should expect a response (whether initial or full).
101. We do not believe it is necessary to amend the guidance to include “where reasonably and commercially possible” regarding refund methods. The guidance makes it clear that providers can offer their preferred refund methods and covers the methods most commonly used in the market. We therefore think it clear that providers are within their right to refuse any unreasonable requests and instead offer one of the commonly used refund methods as listed.
102. Regarding the comments received about refunds and access charges – in our view it is not appropriate to cover this in Code 15 guidance. Under the Code providers are required to refund consumers in full where there is a valid claim. As addressed in paragraph 372 of the [Code 15 statement](#), the PSA does not have the power to require network operators to refund access charges, this is a matter for Ofcom. We do not agree that it is unreasonable to expect merchants to provide full refunds as the consumer would not have incurred any access charge if they had not used the PRS.
103. We do not believe it is necessary to provide guidance on Code Requirement 3.4.8. which requires intermediary and merchant providers to supply the PSA with all information that allows examination of how they have handled any customer care upon request. In our view, the Requirement is clear that all relevant information should be provided, and this would be requested on a case-by-case basis.
104. We do not agree that it is inappropriate to classify all consumer expressions of dissatisfaction as complaints. Ultimately it is the consumer who decides whether they have a complaint or not. We would again refer providers to the definition of complaint which is set out at D.2.17 of Code 15, this definition is aligned with Ofcom’s definition. We also do not agree that the guidance or definition of a complaint will drive up costs as guidance does not introduce any new requirements and PSA expectations regarding complaints remains unchanged. We note that not every complaint results in enforcement and that there is no specific number of complaints that necessarily would trigger supervisory, engagement or enforcement activity by the PSA.

## Final decision

105. We have decided to proceed with the Customer care Standard guidance subject to the following amendments:

- we have clarified that where we refer to “basic rate” calls to customer care lines this means costing no more than the charge for calling a UK geographic number
- we have clarified that either initial or full responses to consumer’s queries should be sent within five working days.

## Vulnerable consumers Standard guidance

### Stakeholder comments

#### Network operators

106. **BT** said that save for their earlier suggestion (see paragraph 55) to include a specific requirement that processes, and policies consider the impact of excessive use on vulnerable consumers (relative and proportionate to their role in the value chain) that they were broadly supportive of the proposed guidance.

107. **Telecom 2** said that while they recognised the need to cater for vulnerable consumers many aspects of the guidance will require manual intervention and be costly to operate to benefit what is a very small number of consumers who would be dealt with by other routine procedures. They noted that if vulnerable consumers are barred from accessing services because of their vulnerability it could be seen as discrimination. They also said that the list of characteristics of the phone-paid services market that may put vulnerable consumers at risk contain aspects that are significant benefits, e.g. low value quick transactions and purchases made on the go. They noted that wanting to contact insurance companies or public services is by no means limited to vulnerable people.

108. They said that they wanted the examples of Board or Executive level taken out as many companies devolve the authority to ensure policies are implemented and changed where necessary to designated managers. They also noted that parental controls can only be implemented by consumers or their phone service providers. They said that levels of contacts with consumers are so low and so few of those can be identified as being vulnerable that any analysis will not be meaningful, and that the PSA could help by collating the complaints they receive on an industry wide basis and highlighting issues to industry. They said that as it isn’t generally possible to identify vulnerable consumers in advance of them contacting Level 2 providers then apart from service design they felt that it is better done on a case-by-case basis.

#### Intermediaries

109. **Donr** said they were generally satisfied with the proposed guidance but felt that there seemed to be issues around the expected outcomes for vulnerable consumers and they said it was unclear if a vulnerable consumer should be blocked (and risk discrimination) or whether other factors in a risk assessment should be considered – for example, triggering

an excessive usage risk assessment before applying restrictions. They said that one route is to simply refund people who meet a vulnerability assessment criteria post donation, but they did not believe this prevents harm but merely covers it up retrospectively.

