

[Draft]

Code for Premium rate services

Approved under Section 121 of the Communications Act 2003

Code of Practice 2021

(Fifteenth Edition)

Phone-paid Services Authority

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1

The PSA and the Code

1.1

Introduction

1.1.1

The Phone-paid Services Authority (**PSA**) is the UK regulator for content, goods and services charged to a phone bill.

1.1.2

The PSA regulates primarily by setting **Standards** and **Requirements** for premium rate service (**PRS**) **providers** to meet in respect of the provision, content, promotion and marketing of their services, and by monitoring and enforcing those Standards and Requirements, in accordance with this Code of Practice (the **Code**).

1.1.3

The **Standards** are designed to provide clarity for industry and deliver necessary technical and operational protections in the market. They also aim to ensure that all consumers, including those who are or may be **vulnerable**, have confidence and consistent experiences when engaging with PRS and ensure that their expectations are aligned with their experiences of other digital payment platforms.

1.1.4

The PSA will support PRS providers to comply with its Standards and Requirements through the provision of **guidance**, **best practice information** and stakeholder engagement. The PSA will seek to provide flexibility in how PRS providers can meet the Standards set by this Code, including (where appropriate) by considering PRS providers' particular circumstances and granting permission for alternative ways for Standards to be met. This approach also helps to facilitate opportunities for innovation in the interests of consumers within a healthy, competitive and well-regulated market.

1.1.5

The PSA will conduct appropriate checks on PRS providers using an effective registration system. This will provide essential information about PRS organisations and the services they offer, as well as putting in place clear and stringent due diligence, risk assessment and control (**DDRAC**) requirements to ensure that those entering and operating in the market comply with the Code and act in the consumer interest.

1.1.6

The PSA will monitor compliance with the Code using a range of tools set out in this Code. Where the PSA identifies potential or actual non-compliance with the Code, it may take regulatory actions, including using informal engagement and/or formal enforcement action, as specified in this Code.

1.1.7

The PSA is committed to acting in a transparent, accountable, proportionate, consistent and targeted manner. Within this framework the PSA acts to ensure that PRS are provided in a way that meets consumer expectations so that all consumers can have a consistently positive experience of PRS.

1.2

Scope

1.2.1

The Communications Act 2003 (the **Act**) gives **Ofcom** the power to approve a Code for the purposes of regulating PRS. Ofcom has approved this Code under section 121 of the Act. Under section 120 of the Act certain providers of PRS are obliged, through the Condition set by Ofcom, to comply with provisions of the Code and directions given by the PSA in accordance with the Code for the purpose of enforcing its provisions.

1.2.2

The Condition set by Ofcom applies to **Controlled premium rate services** which are a subset of services defined as PRS in the Act.

1.3

PRS providers

1.3.1

The PSA regulates by imposing Standards and Requirements, as well as responsibilities and obligations on PRS providers, all of which are enforceable. Three categories of PRS providers comprise the PRS value chain and are defined at paragraphs D.1.3–D.1.9 below: (a) **network operators**; (b) **intermediary providers** (which form part of a PRS value chain); and (c) **merchant providers** (the person responsible for providing the PRS to end users). A PRS provider may fall within more than one of these categories.

1.4

Independence

1.4.1

The PSA operates **independently** from the industry. All members of the PSA's **Board** are appointed in their individual capacities. No member of the Board may have any current commercial interest in PRS but Board members may be appointed on the basis of their contemporary industry knowledge.

1.4.2

Board members do not sit on PSA Code Adjudication Tribunals (**Tribunals**) which adjudicate on allegations of non-compliance with the Code. Tribunals are made up of members of the PSA's Code Adjudication Panel (**CAP**), the composition and function of which is set out at paragraphs 6.3.1-6.3.3 below.

1.5

Delegation of powers

1.5.1

The Board may delegate its powers to employees of the PSA and/or the CAP as it sees fit. Delegated powers may not further be sub-delegated.

1.6

Confidentiality

1.6.1

Confidential information received by the PSA may only be shared with third parties in accordance with paragraph 1.6.3 below.

1.6.2

The PSA shall treat information received as confidential where it relates specifically to the affairs of a particular PRS provider or associated individual, and publication of it would or might, in the reasonable opinion of the PSA, seriously and prejudicially affect the interests of that provider or individual.

1.6.3

Confidential information received by the PSA will generally be held in confidence by the PSA. Subject to applicable law, such information will only be shared with a third party (other than, professional advisers and Ofcom) where:

- (a) the PSA reasonably considers that:
 - i. there is a risk of imminent consumer harm or actual consumer harm as a result of a potential or actual breach of the Code by a relevant PRS provider; and
 - ii. it is necessary and proportionate to share confidential information within the relevant PRS value chain (i.e. with any network operators, intermediary providers and/or merchant Providers in that chain) in order to address the relevant consumer harm issue and/or to ascertain whether a contravention of the Code has occurred or is occurring, in circumstances where the PSA has been unable to secure prompt and effective cooperation with its regulatory efforts from the relevant PRS provider.
- (b) the provider of the information has given their consent for it to be so shared (such consent not being unreasonably delayed or withheld);
- (c) the information has been requested by another regulator or other lawful authority for the proper discharge of their functions;
- (d) the information is required by law enforcement agencies for the purpose of investigating fraud or other potential or alleged offences; or
- (e) the information has entered the public domain or has become lawfully available from a third party free from any confidentiality restriction.

1.6.4

For the avoidance of doubt, where the PSA shares any confidential information under subparagraph 1.6.3(a) above, it will have particular regard to the need to minimise the sharing of such information as far as it is practicable to do so in all the circumstances. Where a PRS provider's confidential information has been shared in this manner, the PSA will notify that provider in writing as soon as reasonably practicable, bearing in mind the need to ensure that any ongoing efforts to prevent or minimise consumer harm are not jeopardised by such notification. In the written notification, the PSA will set out:

- (a) a list of the information that has been shared;
- (b) a list of the persons with whom it has been shared; and
- (c) a brief explanation of why the disclosure of that information was considered necessary and proportionate.

1.7

Reach of the Code

1.7.1

Save as is provided below, the Code applies to all PRS that are accessed through a provider of a United Kingdom **electronic communications network** or **electronic communications service** as defined by section 32 of the Act.

1.7.2

Some PRS may also be **Information Society Services**. In such cases, the Code may be subject to certain provisions of Directive 2000/31/EC (the **e-Commerce Directive**) as transposed into the Electronic Commerce (EC Directive) Regulations 2002 (the **e-Commerce Regulations**). By virtue of the Communications Act (e-Commerce) (EU Exit) Regulations 2020, the Code applies to all Information society services irrespective of whether the intermediary provider or merchant provider responsible for the provision of those services under the Code is:

- (a) established in the United Kingdom; or
- (b) established in another EEA member state, and the services are being accessed or may be accessed from within the United Kingdom.

1.7.3

Nothing in this Code will be construed as enabling the PSA to take any action, or require any person to take any action, that would contravene the e-Commerce Regulations and/or the e-Commerce Directive.

1.8

Commencement and transitional arrangements

1.8.1

This 15th edition of the Code came into force on [date] (“the Commencement Date”).

1.8.2

Section 5 of the Code and any Procedures published by the PSA from time to time under that section, and paragraph 6.1.1 of the Code where it is applied in respect of engagement and enforcement under Section 5, shall apply to:

- (a) any investigations commenced pursuant to the previous edition of the Code and prior to the Commencement Date, but not concluded at that date;
- (b) the PSA’s consideration of any complaints received by it and/or conducting of any monitoring in respect of a service pursuant to the previous edition of the Code and prior to the Commencement Date.

1.9

Approval of the Code

1.9.1

This Code is approved by the Office of Communications (Ofcom) for the purposes of sections 120 and 121 of the Communications Act 2003.

General, compliance and media enquiries

Switchboard: 020 7940 7474

Web: www.psauthority.org.uk

Compliance Advice: compliance@psauthority.org.uk

Media Office: 020 7940 7440

pressoffice@psauthority.org.uk

2

Regulatory approach

2.1

Regulatory Standards and Requirements

2.1.1

The PSA sets overarching regulatory Standards, each of which is supported by a set of more detailed Requirements.

2.1.2

Each Standard sets out the expected quality that relevant PRS providers must reach in relation to the provision of a given PRS. The Standards collectively cover the design, promotion, marketing, content, operation and delivery of a PRS. Each Standard is underpinned by Requirements that are designed to support providers in achieving the Standard.

2.1.3

Each Standard and Requirement imposes separate, distinct and enforceable obligations on PRS providers. Such obligations are subject to any permissions that may be granted pursuant to paragraphs 2.6.1–2.6.4 below.

Service-specific requirements

2.1.4

The Code also sets out service-specific requirements with which network operators, intermediary providers and merchant providers of specific categories of services must comply. These service-specific requirements provide further details for all relevant PRS providers on what additional requirements apply to their particular category of services so as to meet the Standards and protect consumers.

2.2

Guidance and advice to support compliance with Code

2.2.1

To support compliance with the Code, the PSA publishes non-binding guidance. It sets out the PSA's expectations and provides more detail on how PRS providers can comply with the Standards and Requirements in their provision of PRS, both generally as well as in relation to specific service types and charging mechanics. Guidance does not form part of the Code.

2.2.2

Guidance is updated from time to time, following an appropriate consultation if the PSA in its reasonable opinion considers that it is proportionate to consult due to the scale of the proposed changes and/or the potential gravity of the impact of those changes on affected PRS providers.

2.2.3

When considering any alleged breach of the Code and/or the imposition of sanctions, as set out in Section 5 of this Code, the PSA will take into account whether or not a relevant PRS provider has followed the PSA's published guidance. The extent to which a PRS provider has attempted

to comply with the Code by using methods other than those set out in the guidance, and/or the extent to which a provider engaged with the PSA as part of developing any such alternative methods, will also be taken into account.

2.2.4

The PSA also offers compliance support by issuing non-binding compliance advice to PRS providers on request. Whether a PRS provider has sought and/or followed compliance advice will be taken into account in considering any alleged breaches of the Code and/or the imposition of sanctions, as set out in Section 5 of this Code.

2.3

Best practice information

2.3.1

The PSA will publish and update best practice information from time to time on reasonable notice, following consultation as considered appropriate. Best practice information focusses on actions and behaviour that go beyond compliance with the Standards and Requirements and thereby sets out what the PSA considers to be the most effective ways of meeting consumer expectations in the provision of PRS.

2.3.2

Following best practice information will be taken into account as a mitigating factor when considering any alleged breach of the Code (as relevant) and/or the imposition of sanctions by reference to any **Procedures** published by PSA from time to time.

2.3.3

Where the PSA concludes that a PRS provider has achieved an expectation set out in the best practice information, the PSA may, in its sole and absolute discretion, review and vary any existing compliance monitoring requirements under paragraphs 4.3–4.6 below in respect of that provider.

2.4

Supervision and verification

2.4.1

The PSA carries out supervisory activities as set out in Section 4 of this Code for the purposes of assessing a PRS provider's level of compliance with the Code; enabling timely identification and resolution of issues; proactively addressing any such issues; reducing the risk of actual or potential harm to consumers arising from such issues; and ensuring that the PSA can take informed decisions in carrying out its regulatory functions. Such activities support PRS providers in achieving compliance with the Code.

2.4.2

The PSA supervises compliance with the Code using various methods as set out in paragraph 4.3.1 below.

2.4.3

The PSA conducts appropriate checks on PRS providers using an effective registration system, which enables the PSA to collect and verify essential information about PRS providers and their services.

2.4.4

The PSA sets robust DDRAC requirements for all PRS providers in order to ensure that all such providers undertake thorough DDRAC in relation to all persons with whom they contract. The PSA requires PRS providers to use the information collected through DDRAC processes effectively and in line with relevant guidance issued by the PSA from time to time, and to develop and undertake ongoing risk management, mitigation and control activities, in the interests of consumers and the PRS industry as a whole.

2.4.5

The PSA's supervisory activities aim to ensure it has a comprehensive understanding of PRS providers and the services that are offered to consumers. This enables the PSA to protect consumers by taking proactive regulatory action (including but not limited to compliance support and enforcement action) that is proportionate, efficient, timely, targeted and effective.

2.5

Code compliance: engagement and enforcement

2.5.1

The PSA carries out engagement and enforcement activities in the interests of consumers by seeking to ensure that PRS providers comply with the Code.

2.5.2

The PSA receives information and intelligence about compliance issues from a range of sources. These sources include (but are not limited to) consumers, industry, other regulators or public bodies, the press and the PSA's own compliance monitoring activities.

2.5.3

The PSA will engage with PRS providers where it wishes to understand compliance issues and trends in specific services, service types, sectors or the market in general. It will also engage with PRS providers where it receives intelligence about compliance issues, including in respect of the Standards and/or Requirements set out in Section 3 of this Code. Such engagement by the PSA may lead to the commencement of enforcement action in relation to any compliance issues and trends that are identified.

2.5.4

The PSA considers each case or matter on its own merits. Based on the information it has and receives, the PSA determines the appropriate action to take in respect of any potential or actual non-compliance with the Code in order to eliminate or reduce harm or risk of harm to consumers. When engaging with PRS providers, the PSA will act in accordance with Sections 4, 5 and 6 of this Code, as appropriate.

2.6

Tailored approach to regulation

2.6.1

The provisions of the Code apply to all PRS providers unless an alternative approach to achieving compliance is agreed with, or proposed by, the PSA in accordance with the following paragraphs and any Procedures or guidance published by the PSA from time to time.

Bespoke permission

2.6.2

Where a network operator, intermediary provider or merchant provider is able to demonstrate to the satisfaction of the PSA in relation to any Requirement set out in Section 3 or any obligation required in any other part of this Code, that it is able to achieve the objective of the relevant Code provision(s) through means other than strict adherence to such provision(s), the PSA may grant permission in writing for the alternative means to be used. Such permission may be granted subject to conditions. Permission may be withdrawn or varied by the PSA at any time upon reasonable notice.

2.6.3

Whenever the PSA grants bespoke permission under paragraph 2.6.2, it will publish on its website, prior to the permission taking effect:

- (a) the details of the permission, including the name of the PRS provider to which it applies and a description of the alternative means that may be used by that provider;
- (b) the relevant provisions of the Code to which the permission to use those alternative means applies; and
- (c) details of any conditions attached to the use of those alternative means.

The PSA will not publish confidential information pursuant to this paragraph.

General permission

2.6.4

Where the PSA considers, following consultation, that any Requirement set out in Section 3 or obligation in any other part of this Code can be met by means other than strict adherence to such Requirement or obligation, the PSA may grant permission to all relevant PRS providers by issuing a notice which will set out:

- (a) the particular PRS providers or category of providers to which the notice applies;
- (b) a description of the alternative means that may be used;
- (c) the relevant provisions of the Code to which the permission to use those alternative means applies; and
- (d) details of any conditions attached to the use of those alternative means.

Any such general permission may be withdrawn or varied by the PSA at any time upon reasonable notice.

2.6.5

A breach of any condition imposed in relation to permission granted by the PSA under paragraphs 2.6.2–2.6.4 above shall be treated as a breach of the Code. The seriousness of any such breach shall be determined by reference to any relevant Procedures published by the PSA from time to time.

2.7

Prior permission

2.7.1

The PSA may require that particular categories of service must not be provided without its prior written permission (**prior permission**). The PSA will give reasonable notice of any such requirement and the category of service to which it applies, and will publish a full list of such service categories on its website from time to time.

2.7.2

Following consideration of all relevant factors including the compliance record of those wishing to provide or participate in the provision of a service for which prior permission is required, prior permission may be refused or granted by the PSA subject to the imposition of additional conditions. Prior permission may be withdrawn or varied at any time on reasonable grounds and upon reasonable notice in writing.

2.7.3

If a PRS provider which has applied for prior permission is not satisfied with any aspect of the PSA's determination in respect of its application, it may apply to the Chair of the CAP for a review of the determination.

2.7.4

The Chair of the CAP may affirm or reverse a determination to grant or refuse prior permission, and/or may set such conditions for the relevant prior permission as he or she deems fit, in accordance with any relevant Procedures published by the PSA from time to time.

3

Regulatory Standards and Requirements

(i) Consumers

3.1

Integrity

Standard

Organisations and individuals involved in the provision of PRS must always act with integrity and must not, in respect of any part of their provision of PRS, act in a way that brings or might bring the PRS market into disrepute.

Requirements

3.1.1

PRS providers must act honestly at all times in all their interactions with consumers and the PSA.

3.1.2

PRS providers and associated individuals must not bring the PRS market into disrepute by being involved, whether knowingly or recklessly, in arrangements which breach any of the provisions of this Code.

3.1.3

All network operators, intermediary providers and merchant providers must act with integrity by:

- (a) ensuring that regulation of PRS is satisfactorily maintained by:
 - i. taking all reasonable steps in the context of their roles, including through the adoption and maintenance of internal arrangements, to ensure that the Standards and Requirements set out in Section 3 of this Code are complied with in respect of all PRS with which they are concerned;
 - ii. carrying out their own obligations under the Code promptly and effectively;
 - iii. taking all reasonable steps to prevent the evasion and/or undermining of PRS regulation; and
 - iv. taking all reasonable steps to ensure that consumer **complaints** are resolved quickly and fairly, and that any redress is provided quickly and easily.
- (b) having regard to the funding provisions which are set out in Section 7 below and complying with any such provisions where so required.

3.1.4

PRS providers must not engage or otherwise permit the involvement in the provision of PRS of a PRS provider and/or associated individual in respect of whom a sanction has been imposed under paragraphs 5.8.5(f)–(h) below or any previous version of those provisions, so as to enable that person to operate in breach of that sanction.

3.2

Transparency

Standard

Consumers must receive clear, complete and timely information so as to enable them to make fully informed decisions when purchasing phone-paid services.

Requirements

Promotion

3.2.1

During any written, spoken or other form of promotion of a PRS, the cost of the service must be provided before any purchase is made. The cost of the PRS must be prominent, clear, legible, visible and proximate to the phone number, shortcode, button or other means by which a charge may be triggered.

3.2.2

Before making their purchase or incurring any charges, consumers must be fully and clearly informed of all information that would reasonably be likely to influence their decision to purchase, including:

- (a) a clear description of what the service is and/or does;
- (b) the cost and, where applicable, the frequency of charging;
- (c) that the charge will be added to the consumer's phone account (mobile or otherwise);
- (d) the provider's name (or brand if part of the name);
- (e) the name of the service as registered with the PSA;
- (f) the name and contact details of the provider responsible for customer care and complaints handling (either the intermediary provider or merchant provider); and
- (g) any other key information including a full and clear description of any prizes or awards (where relevant).

3.2.3

All written information provided in accordance with paragraph 3.2.2 above must be accessible, legible and clearly presented.

3.2.4

Where the information provided in accordance with paragraph 3.2.2 above is spoken rather than written, it must be audible, clear and spoken at a pace that enables the consumer to understand fully all the information provided.

3.2.5

Merchant providers are responsible for ensuring that any third party contracted to carry out promotional activity on their behalf complies with all Standards and Requirements set out in this section of the Code in relation to such activity.

3.2.6

Where a PRS promotes or is promoted by a non-premium rate electronic communications service, both services will be considered as one where, in the opinion of the PSA, it is reasonable to do so.

Point of purchase

3.2.7

The point of purchase must be kept separate and distinct from any promotional materials such that consumers are aware, upon reaching the point of purchase, that they have entered a purchasing environment.

3.2.8

At the point of purchase, the merchant provider must ensure that:

- (a) the point of purchase is clearly signposted by distinguishing it from other aspects of the service (such as by design and colour scheme);
- (b) the consumer is clearly notified that opting to receive the service creates an obligation to pay and the consumer explicitly acknowledges that obligation;
- (c) the consumer is made aware of the cost of the service and the frequency of charges (if recurring) in a clear and prominent manner, and such information must be provided directly before the consumer commits to making a purchase; and
- (d) the consumer is clearly notified that the PRS charge will be added to the consumer's phone account and charged on the basis described.

Use of service

3.2.9

If a call is recorded or monitored, then this must be stated explicitly and immediately upon connection of the consumer to the service.

3.2.10

Where a voice service connects the consumer to another organisation, the cost of continuing the call, including information about access charges, must be clearly stated before onward connection.

3.2.11

Any messages that the consumer needs to access in order to use or engage with a PRS but which are provided separately from the service itself, must be provided at no additional cost to the consumer.

Receipting - mobile network consumers

3.2.12

The merchant provider must ensure that following a consumer's initial sign-up to the service, and after each subsequent transaction (where the service is recurring), the consumer promptly receives a receipt, at no additional cost to the consumer.

3.2.13

The receipt must be:

- (a) an SMS sent to the consumer's mobile handset, to the number against which the charge has been applied; or
- (b) an email sent to the email address that the consumer has provided as part of the sign-up to the service (where applicable).

In either case, the receipt must be provided in a format which can easily be retained and reviewed by the consumer offline.

3.2.14

The receipt must set out:

- (a) the name of the service as registered with the PSA;
- (b) the name and contact details of the intermediary provider or merchant provider responsible for customer care and complaints;
- (c) details of the amount that has been charged;
- (d) if the consumer has signed up to a **subscription service**, details of the frequency of charging, or if there is no defined billing period the basis upon which the frequency of charging is established; and
- (e) clear instructions on how to exit the service.

3.2.15

The requirements set out at paragraphs 3.2.12–3.2.14 above do not apply to voice services.

Method of exit

3.2.16

There must be simple methods of permanent exit from the PRS. These must include (without limitation) the method used by a consumer to sign up to or access the service, unless it is not possible to use that same method as a method of exit.

3.2.17

All methods of exit must enable a consumer to leave the PRS immediately. There must be no further charges to the consumer after exit, except where those charges have been legitimately incurred prior to exit.

Other transparency Requirements

3.2.18

Additional transparency Requirements in relation to services that require **age verification** are set out at paragraphs 3.5.8–3.5.11 below.

3.3

Fairness

Standard

Consumers must be treated fairly throughout their experience of PRS, including by being charged for PRS only where they have provided informed and explicit consent to such charges.

Requirements

Treating consumers fairly

3.3.1

PRS providers must treat all consumers of PRS fairly and equitably.

3.3.2

PRS providers and their services must not mislead or be likely to mislead consumers in any way.

3.3.3

PRS providers must not use any marketing technique, language or imagery which misleads or has potential to mislead the consumer into believing the service on offer is associated with or provided by another PRS provider or any other public or commercial organisation when it is not.

3.3.4

PRS must be provided without undue delay after the consumer has done what is necessary to connect with the service. Once the consumer has been connected to the service, the service must not be unreasonably prolonged.

3.3.5

Merchant providers must take reasonable and prompt steps to identify excessive use of their service or services by any consumer and to inform the relevant consumer of that usage.

Point of purchase

3.3.6

Consumers must not be charged for PRS without their informed and explicit consent. Merchant providers must be able to provide evidence, where required by the PSA, which establishes that consent.

3.3.7

Multi-factor authentication must be used by merchant providers to establish and demonstrate informed and explicit consumer consent to charges in the following circumstances:

- (a) where the service is accessed fully or in part via an **online gateway**;
- (b) where the service is a subscription Service, including services involving a **recurring donation**;
- (c) where the service is a **Society Lottery Service**.

Multi-factor authentication stage one requirements

3.3.8

In any of the circumstances described at paragraph 3.3.7 above, merchant providers must ensure that the first stage of obtaining consumer consent to any charge, is carried out via one of the following methods of consumer interaction:

- (a) use of a password-controlled account, in respect of which the password is selected and controlled by the consumer. The account information fields must not auto-populate or self-generate and must require the consumer to enter at least two of the following details:
 - i. their verified email address;
 - ii. a username that they have selected and control;
 - iii. their name; and/or
 - iv. a password that they have selected and control.
- (b) use of a secure PIN loop system, which must be initiated and confirmed by the intermediary provider through interaction with the consumer. The secure PIN must:
 - i. comprise no less than four truly random integers;
 - ii. be entered by the consumer (and must not auto-populate or self-generate);
 - iii. expire if, after three attempts, the consumer has not entered the PIN correctly; and
 - iv. expire within 15 minutes of the PIN being received to the consumer's handset.
- (c) use of a secure on-screen PIN which must be initiated and controlled by the intermediary provider or network operator. The secure on-screen PIN must:
 - i. not be displayed in a form that is easily readable by a client machine (for example, it should be presented as an image rather than in HTML text);
 - ii. comprise no less than four truly random integers;
 - iii. be entered by the consumer (and must not auto-populate or self-generate); and
 - iv. expire if, after three attempts, the consumer has not entered the PIN correctly.
- (d) use of a secure, consumer-controlled mobile originating short message service (**MO SMS**) system by means of which consumers are required to notify their mobile network operator and intermediary provider(s) of their consent to any charges;
- (e) for recurring donation services only, through a phone-call between a **person** acting on behalf of the charity and a consumer, in which audible consent to the relevant recurring

charge is obtained from the consumer. The telephone conversation must be recorded in full; or

- (f) for recurring donation services only, through face-to-face engagement with a consumer as part of which the consumer is required to enter at least two details into a secure online environment for the purpose of providing consent to the relevant recurring charge, such as:
 - i. their verified email address;
 - ii. their mobile phone number; and/or
 - iii. their name.

Multi-factor authentication stage two requirements

3.3.9

In addition to the first stage requirement set out at paragraph 3.3.8 above, merchant providers must carry out the second stage of obtaining consumer consent via one of the following means of consumer interaction:

- (a) use of a confirmation button to confirm the purchase;
- (b) use of **biometric technology**, such as fingerprint or facial recognition; or
- (c) use of a secure, consumer-controlled MO SMS system by means of which consumers are required to notify their mobile network operator and intermediary provider(s) of their consent to any charges.

3.3.10

For recurring donation services only, where the consumer has donated on a one-off basis and through a confirmation message is provided with the opportunity to convert their one-off donation to a recurring donation, the message must specifically seek the consumer's consent to the recurring charge. Such consent must be given by way of an MO SMS as set out in paragraph 3.3.9(c) above.

3.3.11

For all subscription services, the consent required to be established through an authentication method set out under paragraphs 3.3.8 and 3.3.9 above must be obtained by the merchant provider every 12 months.

3.3.12

Where a network operator or intermediary provider contracts with a third party to undertake verification of consumer consent to charges as part of their compliance with the provisions above requiring the establishment of such consent, the third party must be independent of the merchant provider.

Evidence of consumer consent to charges

3.3.13

In order to demonstrate consumer consent to charges for a PRS provided fully or partly through an online gateway, the intermediary provider and merchant provider must retain records in compliance with any relevant time periods specified in the **data retention notice** under paragraph 6.2.25 below. In particular, such records must always clearly set out:

- (a) the dates, times and web addresses that relate to the purchase;
- (b) details of the consumer's device and mobile network;
- (c) evidence of at least two positive, recorded and auditable responses from the consumer;
and
- (d) the information displayed to the consumer immediately prior to initiating the purchase.

Calls to voice-based services

3.3.14

For any calls to voice-based services, intermediary providers and merchant providers must retain records which clearly set out:

- (a) the phone number from which the consumer has called (where the consumer's phone number has not been withheld);
- (b) the phone number that the consumer has called; and
- (c) the date and time of the phone call.

3.3.15

For phone calls to voice shortcodes, the **originating network operator's** record of the consumer's initiation of the call will be sufficient evidence of consent.

Text message-based services

3.3.16

Intermediary providers and merchant providers must retain records which clearly set out:

- (a) the date and time that the consumer sent the relevant text message;
- (b) the consumer's mobile phone number;
- (c) the mobile shortcode to which the text was sent;
- (d) the date and time when that text was received to the shortcode; and
- (e) any messages sent to the consumer in reply.

3.4

Customer care

Standard

Consumers must receive excellent and timely customer care including the resolution of their complaints.

Requirements

3.4.1

Intermediary providers and merchant providers must ensure that consumer enquiries and complaints are responded to and resolved promptly, easily and fairly, at no cost to the consumer.

3.4.2

Intermediary providers and merchant providers' customer care facilities must be available to consumers as a minimum during the normal business hours of 9am to 5pm, Monday to Friday (excluding public holidays).

3.4.3

Intermediary providers and merchant providers must keep consumers informed about the status of any complaint and/or associated **refund** request.

3.4.4

The PRS provider in the value chain with contractual responsibility for customer care, whether this is the network operator, intermediary provider or merchant provider, must respond to consumers who contact them promptly and in any event within five working days.

3.4.5

The PRS provider in the value chain with primary responsibility for customer care, whether this is the network operator, intermediary provider or merchant provider, must use all reasonable efforts to resolve all PRS related issues raised by a consumer promptly and in any event within 30 working days of the initial consumer contact.

3.4.6

Intermediary providers and merchant providers must retain, and make available to consumers upon request, all information that is necessary to assist consumers fully in the resolution of their enquiries and complaints.

3.4.7

Intermediary providers and merchant providers must inform consumers who are dissatisfied with the customer care they receive or with the handling of their enquiry or complaint that they may complain to the PSA, and must provide the consumer with the PSA's contact details accordingly.

3.4.8

Intermediary providers and merchant providers must, upon request, provide the PSA with all information that allows examination of how they have handled any customer care or consumer enquiry or complaint.

3.4.9

Network operators and intermediary providers that interact with consumers in relation to a PRS must provide clear information to them about how to contact the merchant provider, including the merchant provider's:

- (a) name as registered with the PSA and details of the service the consumer has been charged for; and
- (b) contact details and hours of operation (including customer care details and website).

3.4.10

Intermediary providers and merchant providers must have clear and publicly available customer care, complaints handling and refund policies in place.

3.4.11

In handling consumer complaints, PRS providers must consider the particular needs of consumers who are or may be vulnerable and may be likely to suffer harm or detriment as a result. PRS providers must have regard to the Standard outlined at paragraph 3.5 below which also applies in the context of consumer complaints.