110. **Fonix** felt that the guidance was clear but noted that aggregators and many merchants do not have access to demographic information concerning a consumer which might identify specific trends such as age or financial status and that vulnerable consumers can usually only be identified retrospectively after interaction with services. They also said that restricting access to services, needed to be consumer driven and that they were concerned that enforcing blocks on consumers could be discriminatory. They said that communicating what controls could be put into place should be the first course of action in protecting vulnerable consumers.
111. **Mobile Commerce and Other Media Ltd** said that they felt that the statement “psychic services which may be attractive to recently bereaved people” could be direct discrimination to people who hold the belief of spiritualism and mediums and that someone’s belief in this does not make them vulnerable. They also felt that the requirement to monitor policies and procedures in relation to vulnerable customers was onerous and does not take into account all service and entity types.
112. **Customer Calls Ltd** said that it does not think the insurance example should be included since people contact insurance providers for all sorts of reasons, not just confined to making insurance claims and it does not follow that a person making an insurance claim is vulnerable. In relation to demonstrating how providers are using their policies and procedures effectively, they said that voice-based services, such as ICSS, do not have access to or are not able to collect detailed data on a user’s vulnerability so no meaningful reporting can be carried out. As such, they wanted to see ICSS and other voice-based services carved out from this section of the guidance, or that it is qualified by the words “where feasible” or similar.

#### Trade associations

113. **Aimm** said their members welcomed efforts to ensure that vulnerable consumers are considered when using phone-paid services and felt that the guidance explains the obligations set out in the Code which are clear and specific. Some of their members had raised concerns that the PSA should not attempt to widen the definition of vulnerability in guidance to expose all elements of the value chain to a subjective charge of failing to support vulnerable customers and in particular that the section around the particular characteristics of the phone paid services market should be removed.
114. They also raised concerns that restricting access to services based on vulnerability would be discriminatory.
115. They agreed on the importance of customer care agent training but felt that issues needed to be judged on a case-by-case basis and that a “one size fits all” approach does not work. They also highlighted the amount of work involved in developing manuals and highlighted that using industry standard DDRAC and process documentation could help to contain costs.

## Broadcasters

116. **BBC Children in Need** noted that since a donation is most often the first interaction the charity has with a supporter, it is generally not feasible to identify vulnerabilities in advance, and that the guidance should allow for vulnerabilities to be flagged and the situation rectified retrospectively. They also said that that placing a bar on vulnerable people could be seen as discriminatory and felt that such a broad approach within the guidance may also be interpreted as disproportionate.

## PSA assessment of inputs received

117. Some respondents said that characteristics of the phone-paid services market were common to many payment mechanisms and some could also be seen as benefits and one respondent asked that the list be removed. We do not agree that the section should be removed as we think it still provides some useful context when considering vulnerability in the phone-paid services market, however we have slightly amended the wording.

118. A couple of respondents highlighted that including insurance and contacting public bodies are not just restricted to vulnerable people and so are inappropriate. While we agree that they are not just restricted to vulnerable people, what they illustrate is that such consumers might be vulnerable – as the guidance makes clear vulnerability is fluid and the examples within the guidance are not saying that all people under these circumstances will be vulnerable, but that they might be. We also do not accept that the insertion of psychic services is discriminatory against people who hold this belief. We agree that belief in psychics or spiritualism doesn't necessarily make people vulnerable but being bereaved could make them vulnerable, which was what the example was illustrating and should be considered in the service design so as to guard against exploiting vulnerable people.

119. A number of respondents raised concerns around putting blocks on or restricting access to services being potentially discriminatory and that this needs to be done by consumers, albeit there is nowhere in the guidance that suggests that blocks should be put on services. The only place in which blocks are mentioned is in Code Requirement 3.5.11 in relation to services which require age verification (and so have legal age restrictions already in place). We accept that intermediaries and merchants do not have the ability to operate parental controls and have amended the guidance to take account of this.

120. We do not agree with the suggestion made that guidance around excessive use should be included within this piece of guidance – we do refer to where guidance on excessive use can be found and since the guidance will be produced in a web-based format it should be easy for providers to cross-refer to the relevant pieces of guidance as and when needed.

121. We note the comments around the work involved in developing and monitoring policies and procedures for vulnerable consumers but these are Code Requirements (3.5.2). We have also noted the comment around the fact that work of this nature is often

delegated and that we should remove the explicit reference to board or executive level staff and we have done this.

### Final decision

122. We have decided to proceed with the Vulnerable consumers Standard guidance subject to the following amendments:

- we have clarified that vulnerability may arise from some characteristics of some services in the phone-paid services market and clarified the example used to illustrate how difficult circumstances could lead to vulnerability
- we have removed the specific reference to Board or executive level staff being the nominated person responsible for ensuring the needs of vulnerable consumers are taken into account in the provision of paid-phone services
- we have clarified that in relation to parental controls while it is not possible for providers to put these in place, they do still have a potential role in doing more to inform consumers about them.