Refunds

3.4.12

Where refunds are provided to consumers, they must be provided promptly and using a method that is easily accessible for each consumer.

3.4.13

Merchant providers (or intermediary providers where they are providing refunds instead or on behalf of merchant providers) must ensure that a decision as to whether or not a consumer is owed a refund is made promptly. The basis for the decision must be clearly communicated to the consumer.

3.4.14

Merchant providers (and intermediary providers where relevant) must ensure that, once agreed, all refunds are processed within 14 working days.

3.4.15

Where a refund is due, the merchant provider must take responsibility for providing it in the first instance. Where the merchant provider is unable to meet all refund requests it may enter into arrangements with an intermediary provider or network operator to provide refunds instead or on its behalf. Where this is the case the intermediary provider or network operator must provide the refunds promptly and using a method that is easily accessible for each consumer.

3.4.16

Merchant providers must ensure that consumers who pursue a complaint and/or seek a refund are not required to expend undue time, effort or money in doing so.

3.5

Vulnerable consumers

Standard

Services must be promoted and provided in a way that ensures they are not likely to cause harm or detriment to consumers who are or may be vulnerable as a result of their particular circumstances, characteristics or needs.

Requirements

3.5.1

Intermediary providers and merchant providers must nominate a person or persons within their organisation that will have overall responsibility for ensuring that the organisation, and the PRS that it promotes and provides, takes account of the needs of vulnerable consumers.

3.5.2

Intermediary providers and merchant providers must, on request, provide the PSA with copies of their written policies and procedures concerning vulnerable consumers. Such policies and procedures must include the identification of risks to such consumers and the controls in place to mitigate those risks, as well as procedures to ensure the fair and proper treatment of such consumers. The policies and procedures must also set out clearly the mechanism for internal approval and review, as well as ongoing monitoring of their effectiveness. Intermediary providers and merchant providers must be able to demonstrate to the satisfaction of the PSA how these policies and procedures are being used effectively in the promotion and delivery of PRS.

3.5.3

Network operators, intermediary providers and merchant providers must have regard to paragraph 3.4.11 above on complaints handling. In doing so, they must ensure that their policies and procedures are robust and take account of the needs of all consumers, including those who are or may be vulnerable.

3.5.4

Merchant providers must ensure that appropriate age verification measures are in place if so required under paragraph 3.5.8 below.

Provisions that apply specifically to children

3.5.5

Where a service is aimed at or likely to appeal to **children**, any promotion associated with that service must state that the bill-payer's permission is required and also state any age requirements for use of the service.

3.5.6

Services that are aimed at or are likely to appeal to children must not offer cash prizes or prizes that can be easily converted to cash.

3.5.7

PRS must not take advantage of children's potential credulity, lack of experience or sense of loyalty.

Age verification requirements

3.5.8

The following age verification requirements will apply to **Adult Services, Remote Gambling Services, Consumer Credit Services, Sexual Entertainment Services** and **Live Entertainment Services**.

3.5.9

As part of the promotion of the service and at the beginning of the consumer's interaction with the service before any charges are incurred, it must be made clear that:

- (a) the service must not be used by anyone under the age of 18 years;
- (b) the consumer must be the bill-payer or have the permission of the bill-payer in order to use the service; and
- (c) service details may appear on the bill.

3.5.10

Services that require age verification must not be:

- (a) accessible from within other services that do not require age verification; or
- (b) promoted within promotional material for other services that do not require age verification.

3.5.11

Where it is discovered that a consumer using a service that requires age verification is below the required age, any charges incurred must be refunded and the consumer must be blocked from using the service.

3.6

Consumer privacy

Standard

Consumer privacy must be respected and protected.

Requirements

3.6.1

Network operators, intermediary providers and merchant providers must comply with all applicable privacy and data protection laws.

3.6.2

Unless otherwise permitted by law, consumers must not be contacted without their consent. Whenever a consumer is contacted, and on each such occasion, the consumer must be given an opportunity to withdraw their consent to being contacted. If consent is withdrawn, the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a PRS, the merchant provider of that service must be able to provide to the PSA, on request, evidence which establishes each consumer's consent to being contacted.

3.6.3

Network operators, intermediary providers and merchant providers must ensure that consumers' **personal data** are not collected or passed on to any other person without their consent, unless under a legal obligation to do so or it is necessary for, or in connection with, legal proceedings.

3.6.4

Where PRS involve the collection of any **personal data**, merchant providers must ensure that before such data is collected:

- (a) the purpose for which the information may be used must be communicated explicitly and clearly to consumers; and
- (b) consumers must positively acknowledge that they understand and consent to the use of their data for such purposes.

3.7

Prevention of harm and offence

Standard

Promotions and services must be provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public.

Requirements

3.7.1

PRS must not promote, incite, or be likely to promote or incite, hatred in respect of any individual or identifiable group, including by age, disability, sex, gender identity or reassignment, race, religion or belief, or sexual orientation.

3.7.2

PRS must not encourage or be likely to encourage consumers to put themselves or others at risk. Such risks may include financial, personal and/or health-related risks.

3.7.3

PRS must not induce or be likely to induce an unreasonable sense of fear, anxiety, distress or offence in consumers or among the general public.

(ii) Organisations

3.8

Organisation and service information

Standard

Organisations and individuals involved in providing PRS must provide the PSA with timely, accurate and detailed information about themselves and the services they offer or intend to offer.

Requirements

Organisation information

3.8.1

Before a PRS is made accessible to consumers, all network operators, intermediary providers and merchant providers in the relevant PRS value chain must register with the PSA, subject only to paragraph 3.8.9 below.

3.8.2

Registration requires PRS providers to provide such information about themselves and their services as the PSA may require for the purpose of effective and efficient regulation. PRS providers will be required to provide such information through the **PSA Register**. The PSA will publish details of the information it requires for registration, which will be updated as the PSA considers appropriate from time to time.

3.8.3

In order to register with the PSA, all network operators, intermediary providers and merchant providers must provide the name and contact details of the individual(s) within the organisation with overall responsibility and accountability for each of the following:

- (a) DDRAC policies and procedures, and the oversight of their implementation;
- (b) platform security and compliance with the technical standards set out at Annex 3, as updated from time to time;
- (c) policies and procedures concerning vulnerable or at-risk consumers, and the oversight of their implementation; and
- (d) overall regulatory compliance in respect of PRS.

3.8.4

The following further requirements in respect of registration will apply to merchant providers:

- (a) Merchant providers must, before making a service accessible to consumers, provide to the PSA all information (including any relevant numbers and access or other codes) that the PSA requires for the purpose of enabling consumers to identify easily the services they may have used and/or for which they have been charged. The PSA will publish

details of the information it requires under this sub-paragraph, which will be updated as the PSA considers appropriate from time to time.

- (b) Merchant providers must provide the identity of any other PRS providers involved in the provision of the service, as well as information about any other person contracted for, or otherwise involved in, the promotion and delivery of the service.
- (c) The PSA will include the details provided in accordance with paragraphs 3.8.4(a) and 3.8.4(b) above on the PSA Register. Those details will also be made freely available to consumers through the PSA's website.
- (d) Whenever any of the information provided under paragraphs 3.8.4(a)–(b) changes, the updated information must be provided to the PSA promptly and in any event within five working days of the change.

3.8.5

Network operators and intermediary providers must each ensure that all PRS and associated access numbers are registered with the PSA before enabling a service to become accessible to consumers.

3.8.6

PRS providers must keep all information provided to the PSA as part of registration up to date. The PSA must be notified of any changes to such information promptly and in any event within five working days of the change.

3.8.7

Registration must be renewed annually or at another reasonable interval as determined by the PSA from time to time.

3.8.8

The PSA will impose a reasonable charge for registration and registration renewal. The PSA will set the amount of the charge giving reasonable notice to PRS providers and other interested persons. Unless an exemption applies by virtue of paragraph 3.8.9 below the charge must be paid prior to any PRS provider being deemed by PSA to be registered.

3.8.9

The PSA may make exemptions from the duty to register, in particular by identifying specific categories of PRS providers and/or services to which the duty to register will not apply and/or any circumstances in which that duty or the requirement to pay a registration charge under paragraph 3.8.8 above will not apply (an **exemption**).

3.8.10

PRS providers that fall within an exemption are not required to register with the PSA and/or pay a registration charge in relation to any PRS to which the exemption applies.

3.8.11

The PSA will publish a full list of exemptions made under paragraph 3.8.9 above on its website. The list of exemptions may be updated from time to time.

3.8.12

All breaches of this Code or any previous editions of the Code by a PRS provider, and any sanctions imposed as a result, will be linked to that provider's registered details in the PSA Register, together with any relevant information arising from any determinations concerning **associated individuals** and/or any other relevant information which is publicly available, for such time as the PSA considers appropriate.

3.8.13

Certain categories of information held by the PSA on its register will be accessible at any time by registered PRS providers, other regulators or any law enforcement agency with a legitimate interest.

3.8.14

A registered PRS provider which is no longer providing any PRS or which only provides PRS that fall within an exemption may de-register at any time. Where a relevant PRS provider is de-registered, their details will continue to be held by the PSA on the PSA Register for a reasonable period, subject to any applicable law.

3.8.15

Any failure to comply with any requirement of this paragraph 3.8 will constitute a breach of the Code.

3.9

Due Diligence, Risk Assessment and Control (DDRAC)

Standard

Organisations and individuals must perform effective due diligence on any person or organisation with whom they contract in relation to PRS, and must conduct a full and thorough assessment of potential risks arising from the provision, content, promotion, and marketing of PRS on an ongoing basis.

Requirements

3.9.1

Network operators and intermediary providers must undertake thorough due diligence on any person with whom they contract in connection with the provision of PRS prior to entering into any contract and/or rendering any service accessible to consumers.

3.9.2

Network operators, intermediary providers and merchant providers must continually assess the potential risks posed by any person with whom they contract in respect of the provision, content, promotion, and marketing of PRS. Network operators and intermediary providers must take and maintain effective and ongoing steps to control and mitigate any risks identified.

3.9.3

Network operators and intermediary providers must comply with the additional due diligence requirements set out at Annex 2. The PSA may update these additional due diligence requirements from time to time following comment and approval by Ofcom, and following reasonable consultation where the PSA considers it to be appropriate. The PSA will provide notice of any such updates by publishing them on its website no less than 30 days before any updated DDRAC requirements come into force.

3.9.4

PRS providers must only contract with other PRS providers which are registered with the PSA, except where an exemption from registration applies under paragraph 3.8.9 above.

3.9.5

Where an intermediary provider is seeking to facilitate provision of a PRS that was previously operating through a different intermediary provider, they must comply with all DDRAC requirements in respect of the relevant merchant provider and/or service. This includes (but is not limited to) verifying any data that has been migrated to them from the previous intermediary provider. Reliance on any information obtained in the course of any previous DDRAC undertaken in respect of the merchant provider will not be sufficient to meet the Requirement of this paragraph.

3.9.6

Intermediary providers must have written DDRAC policies and procedures in place. Any such policies and procedures must be approved by the director or equivalent person within the relevant organisation who has overall responsibility for DDRAC compliance in respect of each value chain and PRS.

3.9.7

All DDRAC undertaken by network operators and intermediary providers in relation to each person with whom they contract must be reviewed and signed off by a director or the equivalent person with responsibility for DDRAC within the relevant organisation.

3.9.8

Network operators must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with intermediary providers where they discover the existence of activities that do not comply with one or more provisions of this Code, or where they reasonably suspect that any such non-compliant activities have occurred or are occurring.

3.9.9

Intermediary providers must have contracts in place that allow them to suspend or terminate their relationships with merchant providers or third-party content verification providers where they discover the existence of activities that do not comply with one or more provisions of this Code, or where they reasonably suspect that any such non-compliant activities have occurred or are occurring.

3.9.10

Network operators and intermediary providers must make provision, in each contract they enter into in respect of PRS, which requires the other party to the contract to provide information gathered in the course of conducting DDRAC to the relevant network operator or intermediary provider and/or to the PSA on request, including information related to any third parties, to the extent permitted by law.

3.9.11

Network operators and intermediary providers must take reasonable steps to satisfy themselves that any contracting party involved in the provision of a PRS meets the DDRAC Standard and Requirements in respect of any other person in the value chain with whom that party contracts.

3.9.12

Network operators and intermediary providers must ensure that any persons with whom they contract include DDRAC obligations in their own contracts with any other persons in the PRS value chain who are involved in the provision of the service. Such DDRAC obligations must enable information gathered in the course of conducting DDRAC to be shared across the value chain and with the PSA upon request, to the extent permitted by law.

3.9.13

Where a network operator contracts with a PRS provider which is acting in the capacity of both an intermediary provider and a merchant provider, the network operator is responsible for undertaking DDRAC in respect of that provider and its services.

3.9.14

Network operators, intermediary providers and merchant providers must use the information obtained through their DDRAC processes to inform their ongoing risk assessment and control in respect of each person with whom they contract and any associated services, having regard to any guidance issued by the PSA from time to time.

3.9.15

Network operators, intermediary providers and merchant providers must make available to the PSA upon request all documentation in relation to DDRAC within a reasonable time period specified by the PSA, to the extent permitted by law.

3.10 Systems

Standard

All systems, including payment and consent verification platforms, used for the provision of and exit from PRS must be technically robust and secure.

Requirements

3.10.1

All network operators and intermediary providers must appoint one or more suitably qualified or experienced person(s) with overall responsibility for security and fraud in respect of PRS.

3.10.2

All intermediary providers must have a **single point of contact (SPoC)** who acts as the point of contact for the PSA regarding systems issues and security. The SPoC should be registered as such with the PSA and should be a suitably qualified or experienced person with technical expertise in systems issues and security.

3.10.3

All intermediary providers (except where they are providing voice-based services) must comply with the technical standards set out at Annex 3. The PSA may update these technical standards from time to time (in line with technological advances) following comment and approval by Ofcom, and following reasonable consultation where the PSA considers it to be appropriate. The PSA will provide notice of any such updates by publishing them on its website no less than 30 days before any updated technical standards come into force.

3.10.4

All intermediary providers (except where they are providing voice-based services) must have their platform security-tested on an annual basis by a third party which appears on the NCSC Approved List. Results of any such security test must be submitted to any network operator(s) with which the relevant intermediary provider has a contractual relationship.

3.10.5

All intermediary providers must act upon any security alerts or flags, whether received from their own monitoring or from information shared by others, in a timely manner.

3.10.6

Network operators must ensure that any platform security test results submitted to them in accordance with paragraph 3.10.5 are assessed by suitably qualified or experienced staff with the requisite technical expertise to analyse the results and make appropriate recommendations.

3.10.7

Network operators and intermediary providers must provide the results of all intermediary provider platform security tests to the PSA in accordance with any request made pursuant to Section 4 or any direction for information made under paragraph 6.1 of this Code.

3.10.8

Network operators must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with intermediary providers:

- (a) on the basis of a technical or security threat or issue; and/or
- (b) where they discover the existence of activities that do not comply with one or more provisions of this Code, or where they reasonably suspect that any such non-compliant activities have occurred or are occurring.

3.10.9

Intermediary providers must have contracts in place that allow them to suspend or terminate a payment facility to any merchant provider or third-party content verification platform:

- (c) on the basis of a technical or security threat or issue; and/or
- (d) where they discover the existence of activities that do not comply with one or more provisions of this Code, or where they reasonably suspect that any such non-compliant activities have occurred or are occurring.

3.10.10

Any evidence created and stored in relation to the Requirements for obtaining consent to charge set out at paragraphs 3.3.6–3.3.16 above must be independently auditable and provided to the PSA upon request.

3.10.11

Where a PRS provider engages any third party to undertake activities to obtain or verify consumer consent to charges on its behalf, it must require that third party by contract to supply the PSA with any relevant data or information upon request, to the extent permitted by law.

3.10.12

Network operators must have in place contracts with intermediary providers which allow for the randomised testing of platforms, including third-party platforms, at any time. Network operators must retain the right to refuse to accept verifications by any third-party platform at their discretion.

3.10.13

All network operators and intermediary providers must implement a **coordinated vulnerability disclosure scheme** and act upon any issues reported.

(iii) Service-specific requirements

3.11

Society Lottery Services

3.11.1

Society Lottery Services must not be used by anyone under the age of 16 years.

3.11.2

Promotions for Society Lottery Services must contain details of:

- (a) the Society Lottery that benefits from the running of the service; and
- (b) the intermediary provider and merchant provider responsible for the service.

3.11.3

For each and every valid entry, the consumer must be issued with a valid ticket of entry to the Society Lottery that sets out all ticketing information as required by law.

3.12

Professional Advice Services

3.12.1

Promotional material must clearly set out details of the operator or PRS provider's qualifications and training which enable them to provide the Professional Advice Service.

3.12.2

Any oral or written communication relating to the review of an agreement for the provision of the Professional Advice Service constitutes promotion or provision of that service.

3.13

Competition Services (including Broadcast Services and Call TV Quiz Services)

3.13.1

Any promotion must make clear that winning is not a certainty.

3.13.2

Prior to entry, the consumer must be clearly provided with:

- (a) a clear description of how the service works and instructions on how to use it;
- (b) information on the prizes available (including where relevant the amount of money that consumers stand to win), the number of prizes available, and any restrictions on the number of prizes that can be won;
- (c) the full cost of participation, including but not limited to the cost of entry;
- (d) the date and time after which the consumer can no longer enter or participate;

- (e) how and when winners will be contacted;
- (f) how and when prizes will be received or money won will be paid;
- (g) how prize winnings will be calculated; and
- (h) where relevant, any criteria for judging entries.

3.13.3

All valid responses for entry into a competition within a TV or radio programme that are sent in by consumers within the timeframe set out in the promotional material must be entered into the competition and given equal consideration.

3.13.4

Consumers whose entries are valid must receive confirmation that they have been entered into the competition.

3.13.5

Competition entries that are sent outside of the times outlined in the promotion must be considered invalid. Any consumer who sends such an entry must be informed that their entry is invalid and that they have not been entered into the competition. The consumer must also be informed whether or not they have been charged.

3.13.6

Where the method of entry is via a phone call, any call that has commenced during the specified time period for entries must be considered valid. This includes calls that have commenced during the specified time period for entries, but have not been completed prior to the closure time.

3.13.7

Where a TV or radio programme is repeated, the route of entry must only remain open if the entries received will still be considered valid.

3.13.8

Where a service contains multiple routes of entry, all routes of entry must be presented and displayed with equal prominence.

3.13.9

All valid entries must have the same chance of winning.

3.13.10

Consumers must not be subjected to any additional costs in order to claim prizes once draws have been made.

TV and radio broadcast voting

3.13.11

All valid votes or entries sent by the audience must be available in sufficient time to be fully considered and reflected in the outcome of an event. In circumstances where the consumer has been clearly informed of the time period in which votes or entries will be valid, any votes or entries received outside this time will be considered invalid and will not need to be considered or reflected in the outcome of an event.

3.13.12

All valid votes or entries received before lines have been announced as open, or after an announcement that lines are closed, must be considered invalid and must not be counted.

3.13.13

Calls that have already commenced at the time of a closure announcement must be completed, considered valid and counted. Invalid votes or entries may only be charged where:

- (a) the risk of being charged for invalid votes or entries has been clearly communicated to the audience;
- (b) consumers whose votes or entries are invalid are clearly informed that their vote or entry is invalid and whether a charge has been applied; and
- (c) the receipt of invalid votes or entries after lines have been announced as closed is not due to technical failure

3.13.14

Where a PRS provider has made arrangements for the handling of excess peak traffic by third parties, these arrangements must ensure that all valid votes or entries so handled are treated the same as those received by the provider.

3.13.15

Phone lines must not remain open when programmes are repeated, except where votes or entries will still be considered valid.

3.13.16

There must be no amendments to the operational systems or procedures relating to the service without senior management authorisation. Any such operational systems or procedures must identify persons in senior management positions within the relevant organisation who have the power to authorise such changes.

3.14

Remote Gambling Services

3.14.1

Promotional material must set out:

- (a) that Remote Gambling Services are not to be used by anyone under the age of 18 years;
- (b) warnings about underage use;
- (c) how the service works and how to use it;
- (d) any significant terms and conditions (with an accessible hyperlink to the full terms and conditions);
- (e) the amount of money that consumers stand to win and how winnings will be calculated;
- (f) a clear explanation of how winnings will be paid;
- (g) information about responsible gambling, or accessible hyperlinks to such information.

3.14.2

Consumers must be able to access their playing history and account information at any time while using the service.

3.15

Live Entertainment Services

3.15.1

Promotional material must state that all calls will be recorded.

3.15.2

All calls must be recorded in full, with time-stamps and date-stamps to show each consumer's entry into, usage of and exit from the service.

3.15.3

If recording ceases at any time and for any reason, calls must be disconnected.

3.15.4

Recordings of Live Entertainment Services must be retained for three years from the point at which the data is collected, in line with the PSA's data retention requirements. Any such recordings must be provided to the PSA upon request, to the extent permitted by law.

3.16

Services using virtual currency

3.16.1

Where services enable consumers to purchase virtual currency, it must be clear how this virtual currency may be used, as well as whether and when it expires.

3.16.2

Where services automatically 'top up' a consumer's virtual currency account once all the currency has been spent (by automatically triggering a further PRS charge or charges on the consumer), this must be made clear to the consumer, prior to purchase.

4

Supervision

4.1

Introduction

4.1.1

This Section sets out how the PSA will carry out its supervisory role and how this role is intended to support PRS providers to achieve and maintain compliance with the Code.

4.1.2

Supervision involves the PSA's ongoing oversight of PRS providers and services in order to achieve and maintain compliance with the Code so as to prevent, or reduce, actual and potential harm to consumers and the market. The PSA's oversight will be achieved through supporting and monitoring compliance with the Code's Standards and Requirements.

4.2

General approach to supervision

4.2.1

In carrying out its supervisory activities, the PSA will analyse information it gathers itself and receives from others. The PSA may use risk management and other relevant frameworks it publishes from time to time, to enable it to prioritise its supervisory activities so as to support compliance with the regulatory Standards and Requirements set out in Section 3 of this Code as effectively as possible.

4.2.2

In order to enable the PSA to ensure continued compliance with the Code and to prevent consumer harm, its approach to supervision will consist of three main types of activity:

- (a) **Proactive** – to identify non-compliance with the Code and consumer harm pre-emptively (which will inform regulatory priorities and activities) through ongoing review and assessment of PRS providers and the services they offer;
- (b) **Reactive** – to spot emerging issues of non-compliance or issues of non-compliance that have recently arisen so as to enable timely and targeted regulatory action to take place which prevents harm from growing; and
- (c) **Thematic** – to undertake wider diagnostic or remedial work in respect of the provision, content, promotion and marketing of PRS where similar or connected instances of non-compliance with particular provisions of this Code, or of actual or potential harm to consumers, have arisen in relation to a number of PRS providers and/or services.

4.2.3

When performing its supervisory activities, the PSA will have regard to the following principles:

- (a) evidence-based judgement

The PSA will make judgements based on evidence and analysis. It will determine the appropriate course of action based on its assessment of, and consideration of any risks posed by, regulated services or service types, individuals, organisations or industry sectors.

(b) forward-looking

In assessing any risks, the PSA will also consider the likelihood of any potential future consumer harm. In particular, the PSA will take account of the need for, or benefits of, early intervention in order to prevent or minimise the occurrence of any such harm.

(c) focused on risk of consumer harm

The PSA will prioritise its monitoring of issues and PRS providers that pose the greatest risk of harm to consumers. Accordingly, the extent and frequency of supervision conducted by the PSA may increase in line with the risk of consumer harm or detriment that is posed by a particular issue or PRS provider.

(d) co-operation

The PSA will work in an open and co-operative way when carrying out its supervisory activities. It will expect PRS providers to co-operate and engage fully to enable effective supervision to take place.

Purpose of supervision

4.2.4

The PSA will supervise by monitoring compliance with the Code in order to achieve the following aims:

- (a) to assess levels of compliance with the Code by PRS providers and/or particular PRS market sectors;
- (b) to enable the prompt identification of any actual or potential non-compliance with the Code;
- (c) to proactively address any actual or potential non-compliance with the Code;
- (d) to prevent or reduce the risk of actual or potential harm to consumers from non-compliance with the Code; and/or
- (e) to ensure that the PSA has sufficient information to take informed decisions enabling it to carry out its regulatory functions effectively.

4.3

Compliance monitoring methods

4.3.1

In support of the aims of this Section of the Code, the PSA may take proportionate steps to monitor compliance with the Code. Such steps will include the undertaking of information-gathering activities where the PSA considers that such activities are reasonable and proportionate in order to achieve one or more of the purposes of compliance monitoring set out at paragraph 4.2.4 above. The information-gathering activities that the PSA may conduct are as follows:

- (a) assessing complaints and other intelligence;
- (b) requiring audits in accordance with paragraph 4.4 below;
- (c) requiring the periodic reporting of data and information in accordance with paragraph 4.5 below;
- (d) targeted information-gathering where this is considered necessary and proportionate in order to achieve one or more of the aims of compliance monitoring as set out at paragraph 4.2.4 above, including by issuing directions for information in accordance with paragraph 6.1 below;
- (e) carrying out **thematic reviews** of the provision, content, promotion and marketing of PRS, where the PSA has reason to believe that there may be common or pervasive issues regarding compliance with particular Standards, Requirements and/or other obligation of the Code and using any or all of the compliance monitoring methods set out at paragraphs 4.4-4.6 and information-gathering under paragraph 6.1 below;
- (f) requiring the provision of **skilled persons reports** in accordance with paragraph 4.6 below;
- (g) engaging with PRS providers under Section 5 of this Code, and in particular under paragraphs 5.1-5.3 below; and
- (h) conducting pre-arranged visits (by consent) to the premises of PRS providers.

4.3.2

Where the PSA is required to provide written notice, under paragraphs 4.4.2, 4.5.2 or 4.6.2 below:

- (a) it will identify within that notice the purpose(s) under paragraph 4.2.4 above for which the compliance monitoring is being undertaken; and
- (b) it will also include within that notice a brief explanation of the reason(s) why it considers that the particular activities it has chosen to undertake are reasonable and proportionate in order to achieve the identified purpose(s).

4.3.3

Any written notice or direction issued by the PSA under this Section of the Code will be effective immediately upon being sent by email to an email address provided by the relevant PRS provider for registration with the PSA. If written notice or a direction is sent by the PSA by first class pre-paid post to an address provided by the relevant PRS provider for registration with the PSA, then it will be effective on the second working day after postage.

4.3.4

Where the PSA's compliance monitoring activities uncover potential or actual non-compliance with the Code which creates a risk of harm or actual harm for consumers, the PSA may engage with any relevant PRS provider(s) in one or more of the manners specified in paragraph 5.1 below. A relevant PRS provider for these purposes will be a PRS provider that, in the PSA's opinion, is reasonably likely to possess further relevant information about, or is otherwise directly or indirectly connected with, the potential or actual non-compliance.

4.3.5

Any failure to comply with the requirements set out at paragraphs 4.4-4.6 below will constitute a breach of the Code.

4.4

Audits

4.4.1

For the purposes of supervision under Section 4 of this Code, the PSA may require a PRS provider to submit an audit report annually or periodically as the PSA may specify.

4.4.2

When it requires an audit report, the PSA will give the relevant PRS provider written notice. The PSA may require the report to be in a form specified in the notice and may require the report to address any matters specified in the notice. The PSA will issue guidance from time to time setting out a non-exhaustive range of matters that an audit report may be required to address.

4.4.3

Audit reporting must commence on the date specified by PSA in the notice and continue until the relevant PRS provider is notified by the PSA that such reports are no longer required.

4.4.4

The person(s) making the audit report must be person(s) nominated or approved by the PSA prior to the audit taking place. In order to be nominated or approved by the PSA, such person(s) must appear to the PSA to have the knowledge, experience and skills necessary for the task of conducting a reliable audit.

4.5

Reporting and notification requirements

4.5.1

For the purposes of supervision under Section 4 of this Code, the PSA may require a PRS provider to periodically report data and information. The PSA will issue guidance from time to time setting out a non-exhaustive range of data and information that the PSA may require in periodic reports and notifications under this paragraph.

4.5.2

When it requires the periodic reporting of data and information, the PSA will give the relevant PRS provider written notice. The notice:

- (a) will specify the data and information that must be reported;
- (b) may require the reporting to take any form specified in the notice; and
- (c) will set out briefly the reasons why the specified data and information is required.

4.5.3

Periodic reporting must commence on the date specified by PSA in the notice and continue until the relevant PRS provider is notified by the PSA that periodic reporting is no longer required.

4.6

Skilled persons reports

4.6.1

For the purposes of supervision under Section 4 of this Code, the PSA may:

- (a) require a PRS provider to produce a report for the PSA on any matter relating to the provision of PRS to which, in the reasonable opinion of the PSA, that PRS provider appears to be connected, whether directly or indirectly; or
- (b) appoint a person to produce a report for the PSA on any matter relating to the provision of PRS.

A skilled persons report will be suitable for matters that require specific expertise, including (but not limited to) technical issues related to platform security and payment platforms.

4.6.2

When it requires a report under paragraph 4.6.1(a) above, the PSA will give the relevant PRS provider written notice. The PSA may require the report to be in a form specified in the notice.

4.6.3

A person appointed to produce a report under paragraph 4.6.1(a) above must be a person appearing to the PSA to have the skills necessary to produce a report on the matter concerned, and must be a person nominated or approved by the PSA.

4.6.4

Where the PSA appoints a person under paragraph 4.6.1(b) above, it will give the relevant PRS provider written notice of the appointed person.

4.6.5

The relevant PRS provider must give the appointed person all such assistance as he or she may reasonably require.

4.6.6

Where it is appropriate the PSA may direct the relevant PRS provider to pay any reasonable expenses incurred by the PSA in relation to an appointment made under paragraph 4.6.1(b).