### Due diligence, risk assessment and control (DDRAC) Standard guidance

#### Stakeholder comments

##### Network operators

123. **BT** was broadly supportive of the guidance, but in relation to operating new services, it did not agree that new service types should automatically be considered higher risk where there is sufficient information to undertake a risk assessment. They did not agree with this “one size fits all” approach and felt it would impose a compliance burden that may discourage the diversification of services. They were also concerned that no proportionality threshold had been set for “incident response” guidance which might result in over-reporting of suspected or alleged breaches. They suggested that the PSA should supplement the current guidance with minimum thresholds (and articulate the incentives) for making referrals for confirmed or suspected instances of regulatory non-adherence.

124. **Telecom 2** said that while the guidance was extensive, they felt that some of the expectations were unrealistic or impractical. They felt that registration data could be verified and validated by the PSA. They noted that having DDRAC information reviewed by a director or equivalent assumes that someone at that level will have the required detailed knowledge and understanding to do so. They said that most companies employ or train specialists in this role and these are the people who should sign off DDRAC information. They felt that people at director level could, with advice, sign off policies as they involve committing spend but that is as far as they can reasonably go.

125. They asked for clarity over what is meant by “incident” but noted that the guidance says that incidents are responded to proactively and that it was difficult to see how this can be done as it is only possible to respond after the event.



126. They noted that some of the information listed in Annex 2 may not be available for every merchant, particularly if they are small companies or sole traders. They said they were concerned that the PSA feel that third-party DDRAC providers are not competent to do the work.

#### Intermediaries

127. **Donr** said that while the guidance was extensive and mostly acceptable, they felt there was a gap in DDRAC processes which is knowing of any prior compliance concerns raised around a service by the PSA and did not understand why the PSA is unable to share this information.

128. **Fonix** said that the guidance was clear.

129. **Mobile Commerce and Other Media Ltd** noted that the PSA was currently failing to undertake any due diligence on firms before they can become registered with them, which in their view lets down the whole value chain and questioned why information about registration wasn't included in the Code or the DDRAC guidance. They noted that the guidance refers to incidents but is vague and does not define the term.

130. They strongly disagreed with the PSA's view that all new clients or services should be deemed a greater risk level as they felt that there are considerably more factors that should be taken into account when considering a risk level than just whether or not they are new to the market or a new service. They said that requiring someone to disclose information in relation to any breaches being investigated by the PSA could be harmful to both parties. They also said that retention periods for the DDRAC documents should be included in this guidance for easy of reference.

#### Trade associations

131. **aimm** noted that in relation to who needs to sign off DDRAC information that in some very large organisations this will not be a director or director equivalent, but it should be the specially recruited specialists who should fulfil this role. They generally agreed that any suspected breaches should be investigated quickly and established as being a definite breach before being reported, to save undue time wasting and use of resource, but sought assurance that this approach is acceptable.

132. They also suggested that the PSA could develop a template to guide the value chain on the retention and storage of data and to standardise the process. Some of their members also suggested that as a group, the MNOs could choose a representative to request and review the DDRAC documents in Annex 2 on their behalf annually. They also asked whether the PSA could share information with the value chain which would help inform DDRAC practices. They raised again why the PSA could not incorporate a level of data validation in the registration process. They felt that this would greatly reduce the burden on the value chain in this area, including the financial burden.

#### Broadcasters

133. **BBC Children in Need** agreed that the guidance was helpful and effective.

## PSA assessment of inputs received

134. We note the concerns that because there is no threshold set out in guidance for reporting incidents this might result in the over-reporting of suspected/alleged incidents, but we do not agree that it would be useful from a regulatory perspective to set out a particular benchmark in guidance, nor do we think it necessary to further explain or define the word “incident”, which we feel is a widely understood term.
135. We also note that some respondents have repeated the calls they made during the consultation on Code 15 for the PSA to verify market entrants and share more information about the compliance history of providers, although these are not matters for guidance. We have set out our revised and enhanced approach to the verification of registration information in our [Procedures](#).
136. We appreciate that respondents have asked for further clarity over how long data should be retained for and this is set out in our [data retention notice](#). We do not think it appropriate to specify these periods within guidance because if, for example, legislation changes it is more efficient to make amendments to the data retention notice as opposed to amending numerous pieces of guidance which would have to be consulted on.
137. We note the comment from one respondent who queries why guidance says that merchants may want to develop DDRAC policies and processes in order to meet their obligations under Code Requirement 3.9.2 when it is also stated that merchants are not required to perform DDRAC under the Code. We feel that it is quite clear that we are not saying that it is a requirement but merely suggesting that they may find it helpful to do so. We feel that this distinction is sufficiently clear, and in any event merchants may be contractually obliged by any intermediaries or network operators they contract with to develop and maintain such policies and procedures.
138. We appreciate the concerns raised in relation to new services that where there is sufficient information to undertake a risk assessment in relation to a service provider’s ability to operate the service effectively and compliantly, there should not be an automatic assumption that the service be deemed high risk. We have amended the wording of the guidance slightly to address this concern.
139. We note the comments that in some organisations a director/director equivalent is not best placed or experienced enough to sign off DDRAC policies and procedures and that often specialists are employed and that it should be those with relevant experience who should perform this task. However, we also note that it is a Requirement of the Code (3.9.7) that all DDRAC is reviewed and signed off by a director or the equivalent person.