5

Engagement and enforcement

5.1

General approach to engagement and enforcement

5.1.1

The PSA takes a balanced approach to engagement and enforcement. It may decide to deal with a matter through an engagement route, either by means of an **enquiry Letter** under paragraph 5.2 below and/or by way of a **warning letter** under paragraph 5.3 below. Alternatively, the PSA may decide that it would be more appropriate to issue an **enforcement notice** to a relevant PRS provider (the **Relevant Party**) in accordance with paragraph 5.4 below.

5.1.2

Engagement may take place alongside, or instead of, one or more of the supervision activities set out in Section 4 of this Code. Once an enforcement notice has been issued to a Relevant Party, no additional supervision activities will be commenced in respect of that Relevant Party under Section 4 aside from by way of a direction for information under paragraph 6.1 above, but existing activities will continue unless the PSA directs otherwise.

5.1.3

PRS providers must co-operate fully and throughout the period for which the PSA is carrying out its engagement or enforcement activities in accordance with this Section. PRS providers must also co-operate fully where the PSA is carrying out supervision activities as required by the co-operation principle set out under paragraph 4.2.3(d). A failure to co-operate will constitute a breach of the Code, which may lead to enforcement action under Section 5.4 below.

5.1.4

In determining the appropriate engagement or enforcement route, the PSA will take into account all relevant considerations as will be set out in Procedures published by the PSA from time to time. Such considerations will include, but may not be limited to:

- (a) the seriousness of any apparent breach;
- (b) the gravity of any apparent consumer harm, as initially assessed by the PSA; and
- (c) the breach history of the PRS provider(s) concerned (including any sanctions previously imposed).

The PSA may, from time to time, establish further Procedures governing its engagement and enforcement activities under the Code.

5.1.5

Where the PSA considers that breaches may have been committed by more than one PRS provider as part of the same or a similar matter, the PSA is not obliged to use the same engagement or enforcement route in respect of each provider. It will decide the most appropriate route to use on a case-by-case basis, in accordance with paragraph 5.1.4 above and

any relevant Procedures, and in the light of each PRS provider's particular involvement and circumstances.

5.1.6

Where as a result of its enquiries or engagement the PSA considers that a breach of the Code is likely to have occurred, it may decide at any time that the matter should be placed before a Tribunal or a single legally qualified member of the CAP for determination, in accordance with paragraph 5.4 below.

5.1.7

If relevant information comes to light during the course of the PSA's engagement with a relevant PRS provider, the PSA may change its engagement approach, or withdraw an allegation of any or all breaches, at its discretion.

5.1.8

The PSA may decide not to take any further action in respect of a case or matter in accordance with any prioritisation criteria that it may publish from time to time. However, where it is considered appropriate, the PSA may at any time reconsider a case or matter in respect of which it has previously decided not to take further action. Where the PSA decides to reconsider a case or matter, it will notify the relevant PRS provider of the decision.

5.1.9

In general, the PSA will also provide reasons for any decision to reconsider under paragraph 5.1.8 above. However, in cases where, in the PSA's reasonable opinion, there exist operational or investigative sensitivities including (but not limited to) those arising from any relevant confidentiality obligations that the PSA might have in relation to a third party, the PSA will not be obliged to provide reasons to the extent that the PSA reasonably considers that doing so would breach those obligations or otherwise prejudice the PSA's ongoing operations or investigations.

5.2

Engagement: enquiry Letters

5.2.1

The PSA receives intelligence about compliance issues from various sources, including (but not limited to) consumers, industry, other regulators or public bodies, the press and the PSA's own compliance monitoring. Where the PSA receives such intelligence, it may carry out enquiries and engage with relevant PRS providers accordingly.

5.2.2

The PSA may engage with PRS providers where it considers that it is reasonable and proportionate to do so in order to understand Code-compliance issues and trends relating to the provision (including operation and consumption), content (including design), promotion, and marketing of PRS, whether in relation to specific services or service types, or in relation to the market in general. Such engagement will support and inform the PSA's decisions on appropriate regulatory priorities and action.

5.2.3

Where the PSA decides to engage with a relevant PRS provider under paragraphs 5.2.1 and/or 5.2.2 above, it may send an enquiry letter to any participant in the relevant PRS value chain seeking information.

5.2.4

By means of an enquiry letter, the PSA may seek information concerning matters including: the relevant PRS; promotions; complaints (including any action taken by any person in relation to complaints); technical platforms; systems; operational issues; thematic issues that have come to light as a result of PSA's compliance monitoring activities; contractual relationships; or any other compliance issues otherwise raised or identified.

5.2.5

Failure to respond to an enquiry letter without good reason and/or repeated failures to respond will be a relevant factor for the PSA to take into account when considering the requirement for co-operation in paragraphs 4.2.3. (d) and/or 5.1.3 above.

5.3

Engagement: warning letters

5.3.1

In appropriate cases where it appears to the PSA that a breach of the Code has occurred or is likely to have occurred, and whether or not an enquiry letter has been sent or a response received, the PSA may issue a warning letter to the relevant PRS provider. In a warning letter, the PSA will set out its concerns in relation to any apparent breach of the Code and require a response and/or corrective action to be taken within a specified timeframe, rather than proceeding to place the matter before a Tribunal or a single legally qualified CAP member under paragraph 5.4 below.

5.3.2

Where corrective action is required under paragraph 5.3.1 above, the PSA may specify the action to be taken in the form of an **action plan**. Action plans may be modified subsequently by agreement between the PSA and the relevant PRS provider.

In such cases, the following procedure will be adopted:

- (a) The PSA will issue a warning letter to the relevant PRS provider, including an action plan. That action plan will specify a set of actions which the PSA believes to be necessary to remedy the breach and prevent any repetition, together with a deadline for implementation. The PSA may invoice the relevant PRS provider for its reasonable administrative costs associated with formulating the action plan and the warning letter.
- (b) If the action plan is accepted, the relevant PRS provider must demonstrate to the satisfaction of the PSA that it has been implemented and the breach remedied on or before the deadline. If this is not demonstrated, the PSA will conclude that the action plan has not been implemented and that the breach has not been remedied.

- (c) Where the relevant PRS provider does not agree to any part of the action plan (including the deadline), it must clearly set out its disagreement in writing within five working days of receiving the action plan. The PSA will consider such representations and may decide, at its discretion, to alter the action plan and/or the deadline as a result.

5.3.3

The PSA may decide to place the case or matter before a Tribunal or single legally qualified CAP member under paragraph 5.4 below if:

- (a) the relevant PRS provider fails to respond to a warning letter within the timeframe set by the PSA under paragraph 5.3.1 above;
- (b) the relevant PRS provider fails to demonstrate that it has complied with an action plan, where issued, in accordance with paragraph 5.3.2(b) above;
- (c) no agreement on the action plan can be reached, under paragraph 5.3.2(c) above or otherwise; or
- (d) the relevant PRS provider disputes that any apparent breach raised as a concern in a warning letter has occurred.

5.3.4

The PSA will keep a record of all warning letters and any action plans issued. If the case or matter is subsequently placed before a Tribunal or single legally qualified CAP member under paragraph 5.4 below, the PSA will take into account the warning letter and action plans when considering any further breaches by the Relevant Party or any connected person.

5.3.5

The PSA may publish warning letters (or any extract taken therefrom) where it considers that it would be necessary and proportionate to do so in order to prevent or reduce potential or actual harm to consumers. Before it publishes any document under this paragraph, the PSA will:

- (a) send a notice to the relevant PRS provider providing details of the warning letters and/or extracts which it proposes to publish, and setting out in brief the PSA's reasons for proposing to publish it;
- (b) specify a reasonable period (not shorter than two working days but not longer than 10 working days) for the relevant PRS provider to make representations;
- (c) consider any representations made within the specified period, paying particular regard to any representations concerning any potential prejudicial effect of any such publication on any relevant persons;
- (d) decide whether and how to publish the warning letters and/or extracts in an appropriate manner and form, taking into account any representations made.

The PSA will not publish any confidential information under this paragraph.

5.4

Formal notification and enforcement notices

5.4.1

When the PSA makes enquiries or engages with a relevant PRS provider under paragraphs 5.2 and/or 5.3 above, or obtains information by way of its compliance monitoring activities under Section 4 of this Code, and decides that a case or matter should be placed for determination before a Tribunal or a single legally qualified CAP member:

- (a) paragraphs 5.4.2–5.11 will apply; and
- (b) the matters set out at paragraphs 5.4.4, 5.5.1, 5.6.1, 5.6.2 and 5.6.3 below will be subject to oversight by senior members of the PSA, to the extent that such oversight is deemed appropriate by reference to any Procedures published by the PSA from time to time.

5.4.2

Where it appears to the PSA that a breach of the Code has occurred or is likely to have occurred, and the case or matter is sufficiently serious to warrant action that is or may be likely to lead to a determination by a Tribunal or single legally qualified CAP member, it will notify the Relevant Party in writing accordingly (the formal notification). Factors which may be taken into account in determining the seriousness of a particular case or matter, as well as in determining whether a case or matter will be placed before a Tribunal or a single legally qualified CAP member, will be specified by the PSA in Procedures published from time to time.

5.4.3

Following receipt of a formal notification, the Relevant Party may provide the PSA with any information it considers relevant to the case or matter, whether in response to any direction to provide information given by the PSA under paragraph 6.1 above or otherwise.

5.4.4

Upon the conclusion of any further enquiries and investigations the PSA will notify the Relevant Party of its conclusions in writing in the form of an **enforcement notice**, except where paragraph 5.1.8 applies or the PSA considers that a determination by a Tribunal or single legally qualified CAP member is no longer appropriate. The enforcement notice will contain, as a minimum:

- (a) details of any PRS and/or promotional material considered relevant to the alleged breach(es);
- (b) reference to the relevant provisions of the Code which are alleged to have been breached;
- (c) all necessary information and evidence obtained in the course of the PSA's enquiries and investigations concerning the alleged breach(es) of the Code; and
- (d) the proposed sanction for the alleged breach(es) of the Code which the PSA will recommend to the Tribunal or single legally qualified member of the CAP (as applicable).

5.4.5

The Relevant Party will be given a reasonable period of time to respond to the enforcement notice and to provide any further information requested by the PSA. A response will normally be required within 10 working days unless otherwise specified in the enforcement notice. In exceptional circumstances, the PSA may set a shorter or longer time limit, which will not be shorter than one working day, nor longer than 20 working days.

5.4.6

If the Relevant Party fails to respond within the period specified pursuant to paragraph 5.4.5 above, the PSA will proceed with the case on the assumption that the Relevant Party does not wish to respond.

5.4.7

The PSA will prepare a report containing the enforcement notice and any responses from the Relevant Party, together with relevant supporting evidence, which will be placed before a Tribunal to determine the case. The case may be determined on the papers or by way of an oral hearing in accordance with paragraphs 5.7.6–5.7.19 below.

5.4.8

Where the PSA considers it to be appropriate having regard to the seriousness of the case or matter, and by reference to Procedures published by the PSA from time to time specifying matters including (but not limited to) the maximum applicable sanction limits, it may place the report and evidence before a single legally qualified CAP member to determine instead of a Tribunal. A single legally qualified CAP member may only determine the case on the papers, and not by way of an oral hearing.

5.4.9

When considering the case or matter, if the single legally qualified CAP member determines that the apparent breach or breaches are serious and considers that the level of sanctions permitted in the published Procedures are not sufficient to address such seriousness, the single legally qualified CAP member may instruct that the case or matter is dealt with by a Tribunal instead.

5.5

Settlement

5.5.1

At any point following receipt of a formal notification under paragraph 5.4.2 above but before the case or matter is placed before a Tribunal under paragraph 5.4.7 above or a single legally qualified CAP member under paragraph 5.4.8 above, the Relevant Party may, by reference to Procedures published by the PSA from time to time, engage with the PSA to settle the case or matter. This paragraph does not apply where an oral hearing is required under paragraph 5.7.9(a) below.

5.5.2

Where the PSA and the Relevant Party engage in accordance with paragraph 5.5.1 above, the PSA may exercise its discretion to settle the case or matter. Where an agreement is reached in

writing, which may include any discounts that the PSA considers appropriate to apply, such agreement will be binding. Any breaches admitted and/or sanctions agreed will have the same effect as if they had been upheld and imposed by a Tribunal. The PSA will publish on its website the facts relating to the case or matter and the terms of the agreement that has been reached.

5.5.3

Where an oral hearing is required under paragraph 5.7.9(a) below, but before the matter is determined by a Tribunal, the Relevant Party and the PSA may seek to reach agreement on:

- (a) any **interim measures** that may be adopted;
- (b) any admissions concerning the alleged breaches; and/or
- (c) any agreement over sanctions that might be imposed by the Tribunal.

5.5.4

Where an agreement is reached in accordance with paragraph 5.5.3 above, the PSA will place the details of the matter and the agreement reached before the Tribunal for approval. Unless the Tribunal determines that there are good reasons not to do so, it will approve the agreement reached by way of an **adjudication by consent**.

5.6

Interim measures

5.6.1

At any time during the PSA's enquiries or engagement with a relevant PRS provider under paragraphs 5.2-5.4 above when it appears to the PSA that a breach of the Code has taken place and the PSA considers, by reference to any criteria set out in its Procedures published from time to time, that:

- (a) the apparent breach is causing serious harm or presents a serious risk of harm to consumers or the general public and requires urgent corrective action; and/or
- (b) the Relevant Party cannot or will not comply with any sanction that may be imposed by a Tribunal pursuant to paragraphs 5.8.5(d), (i) or (j) below, or an administrative charge imposed by the PSA under paragraph 5.11.1 below,

the PSA may adopt the course provided for by paragraphs 5.6.2 and/or 5.6.3 below as appropriate, by (among other things) seeking interim measures from a Tribunal.

5.6.2

Where paragraph 5.6.1(a) above is satisfied, the PSA may seek a direction from a Tribunal for the suspension of part or all of the PRS in question (a **suspension direction**) or such other corrective action as is considered appropriate in the circumstances.

5.6.3

Where paragraph 5.6.1(b) above is satisfied, the PSA may:

- (a) issue a direction to a network operator or intermediary provider to notify the PSA of all future outpayment dates promptly and in any event within two working days and, in the event that any changes are subsequently made to such dates, to notify the PSA of those changes promptly and in any event no less than two working days before the next outpayment date;
- (b) seek a direction from a Tribunal requiring a network operator or intermediary provider to retain any payment or proportion of such payment relating to the relevant PRS from the Relevant Party (a **withhold direction**), pending either a **Decision** under paragraph 5.7.21 below or the implementation of such acceptable alternative interim security as may be set out in Procedures published from time to time; and/or
- (c) seek a direction from a Tribunal requiring a network operator or intermediary provider to pay over to the PSA any monies subject to a withhold direction under paragraph 5.6.3(b) above, pending either a Decision under paragraph 5.7.21 below or the implementation of such acceptable alternative interim security as may be set out in Procedures published from time to time. Any monies paid over pursuant to this subparagraph will be held by the PSA as security for any fines and/or administrative charge for which the Relevant Party may become liable as a result of a Decision under paragraph 5.7.21 below. For the avoidance of doubt, the PSA will repay all such monies promptly to the relevant network operator or intermediary provider in the event that neither a fine nor an administrative charge is imposed on the Relevant Party.

5.6.4

Where the PSA intends to seek a direction under paragraphs 5.6.2 and/or 5.6.3:

- (a) by means of an **interim enforcement notice**, the PSA will (except where it is not appropriate to do so on public interest grounds) use reasonable endeavours to notify the Relevant Party of its initial findings and the proposed interim measure(s) which it considers appropriate;
- (b) the Relevant Party will be given a reasonable opportunity to make representations to the PSA;
- (c) if the Relevant Party fails to respond to the interim enforcement notice within such reasonable period as may be determined by the PSA, the PSA will proceed on the assumption that the Relevant Party does not wish to respond; and
- (d) if the PSA decides to proceed, having considered any representations, it will notify a Tribunal of its findings and of any representations made by the Relevant Party.

5.6.5

Where it is not possible or appropriate for the PSA to issue an interim enforcement notice notifying the Relevant Party of the application for interim measures under paragraph 5.6.4(a) prior to seeking a direction from the Tribunal under paragraphs 5.6.2 and/or 5.6.3 above:

- (a) the PSA will use reasonable endeavours to provide the Tribunal with all facts that might be material to its consideration including any materials which it considers might reasonably have been relied upon by the Relevant Party; and
- (b) the PSA will use reasonable endeavours to inform the Relevant Party, as soon as reasonably practicable following a Tribunal's decision to impose interim measures pursuant to paragraph 5.6.6 below, that its PRS appears to be in breach of the Code; that interim measures have been imposed by a Tribunal; and of the availability of the right to a review pursuant to paragraph 5.6.7(a) below.

5.6.6

Where a direction is sought from a Tribunal under paragraphs 5.6.2 and/or 5.6.3 above:

- (a) the Tribunal will decide whether the applicable conditions at paragraph 5.6.1 above are satisfied so as to warrant the imposition of interim measures, on the basis of the evidence presented to them;
- (b) the Tribunal will set out its findings and reasons in writing and provide them to the PSA and the Relevant Party. The PSA will use reasonable endeavours to ensure that the Tribunal's written decision is received by the Relevant Party; and
- (c) where, and to the extent that, the Tribunal considers that either or both of the conditions at paragraphs 5.6.1(a) and/or 5.6.1(b) are satisfied and decides that an interim measure is appropriate and proportionate, the Tribunal will permit the PSA to:
 - i. issue a suspension direction to the Relevant Party;
 - ii. issue a direction for such other corrective action as the Tribunal determines to be appropriate;
 - iii. direct any relevant network operator or intermediary provider to bar access to the relevant service or phone numbers immediately if the Relevant Party cannot be contacted or does not immediately suspend the service or take the required corrective action; and/or
 - iv. issue a withhold direction to a relevant network operator or intermediary provider.

5.6.7

When directed to do so by the PSA, network operators and intermediary providers shall, in accordance with a withhold direction, immediately:

- (a) withhold:
 - i. such amount of money as the PSA may require out of any monies payable by any network operator or intermediary provider to a specified intermediary provider or merchant provider until permitted by the PSA to do otherwise;
 - ii. some or all monies payable to a specified intermediary provider or merchant provider in respect of certain PRS numbers or PRS (as may be specified) until permitted by the PSA to do otherwise; or
 - iii. all monies payable to a specified intermediary provider or merchant provider until permitted by the PSA to do otherwise;
- (b) pay over to the PSA any amounts of money made subject to a withhold direction under paragraph 5.6.7(a) above or withheld pursuant to paragraphs 6.2.6 and 6.2.7 below, as the PSA may require to hold as security for fines that may be imposed by a Tribunal considering the case in accordance with this Section and/or an administrative charge that may be invoiced by the PSA in accordance with paragraph 5.11 below. Such payments must be made within 30 days of such a direction;
- (c) pay over to the PSA any amounts of money made subject to a withhold direction under paragraph 5.6.7(a) above or withheld pursuant to paragraphs 6.2.6 and 6.2.7 below, as the PSA may require to satisfy any outstanding fines that have been imposed by a Tribunal considering the case in accordance with this Section and/or any administrative charge invoiced by the PSA in accordance with paragraph 5.11 below. Such payments must be made within 30 days of such direction; and/or
- (d) pay refunds on behalf of intermediary providers or merchant providers when so required by the PSA in accordance with paragraphs 5.9.1 or 5.9.2 below.

Review of interim measures

5.6.8

At any time prior to a Decision made under paragraph 5.7.21 below, the Relevant Party may apply for, and the Chair of the CAP may grant, an urgent review of any interim measure(s) previously imposed, in circumstances where:

- (a) it has not been possible or appropriate to issue an interim enforcement notice notifying the Relevant Party of the application for interim measures prior to their imposition; and/or
- (b) further information has come to light suggesting that interim measures should not have been imposed or are no longer appropriate,

and in either case, upon referral by the PSA, the application for review is determined not to be frivolous or vexatious by the Chair of the CAP (or by another legally qualified member of the CAP where the Chair is unavailable or has sat on the original Tribunal), after consideration of any written representations by the Relevant Party.

5.6.9

A review of interim measures will be heard by a differently constituted Tribunal.

5.6.10

The application for review must be made in writing, must include any supporting evidence and must set out:

- (a) the grounds on which the Relevant Party considers that the interim measure(s) should not have been imposed; and/or
- (b) the grounds on which the Relevant Party considers that the interim measure(s) are no longer appropriate.

5.6.11

In the circumstances described at paragraph 5.6.8 above, and at the request of either the Relevant Party or the PSA, the Tribunal may permit oral representations to be made to clarify any matter. The Tribunal may also, of its own motion, request oral representations to clarify any matter.

5.6.12

Subject to any requirement for further information or the Tribunal's need to consider any issues relating to whether the application for review is frivolous or vexatious for the purposes of paragraph 5.6.8 above, the Tribunal will determine the review within five working days of receiving the application. By way of its determination, and by reference to any relevant Procedures published by the PSA from time to time, the Tribunal will have the power to affirm, vary or withdraw the interim measure(s).

5.7

Proceedings before the CAP and Tribunals

The Tribunal and single legally qualified CAP member

5.7.1

Where a referral or notification is made by the PSA pursuant to paragraphs 5.4.7, 5.4.8 and/or 5.6 above, a Tribunal of three members including at least one legally qualified member or a single legally qualified CAP member (as applicable) will be appointed from the CAP to consider the matter. A legally qualified Tribunal member will be appointed as the Chair of the Tribunal.

5.7.2

The Tribunal or single legally qualified CAP member (as applicable) will reach a Decision as to whether the Code has been breached by the Relevant Party on the basis of the evidence presented and the representations made before it.

5.7.3

When considering whether there has been a breach of the Code, the Tribunal or single legally qualified CAP member (as applicable) may take into account, where relevant, the extent to which the Relevant Party has followed any relevant guidance published by the PSA.

Oral representations

5.7.4

In any case where an enforcement notice or an interim enforcement notice has been issued by the PSA under paragraphs 5.4.4 or 5.6.4(a) above, or a review is sought under paragraph 5.10.1 below, and the matter is to be determined by a Tribunal on the papers, at the request of the Relevant Party or the PSA and with the Tribunal's permission, the Relevant Party or the PSA may make oral representations to clarify any matter for the Tribunal. The Tribunal, of its own motion, may request oral representations to clarify any matter.

5.7.5

Where a case is to be determined by a single legally qualified CAP member in accordance with paragraph 5.4.8 above and the Relevant Party wishes to make oral representations, it may request that the case is dealt with by a Tribunal instead. Such a request will be considered by the single legally qualified CAP member in accordance with the PSA's Procedures as published from time to time. Where a case is dealt with by a Tribunal under this paragraph, it may (if appropriate) impose the full range and level of sanctions available to a Tribunal under the Code having regard to the Procedures published by the PSA from time to time.

Oral hearings

5.7.6

Instead of a case being determined by a Tribunal on the papers any Relevant Party or the PSA, or in the case of subparagraph 5.7.6(b) below an associated individual, may by notice in writing:

- (a) request an oral hearing in any case where there are serious and complex issues to be determined, a fair determination would not be possible without an oral hearing, and:
 - i. an enforcement notice has been issued by the PSA under paragraph 5.4.4 above and a Decision has not yet been made by a Tribunal in respect of that enforcement notice; and/or
 - ii. the Relevant Party wishes to seek a review of any determination made by a Tribunal under paragraph 5.10.1 below and a review has not previously been carried out in respect of that determination; or
- (b) require an oral hearing where the Tribunal intends, either following a recommendation by the PSA or of its own motion, to impose as a sanction, the prohibition of an associated individual from involvement in or promotion of any or all PRS types for a defined period, (see paragraphs 5.8.5(f) and 5.8.5(g) below).

Further details concerning the conduct of oral hearings are set out in Procedures published by the PSA from time to time.

5.7.7

An oral hearing may also be requested by the Relevant Party in the circumstances set out in paragraph 5.8.11 below.

5.7.8

Oral hearings must be applied for within 10 working days of the date of receipt by the Relevant Party of an enforcement notice or publication of a Tribunal Decision (where a review is sought), or notice of the Tribunal's intention to impose a prohibition under paragraph 5.7.6(b) above, as the case may be, subject to any directions issued by the PSA altering the period of response, pursuant to paragraph 5.4.5 above.

5.7.9

Within any written application for an oral hearing, the Relevant Party must provide details of the relevant allegation or determination and set out clearly the applicant's case in respect of it. In relation to an application under paragraph 5.7.6(a) above, the applicant must also set out the reasons why it believes that there are serious and complex issues to be determined, and why it believes that a fair determination would not be possible without an oral hearing. The Chair of the Tribunal constituted to deal with the matter on the papers or, where no Tribunal has been constituted the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has been involved in any previous proceedings relating to the case) will then determine whether or not to grant the requested oral hearing in accordance with the criteria outlined at paragraph 5.7.6 above.

5.7.10

If there is to be an oral hearing, the PSA will give the Relevant Party reasonable notice of the date listed. The Relevant Party is entitled to appear at the oral hearing in person and make representations, or to instruct a representative to do so on its behalf. The PSA will attend the oral hearing to present its case and may instruct a representative to act on its behalf.

5.7.11

The Chair of the Tribunal will give such directions as he or she considers necessary for a fair and efficient hearing.

5.7.12

If the Relevant Party is neither present nor represented at the hearing, and the Tribunal has no cause to believe that there is good reason for the Relevant Party's absence, the case will be determined by the Tribunal as it sees fit in the absence of the Relevant Party.

5.7.13

In relation to oral hearings proceeding pursuant to paragraphs 5.7.6(a) and 5.7.6(b) above, where a Relevant Party or an associated individual, respectively, fails without good cause, to appear (in person or through a representative) at a hearing which is properly established, then the Tribunal may make such findings as it sees fit in the absence of the Relevant Party or associated individual.

5.7.14

The Chair of the Tribunal will generally conduct the pre-hearing process and the hearing itself in accordance with the relevant Procedures published by the PSA from time to time. However, he or she will have the power to conduct the pre-hearing process and the hearing as he or she sees fit in the interests of justice, including by deciding to adjourn the hearing if appropriate.

5.7.15

On the application of the PSA, the Chair of the Tribunal may direct that the Relevant Party is required to provide security for the PSA's administrative charge that may be invoiced under paragraph 5.11 below, within a reasonable time period.

5.7.16

The Relevant Party will not be entitled to recover any costs incurred during the investigation and adjudication process.

5.7.17

The Chair of the Tribunal will have the power to strike out a case in the event of serious or persistent failure to comply with the Tribunal's case management directions.

5.7.18

An audio recording of the oral hearing will be made. Recordings will be made available to the PSA and the Relevant Party.

5.7.19

An oral hearing will be conducted in private, unless the Relevant Party or the PSA otherwise requires. If an oral hearing is in public, either party may request that any part of the hearing be conducted in private and any such application will itself be heard in private.

Confidentiality

5.7.20

A Tribunal will be entitled to consider and to act upon confidential information provided to it by the PSA or the Relevant Party without the source of that information being disclosed, directly or indirectly, prior to or during the course of the hearing, provided that the PSA or Relevant Party (as appropriate) is given a reasonable opportunity to respond to the substance of any such confidential information. Before using confidential information in this way, the PSA or Relevant Party (as appropriate) will obtain consent to its use in these terms from the provider of that information and confirm to the Tribunal prior to the hearing that such consent has been obtained.

The Decision

5.7.21

A full, written, reasoned Decision will be prepared and provided to the Relevant Party as soon as reasonably practicable after the Tribunal or single legally qualified CAP member makes their determination on the papers or following an oral hearing.

5.7.22

The Decision will include reasons in relation to:

- (a) whether the Relevant Party has breached the Code; and
- (b) the appropriate sanction identified by the Tribunal in accordance with paragraph 5.8 below.

5.7.23

All Decisions, whether reached through a determination on the papers or an oral hearing, and whether interim or final, will be published by the PSA and may identify any Relevant Party or associated individual, and/or any other PRS provider involved in the provision and/or promotion of the PRS.

5.7.24

The Decision will be published on the PSA's website, and in any other manner that the PSA considers appropriate and proportionate.

5.8

Sanctions

5.8.1

If a Tribunal or single legally qualified CAP member concludes that the Code has been breached, it will determine the appropriate sanction(s) to impose by considering:

- (a) the Relevant Party's history of Code breaches (if any);
- (b) any previous sanctions imposed;
- (c) the revenue earned from the service(s) concerned; and
- (d) any other relevant information put before it.

'Other relevant information' may include, but is not limited to, the extent to which the Relevant Party has followed any relevant guidance published by the PSA and/or the extent to which the Relevant Party attempted to comply with the Code by any alternative methods. A Tribunal or single legally qualified CAP member will generally treat a failure to comply with guidance combined with failure to consider alternative methods for compliance with the Code as a serious aggravating factor. Following guidance will be treated as a mitigating factor.

5.8.2

The Tribunal may impose one or more of the sanctions set out in paragraph 5.8.5 below in any combination depending upon the seriousness with which it regards the breaches it has identified. In considering the seriousness of any breaches, and in determining the sanctions to impose, the Tribunal will have regard to Procedures published by the PSA from time to time.

5.8.3

A single legally qualified CAP member may impose any combination of the sanctions set out in sub-paragraphs 5.8.5(a)–(d) and 5.8.5(i) below up to the maximum levels specified in Procedures published by PSA from time to time.

5.8.4

A Tribunal may impose a greater or lesser sanction than that proposed by the PSA in any enforcement notice issued under paragraph 5.4.4(d) above, or proposed as part of the pre-hearing process conducted by the Tribunal Chair under paragraph 5.7.17 above.