## Final decision

140. We have decided to proceed with the DDRAC Standard guidance subject to the following amendments:

- we have clarified that while the Code does not oblige merchants to undertake DDRAC on third parties with whom they contract or to develop DDRAC policies and procedures they may nevertheless be contractually obliged to do so by a network operator or intermediary in accordance with Code Requirement 3.9.12
- we have amended the wording around new service types to clarify that they do not need to be automatically deemed higher risk but that they should be monitored closely until there is sufficient data to demonstrate that the service is operating effectively.

## Systems Standard guidance

### Stakeholder comments

#### Network operators

141. **BT** said that it supported the rules and guidance that will ensure systems used to support premium rate services are robust and secure.

#### Intermediaries

142. **Donr** noted that the Standard remains focused on the intermediary for which there appears to be little real-world concerns around security and vulnerabilities, and little has been done to alleviate concerns around the PSA systems or mobile network systems.
143. **Fonix** said that the guidance was clear.
144. **Mobile Commerce and Other Media Ltd** said that the PSA should not specify that security testing should be done by a CREST certified body and allow firms to make a choice of provider based on their individual business and needs. They said that OWASP and CVSS could become outdated very quickly or redundant.

#### Trade associations

145. **Aimm** raised concerns that there is not enough expert technical knowledge to be able to test security properly annually and again asked what the PSA would do with submissions and whether they would be dealt with in-house or not. They felt that some guidance on how the requests for access and their limitations to “case investigation” matters only would be useful. They also asked for reassurance that the PSA would work with them if supervisory interventions fell during a period of high activity in order to reduce the risk of operational failure. They also said that they felt thematic reviews could be onerous and problematic in terms of resource and confidentiality and would like to know what reasonable and justifiable KPIs would trigger a review of this nature.

#### Broadcasters

146. **BBC Children in Need** agreed that the guidance was helpful and effective.

### PSA assessment of inputs received

147. The majority of the responses regarding the Systems Standard guidance were actually about our approach to supervision rather than the content of the guidance and information

on approach is contained in our Procedures. As we confirmed in our Statement on Code 15, we will work with industry in establishing an appropriate and effective approach to our consideration of platform security testing.

148. We note the concern that we should not require that testers are CREST Accredited. While this is guidance and a recommendation only, we have amended the guidance to allow for systems testing by a third party with an equivalent accreditation. It was also noted OWASP and CVSS could become outdated, but the guidance also makes clear that these are recommendations not requirements. Should these become out of date it is possible to update guidance relatively quickly, in consultation with industry.

#### **Final decision**

149. We have decided to proceed with the Systems Standard guidance without further amendments other than the clarification noted in para. 148 above.

150. We have decided to proceed with Systems Standard guidance with one minor amendment which provides clarity on Requirement 3.10.4 and the obligation within it to use the NCSC approved list.

#### **Guidance on service-specific Requirement 3.13.3**

151. Further to issuing this draft guidance note on this service-specific Requirement, on 12 January 2022 we published a [consultation on minor changes to service-specific Requirements in section 3.13 of Code 15](#). As a result, we will not be proceeding with the current guidance note in this area and will consider the stakeholder comments we received (not replicated in this document) when we publish the statement following this consultation, which closes on the 23 February 2022.

## **4. Next steps**

152. Code 15 will come into force on 5 April 2022. We are committed to working with industry to assist them in complying with the Code and would encourage any provider who has any query at all on the Code or guidance to contact us at [compliance@psauthority.org.uk](mailto:compliance@psauthority.org.uk).