5.8.5

Having taken all relevant circumstances into account and subject to paragraphs 5.8.2–5.8.3 above (as applicable), the Tribunal or single legally qualified CAP member may impose one or

more of the following sanctions in relation to each breach as they consider appropriate and proportionate:

- (a) a requirement for the Relevant Party to remedy the breach (including without limitation by requiring it to register in the PSA Register under paragraph 3.8 above if it has not previously done so);
- (b) a formal reprimand and/or warning as to future conduct;
- (c) a requirement for the Relevant Party to submit some or all categories of its services and/or promotional material to the PSA, or a third party, for compliance advice or for prior permission from the PSA for a defined period. Any compliance advice given by the PSA must be implemented within a specified period to the satisfaction of the PSA. The PSA may require payment of a reasonable administrative charge by a Relevant Party for compliance advice it provides pursuant to this sub-paragraph. Any compliance advice given by a third party must, to the satisfaction of the PSA, be: (i) sufficient to address the breaches of the Code identified by the Tribunal; and (ii) implemented within a period specified by the PSA. The cost of any such advice will be borne in its entirety by the Relevant Party;
- (d) imposition of a fine on the Relevant Party in respect of all of the upheld breaches of the Code, or separate fines in respect of each upheld breach of the Code, not exceeding the maximum amount permitted by law (which at the time of publication of this Code is £250,000 in respect of all breaches or in respect of each breach). Where a fine is imposed it under this sub-paragraph it will be payable to the PSA;
- (e) a requirement for access to some or all of the Relevant Party's services or PRS numbers to be barred for a defined period, or until compliance advice has been implemented to the satisfaction of the PSA, and a direction to any PRS provider in any relevant PRS value chain accordingly;
- (f) a prohibition on a Relevant Party and/or an associated individual found to have been knowingly involved in a serious breach or a series of breaches of the Code, and/or failed to take reasonable steps to prevent such breaches, from providing or having any involvement in specified types of PRS or promotion for a defined period;
- (g) a prohibition on a Relevant Party and/or an associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code, and/or failed to take reasonable steps to prevent such breaches, from providing or having any involvement in any PRS or promotion for a defined period;
- (h) a prohibition on a Relevant Party from contracting with any specified person registered (or who should be registered) in the PSA Register at all, or subject to specified terms, for a defined period;
- (i) a requirement that refunds are paid within a specified time period to all or any specified group of consumers who claim a refund, for the full amount spent by them for the relevant service or for a specified lesser amount, save where there is good cause to

believe that such claims are not valid, and to provide evidence to the PSA that such refunds have been made;

- (j) a requirement in circumstances where there has been a serious breach of the Code and/or serious consumer harm and/or unreasonable offence or distress caused to the general public, that refunds for the full amount spent or a specified lesser amount are paid within a specified time period to all or any specified group of consumers who have used the service, regardless of whether they have claimed a refund;
- (k) a requirement that the Relevant Party submits to a **compliance audit** carried out by a third party approved by the PSA and to a standard prescribed by the PSA, the costs of such audit to be paid by the Relevant Party. Such an audit must be completed and the recommendations implemented within a period specified by the PSA.

5.8.6

Where refunds have been ordered under paragraph 5.8.5(j) above, they must be credited directly to the consumer's account with their communications provider. Where there is no such communications provider account, consumers must be notified of their right to a refund and be given an easy method of obtaining the refund.

5.8.7

Where it is not technically or legally possible to notify consumers of their right to a refund, the PSA may direct the Relevant Party to donate an amount of money equivalent to the refunds to an appropriate registered charity nominated or approved by the PSA. Evidence must be provided to the PSA that any refunds or payments to the nominated charity (as appropriate) have been made.

5.8.8

All breaches upheld and sanctions imposed against a Relevant Party following consideration by a Tribunal or single legally qualified CAP member will be noted on the PSA Register. Information concerning any such breaches and sanctions will be made freely available to the general public.

5.8.9

The failure of any Relevant Party to comply with any sanction within a reasonable time may result in:

- (a) the PSA, of its own motion and without needing to seek further direction from a Tribunal, issuing a suspension direction to the Relevant Party until full compliance with the sanction(s) has been achieved. Such a suspension would, unless stated otherwise, cover any premium rate numbers, shortcodes or other means of access to services, or other codes allocated during the period of suspension;
- (b) a further breach of the Code by the Relevant Party, which may lead to the PSA issuing a fresh enforcement notice and the matter being determined by a Tribunal or single legally qualified CAP member, with the consequence that further separate sanctions may be imposed; and/or
- (c) the PSA taking such other action as it is entitled to take under any applicable law.

5.8.10

When directed to do so by the PSA either as the result of a sanction imposed under paragraph 5.8.5(e)-(g) above or in consequence of the issue of a suspension direction, all network operators, intermediary providers and merchant providers shall immediately (and as applicable):

- (a) terminate access to such PRS and/or PRS numbers as the PSA may specify;
- (b) terminate access to all PRS numbers that are allocated to any specified intermediary provider or merchant provider; and/or
- (c) terminate access to some or all PRS numbers over which a specified PRS or type of service may be operated.

5.8.11

If a network operator fails to comply with a sanction issued under this Section, the PSA may (without prejudice to any other action available to it) refer the matter to Ofcom in accordance with section 120 of the Act for Ofcom to take such action as it sees fit.

5.8.12

If a Tribunal considers that it may wish to impose a prohibition under sub-paragraphs 5.8.5(f) or 5.8.5(g) in respect of any associated individual, the PSA will first make all reasonable attempts to notify the individual concerned and the Relevant Party in writing. In providing any such notification, the PSA will inform the Relevant Party and the associated individual that either of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of their right to require an oral hearing under paragraph 5.7.9(b) above rather than consideration of the matter relating to the associated individual on the papers.

5.9

Refunds

5.9.1

Where:

- (a) a Tribunal has directed a Relevant Party to pay refunds to consumers, under paragraph 5.8.5(i) or 5.8.5(j), or a single legally qualified CAP member has directed the payment of refunds under paragraph 5.8.5(i); and
- (b) the Relevant Party can satisfy the PSA that it cannot comply without recourse to money which has been retained by a network operator or intermediary provider under paragraphs 3.11.2 and/or 3.11.3 above, and/or in response to a withhold direction (the **Retention**),

then the PSA may, without further direction from the Tribunal or single legally qualified CAP member, direct the Relevant Party to present a list of consumers to whom refunds are due to the PRS provider which holds the Retention. That PRS provider will then make any payments due from the Retention.

5.9.2

If a Relevant Party fails promptly to pay refunds in response to a sanction, the PSA may (without prejudice to any other action available to it and without further direction from the Tribunal or single legally qualified CAP member) direct a network operator or intermediary provider which holds a Retention to pay refunds from the Retention.

5.9.3

Where refunds are paid under paragraph 5.9.1 or 5.9.2 above, the Relevant Party will be responsible for any reasonable administration costs which the PRS provider holding the Retention may incur as a result of making payments on its behalf. Those costs may be deducted from the remainder of the Retention after all refunds have been processed.

5.9.4

A PRS provider holding a Retention will not be required to make refunds on behalf of the Relevant Party if the PSA has not directed it to do so under paragraph 5.9.1 or 5.9.2 above within six months of the date of the Decision.

5.9.5

If funds from a Retention are left over following the payment of all refunds, or after the six-month period referred to in paragraph 5.9.4 above, such funds must be used to pay in whole or in part any outstanding fines, or any administrative charge invoiced under paragraph 5.11 below owed by the Relevant Party.

5.10

Reviews

5.10.1

A Relevant Party or the PSA may, after a Tribunal or single legally qualified CAP member has adjudicated a case pursuant to paragraphs 5.4.7 or 5.4.8 above, apply for a review of any determination (including a Decision but excluding an adjudication by consent under paragraph 5.5.4 above) before a differently constituted Tribunal.

5.10.2

Such an application will set out, in writing, the grounds for a review. A determination may be reviewed on one or more of the following grounds:

- (a) the determination was based on a material error of fact;
- (b) the determination was based on an error of law;
- (c) the Tribunal or single legally qualified CAP member reached an unjust determination due to a material error of process in respect of procedures set out in the Code and/or Procedures published by the PSA from time to time; and/or
- (d) the Tribunal or single legally qualified CAP member came to a determination that no reasonable person could have reached.

5.10.3

Other than in exceptional circumstances, an application for a review must be made within 10 working days of the publication of the relevant determination and must include all relevant supporting information and/or evidence. If an application for a review is brought after the deadline has expired, the Relevant Party must in its request explain the exceptional circumstances for its delay.

5.10.4

The PSA may respond to any application for a review and may provide any relevant supporting information and/or evidence. Having received a request for review, the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has sat on the original Tribunal) will consider the grounds of the application and any response received from the PSA and decide whether there are reasonable grounds to conclude that the review has merit.

5.10.5

If it is decided that there are reasonable grounds to conclude that the review has merit, a differently constituted Tribunal (or in the case of a determination made by a single legally qualified CAP member, a Tribunal not including that CAP member) will carry out a review of the Decision, as soon as practicable.

5.10.6

The enforcement of sanctions imposed pursuant to a Decision is not automatically suspended by an application for a review. Where the Relevant Party wishes to request that the enforcement of sanctions be suspended, the following will apply:

- (a) the Relevant Party may apply in writing to the Chair of the CAP setting out the grounds on which any sanction should be stayed;
- (b) the Chair (or other legally qualified CAP member where the Chair is unavailable or has sat on the original Tribunal) will not grant the application unless: (i) to do so would not give rise to a significant risk of public harm; and (ii) the Relevant Party would otherwise suffer undue hardship;
- (c) on the application of the PSA, if a Relevant Party has not been granted a suspension of sanctions and has failed to comply with any sanction, the Chair (or other legally qualified CAP member, as applicable) may stay the review unless and until the sanction is fully complied with.

5.10.7

The Tribunal will consider all documentation and evidence produced at the original Tribunal and will determine the review on the papers, unless on the application of the Relevant Party or of its own motion, the Tribunal decides to convene an oral hearing in accordance with paragraph 5.7.9 above. Where an oral hearing is convened the Tribunal may consider evidence not produced at the original Tribunal where such an application is made by the Relevant Party in accordance with any directions issued by the Chair of the Tribunal under paragraph 5.7.11 above. Where the

Tribunal conducts the review on the papers it may, at its sole discretion, invite the Relevant Party or the PSA to make oral representations to clarify any matter.

5.10.8

The Tribunal may:

- (a) confirm, vary or rescind a determination or any part of it, and substitute such other finding as it considers appropriate; and/or
- (b) confirm, vary or rescind any sanction imposed by a determination. For the avoidance of doubt, the Tribunal may impose a greater sanction than that imposed by the original Tribunal or single legally qualified CAP member, provided that such a sanction is permissible under paragraph 5.8.5 above. The Tribunal is not in any case subject to the limitations that apply to a single legally qualified CAP member under paragraph 5.8.3 above;

5.10.9

Where a Tribunal decides to rescind a determination or any part of it in accordance with paragraph 5.10.8 above, the Tribunal may require such determination or part of it to be taken again in circumstances where it is found to be unjust under paragraph 5.10.2(c) above and/or a full written reason for the determination has not been provided by the original Tribunal in their Decision in accordance with paragraphs 5.7.21 – 5.7.22 above.

5.11

Administrative charge

5.11.1

The PSA may invoice a Relevant Party found to be in breach of the Code for the PSA's administrative and legal costs by way of an administrative charge.

5.11.2

Non-payment of the administrative charge within the period specified by the PSA will be considered a breach of the Code and may result in further sanctions and/or legal action.

5.11.3

The PSA may instruct a relevant network operator or intermediary provider to retain revenue and/or not to provide further PRS numbers, until the administrative charge has been paid.

5.11.4

The PSA may direct a relevant network operator or intermediary provider to transfer to it any sums remaining under the Retention up to the full value of the administrative charge owed, after any refunds have been paid to consumers and after the relevant network operator or intermediary provider has recovered its reasonable administration costs in accordance with paragraphs 5.9.1-5.9.3 above.

5.11.5

If a Relevant Party considers that an administrative charge invoiced to it is excessive, it may challenge the level of the administrative charge by applying to the Chair of the CAP (or other legally qualified CAP member where the Chair is unavailable) for a review, in accordance with Procedures published by the PSA from time to time.

6

Additional powers, responsibilities and obligations

6.1

Directions for information

6.1.1

The following provisions apply on any occasion when the PSA considers it to be necessary and proportionate to direct any PRS provider to disclose information or documents in order to achieve one or more of the purposes of supervision as set out at paragraph 4.2.4 above or for the purposes of engagement and enforcement under Section 5 above:

- (a) To the extent permitted by law and subject to the confidentiality provisions set out at paragraph 1.6 above, the PSA may direct any PRS provider to disclose any relevant information or documents within a reasonable time period that may be specified by the PSA. The PSA may also specify the format in which the information or documents must be disclosed.
- (b) Where a direction is made under this paragraph, the relevant PRS provider must disclose the requested information to the PSA as well as any information that is reasonably likely to have a regulatory benefit in furtherance of the PSA's general functions in regulating the provision, content, promotion and marketing of PRS.
- (c) Where a direction is made pursuant to this paragraph, the relevant PRS provider must not knowingly or recklessly conceal or destroy the information or documents requested.

6.1.2

In particular, but without limitation, paragraph 6.1.1 above may be used by the PSA to direct the provision of information or documents as part of the conduct of thematic reviews or engagement activities under paragraphs 4.3.1(e) and 4.3.1(g) respectively, or in order to ensure compliance with the funding provisions in Section 7 of this Code.

6.1.3

In any direction made under paragraph 6.1.1 above as part of the conduct of thematic reviews, the PSA will provide brief reasons as to why it considers that the information or documents requested are necessary and proportionate for one or more of the purposes set out at paragraph 4.2.4 above.

6.1.4

PRS providers must not knowingly or recklessly provide false or misleading information to the PSA (either by inclusion or omission).

6.1.5

All PRS providers must:

- (a) act on any direction, instruction, notice or request for information given by the PSA in accordance with the Code. Where the PSA specifies a timeframe for action or response, that timeframe must be adhered to or an extension promptly requested in writing setting out the reasons why an extension should be granted. Any such extension will be granted only where PSA considers that there are good reasons to do so.
- (b) not give any undertaking to consumers, suppliers, other PRS providers or other persons which precludes, or might preclude, any information being given to the PSA in confidence.

6.1.6

Any failure to comply with any requirement of this paragraph 6.1 will constitute a breach of the Code.

6.2

Responsibilities and obligations on PRS providers

Withholds

6.2.6

Network operators shall not make, and shall withhold, payments due to any PRS provider for a period of at least 30 days after the use of the PRS to which the payments relate.

6.2.7

Where the PSA so directs, in accordance with the provisions of this Code, all payments must be retained for a period in excess of 30 days.

6.2.8

The PSA may direct any network operator which pays money to any PRS provider, in contravention of paragraphs 6.2.6 and/or 6.2.7 above, to pay to the PSA an amount not exceeding the amount of any fines, **administrative charge** or refunds imposed on the relevant PRS provider, which have not been paid by, or on behalf of, that provider when due. This paragraph applies without prejudice to any other action which might be taken by the PSA against the relevant network operator.

6.2.9

The amount payable by the network operator to the PSA under paragraph 6.2.8 above shall not exceed the amount that should have been withheld or retained by the network operator in accordance with the Code.

Specific responsibilities of network operators

6.2.10

Where required by the PSA network operators must supply the PSA without delay such information as it may require for the purpose of establishing that they meet the definition of a network operator under paragraph D.1.4 of this Code.

6.2.11

Network operators must maintain a record of PRS numbers which, having been allocated or exported to them, are subsequently exported by them to another network operator or over which they cease to have control for any reason. On request and without delay, network operators must supply to the PSA the name of the network operator to which any PRS number falling within this paragraph has been exported or which has control over it. If known, network operators must also supply to the PSA the name of the merchant provider using the relevant PRS number.

6.2.12

If a network operator provides any part of a PRS which has a direct impact on consumers, whether in respect of its promotion or otherwise, the network operator shall be responsible for compliance with this Code in relation to the functions it performs in respect of that PRS.

6.2.13

If, pursuant to an engagement carried out under section 5 of the Code, the PSA considers that a network operator is involved in a breach of the Code in relation to its own functions in respect of a premium rate service, then the PSA may raise a breach of the Code against that network operator and proceed against it. It shall be treated in all respects concerning that breach of the Code as though it was a merchant provider.

Specific responsibilities of intermediary providers

6.2.14

If an intermediary provider provides any part of a PRS which has a direct impact on consumers, whether in respect of its promotion or otherwise, the intermediary provider shall be responsible for compliance with this Code in relation to the functions it performs in respect of that PRS.

6.2.15

If, pursuant to an investigation carried out under section 5 of the Code the PSA considers that an intermediary provider is involved in a breach of the Code in relation to its own functions in respect of a PRS then the PSA may raise a breach of the Code against that intermediary provider and proceed against it. It shall be treated in all respects concerning that breach of the Code as though it was a merchant provider.

Specific responsibilities of merchant providers

6.2.16

Merchant providers shall be responsible for any breach of the provisions of this Code in respect of the provision of the relevant PRS, except where paragraph 6.2.10 or 6.2.12 above applies.

6.2.17

Before promoting or providing services, merchant providers must have readily available all documentary and other evidence necessary to substantiate any factual claims made in its promotional material. This material, together with a statement outlining its relevance to the factual claim in question must be provided without delay if requested by the PSA.

6.2.18

Where certain PRS phone number ranges, shortcodes or other means of access to services have been designated by either Ofcom or a network operator for use only for particular purposes or for the provision of particular categories of service, or where Ofcom or a network operator has restricted certain PRS number ranges, shortcodes or other means of access to services from being used for particular purposes or for the provision of particular categories of service, those number ranges, shortcodes or means of access must not be used in contravention of the applicable restrictions. Ofcom's designations will have precedence over any conflicting designations issued by a network operator.

Specified Service Charges and durations of calls

6.2.19

The PSA may, in relation to any category of PRS, including those set out in paragraph 6.2.20 below, specify:

- (a) the **service charges** which may be spent per call or calls taken together in any 24-hour period or monthly billing cycle;
- (b) the permitted duration for a call or calls to a service in any specified time period; and/or
- (c) the actions which must be taken at specified intervals, or after specified service charges or specified call durations have been reached, including but not limited to:
 - i. the provision of spend or call duration reminders;
 - ii. the immediate termination of the service after provision of a spend or call duration reminder unless the consumer positively confirms a wish to continue to use the service; and/or
 - iii. the immediate termination of the service.

6.2.20

The service categories to which paragraph 6.2.19 above refers include:

- (a) Sexual Entertainment Services;
- (b) Virtual Chat Services;
- (c) Live Entertainment Services (including Sexual Entertainment Services);
- (d) Chatline Services;
- (e) Remote Gambling Services;

- (f) Professional Advice Services;
- (g) Counselling Services;
- (h) Subscription Services; and
- (i) Services aimed at, or which could be reasonably expected to be particularly attractive to, children.

6.2.21

Any service charge, call duration or action specified under paragraph 6.2.19 must be fair and proportionate.

6.2.22

Before any service charge, call duration or action is specified under paragraph 6.2.19 above, the PSA will consider all factors that are relevant and within its reasonable contemplation, consulting relevant stakeholders and considering all representations made about the proposal within the specified consultation period.

6.2.23

Any reference to compliance with the provisions of this Code shall include compliance with all specified service charges, call durations and actions set by the PSA under paragraph 6.2.19 above. A breach of any specified service charge, call duration or action set under that paragraph shall constitute a breach of the Code.

6.2.24

The list of all such specified service charges, call durations and actions, and the service categories to which they relate, will be set out at Annex 1 to this Code and may also be published on the PSA's website.

Data retention

6.2.25

To the extent permitted by law, PRS providers must comply with any data retention notice issued by the PSA, including (but not limited to) any data retention periods specified therein. The data retention notice may include requirements to retain consumers' **personal data** and other types of data relating to services provided and DDRAC. The PSA may amend or update the data retention notice from time to time.

6.2.26

Any failure to comply with the data retention notice will constitute a breach of the Code.

6.3

Formation, composition and responsibilities of the CAP

6.3.1

The PSA has established a CAP consisting of a minimum of nine and a maximum of 17 members. Throughout the entire duration of their membership, CAP members must not have any commercial interest in the PRS sector. The CAP will comprise:

- (a) a Chair of the CAP, who shall be a qualified barrister or solicitor with not less than 15 years of relevant experience;
- (b) up to three but no less than two legally qualified members, who are qualified barristers or solicitors with not less than 10 years of relevant experience; and
- (c) up to 13 but no less than six lay members with adjudicatory and relevant marketing, technical, operational, consumer-based or other experience.

6.3.2

The Chair of the CAP will be appointed by the Board, and will advise the Board as required on Tribunal activity, trends and related matters. The legally qualified members and lay members will be appointed by the Board in consultation with the Chair of the CAP.

6.3.3

The Board has delegated to the CAP the functions of adjudicating alleged breaches of the Code and reviewing determinations made by the PSA in relation to prior permission, including the imposition of conditions upon which prior permission is granted.

6.4

Amendment of Code provisions

6.4.1

For the purposes of paragraph 6.4:

- (a) the term 'amend' and its cognates include additions, removals or variations of any provision of the Code or any provision contained in any other instrument that forms part of the Code by virtue of a provision thereof; and
- (b) 'provision' means any paragraph of the Code, including any sub-paragraph.

6.4.2

The PSA may amend a provision or a set of related provisions of the Code and/or any other instrument that forms part of the Code by virtue of a provision thereof, subject to paragraphs 6.4.3–6.4.4 below.

6.4.3

Before a provision of the Code can be amended in accordance with paragraph 6.4.2 above, the PSA must publish its amendment proposals along with written reasons and any relevant evidence for public consultation and scrutiny.

6.4.4

Having considered any comments received following a consultation conducted in accordance with paragraph 6.4.3 above, the PSA will review its amendment proposals and submit them to Ofcom for comment and approval.

Updates or minor clarifications

6.4.5

Paragraphs 6.4.3 and 6.4.4 above shall not apply where an amendment is required as a result of changes in applicable law, or where minor clarification is required which does not alter the substance and meaning of a provision. Where any amendment is made under this paragraph, the PSA will publish its details in such manner as the PSA considers appropriate for bringing it to the attention of persons who, in the PSA's opinion, are likely to be affected by the amendment.

7

Funding arrangements

7.1

General provisions

7.1.1

For the purposes of this Section, the following definitions shall apply:

- (a) 'outpayments' are sums payable by network operators to intermediary providers or merchant providers in respect of revenue generated by PRS;
- (b) 'revenue' is the sum received by a network operator from consumers in respect of the provision of a PRS, gross of any sum that may be due to third parties arising from the provision of the PRS;
- (c) 'financial year' means the financial year of the PSA as set from time to time, which at the date of publication of this edition of the Code is 1st April to 31st March; and
- (d) 'own service' refers to any PRS provided by a network operator also operating as a merchant provider, whether directly or through any associated company, or a **connected company or person**.

7.1.2

The PSA may issue directions to any PRS provider where, in accordance with paragraphs 6.1.1-6.1.2 above, it requires information to ensure that the provisions of this Section of the Code are being complied with and/or where the PSA has the power to require a network operator to perform any obligation or action under this Section of the Code.

7.2

PSA funding

7.2.1

The PSA's funding arrangements are approved by Ofcom in accordance with section 121(2)(c) of the Act. The PSA will fund its activities by means of a levy which will be calculated by reference to a defined rate or proportion of the financial value of PRS transactions.

7.2.2

The PSA may, in addition to or instead of a levy, fund its activities by other means including (without limitation) by means of:

- (a) monies received through sanctions imposed under paragraph 5.8.5(d) above;
- (b) fees charged by the PSA for registration and registration renewal under paragraph 3.8.8 above;
- (c) fees charged for any other services provided by the PSA; and
- (d) bank account interest.

7.2.3

Where the PSA, in accordance with paragraph 7.2.2 above, decides to fund its activities by means other than a levy, it will publish its proposals for consultation and scrutiny.

7.2.4

The PSA will hold reserves in such amounts as it deems reasonable and necessary to ensure the smooth and continued operation of the organisation and the performance of its regulatory functions.

7.3

Business plan and budget

7.3.1

As far as is reasonably practicable, by 31 December each year, the PSA will publish a proposed business plan and budget for the forthcoming financial year for consultation and scrutiny.

7.3.2

Having considered the comments received under paragraph 7.3.1 above, the PSA will review and then present its proposed business plan and budget to Ofcom for comment and approval.

7.3.3

The PSA will then announce its approved budget for the forthcoming financial year. In so doing, the PSA will specify how it will fund its budget having regard to its available and required reserves. This will include any amount it intends to collect through a levy imposed in accordance with paragraph 7.2.1 above and/or any other funding sources.

7.3.4

The PSA and Ofcom may agree an alternative timeframe for the consultation and consideration of the PSA's business plan required by paragraphs 7.3.1 and 7.3.2 above. Where such an alternative timeframe is agreed the PSA will publish a notification on its website accordingly.

7.4

Levy-funded model

7.4.1

Where the PSA is funded by a levy in accordance with paragraph 7.2.1 above, it will:

- (a) define the levy as a proportion of financial transactions in the PRS value chain that are required to be collected by the network operator;
- (b) determine which financial transactions in the PRS value chain the levy applies to;
- (c) determine the rate or proportion of the value of PRS transactions at which the levy is set;
- (d) require network operators to collect the levy on behalf of the PSA and pay it to PSA in accordance with the provisions of paragraph 7.6 below;

- (e) notify network operators of the determinations made at sub-paragraphs 7.4.1(b) and (c) above as early as reasonably practicable following approval by Ofcom of the PSA's business plan and budget for the forthcoming financial year; and
- (f) require network operators, following receipt of a notification under sub-paragraph 7.4.1(e) above, to inform every PRS provider to which they make outpayments of the determinations made at sub-paragraphs 7.4.1(b) and (c) above, and of the fact that the relevant network operator will deduct the levy from each outpayment at source and pay the deducted amount to the PSA. Where a network operator fails to deduct the levy due in this manner, the network operator will remain liable to the PSA for the full amount of the levy due.

7.5

Financial information

7.5.1

Network operators must provide to the PSA such financial transaction information as the PSA from time to time determines to be necessary in order to enable it to calculate estimated and actual income for the purposes of the levy. This information will include (but will not be limited to) revenues and outpayments, including those relating to a network operator's own service.

7.5.2

Outpayments in respect of own service revenues should be calculated by deducting only those costs incurred by the network operator that are identified as being network-related costs associated with the direct provision of the relevant PRS. This deduction should not include the merchant-related costs of providing the relevant PRS.

7.5.3

Any information required under paragraph 7.5.1 above must be provided in accordance with the timetable published by the PSA from time to time. The timetable will specify the dates by which various activities are to be carried out by network operators and/or the PSA. The PSA may, upon giving reasonable notice to interested persons, vary some or all of the dates set out in the timetable.

7.5.4

Network operators must ensure that the information they provide to the PSA is accurate. The PSA may require:

- (a) an individual with seniority and authority within the network operator's organisation to sign off the information provided by the network operator;
- (b) direct confirmation from a network operator, by way of an audited statement, of the financial transaction information supplied in accordance with paragraph 7.5.1 above. Audited statements may be provided by a network operator's auditors, and must be provided within such reasonable time as the PSA may direct;
- (c) a network operator or a network operator's auditors to supply such further information and/or explanation of such matters as the PSA may consider necessary to satisfy itself as to the accuracy of the network operator's figures in such a format as may be prescribed by the PSA (including by means of a further audited statement);
- (d) a network operator to subject itself to assessment by an independent auditor nominated by the PSA for the purpose of establishing whether the network operator has fully complied with its obligations under this Section of the Code. The costs of any such assessment shall be borne by the network operator.

7.6

Levy payment

7.6.1

The PSA will use information supplied in accordance with paragraph 7.5.1 above to estimate the amount of the levy that must be collected by each network operator for the forthcoming financial year.

7.6.2

The PSA will advise each network operator of the estimate made at paragraph 7.6.1 above and of the payment schedule for the estimated levy. The payment schedule will be determined by the PSA based on the size of the estimated levy and its consideration of any relevant administrative thresholds it may have relating to payment and/or timing. Payment of the levy will generally be required in 12 equal monthly instalments or in a single payment. However, the PSA may set such alternative payment schedule as it determines to be appropriate in the circumstances.

7.6.3

The PSA will issue invoices for payment of the estimated levy, which will set out any relevant terms for payment. All invoices provided by the PSA to network operators will add a charge for **VAT** where appropriate at the applicable rate.

7.6.4

Following completion of the financial year, the PSA will use the information supplied in accordance with paragraph 7.5.1 above to calculate the levy due to be collected from each network operator for that financial year. The method of calculation will be determined by the PSA, and will involve (but will not be limited to) consideration of:

- (a) the absolute value of financial transactions to which the levy applies in each network operator's case, as determined under paragraph 7.4.1(b) above; and
- (b) each network operator's relative share of the total value of financial transactions to which the levy applies, as determined under paragraph 7.4.1(b) above.

7.6.5

The PSA will reconcile the calculation made at paragraph 7.6.4 above with payments made in respect of the estimated levy during the relevant financial year under paragraphs 7.6.1–7.6.3 above and make any necessary adjustments. In particular:

- (a) where a network operator's total payments in respect of the estimated levy for the relevant financial year exceed the calculation made at paragraph 7.6.4 above, the network operator is entitled to have the excess amount repaid by the PSA; and
- (b) where a network operator's total payments in respect of the estimated levy for the relevant financial year are less than the calculation made at paragraph 7.6.4 above, the network operator will be liable to PSA for the difference which will be payable forthwith on demand.

7.6.6

Network operators may, in exceptional circumstances, seek the agreement of the PSA to a recalculation of their estimated levy and the consequential payments required of them under paragraph 7.6.2 above.

7.6.7

If a network operator fails to pay to the PSA monies due in line with the payment schedule set by the PSA in accordance with this Section of the Code and/or in accordance with any other directions issued by PSA, the network operator will be liable to pay interest on any outstanding sums due at the rate of 3% above the prevailing Bank of England base rate from the date on which each relevant payment became due.

Definitions

D.1

Key definitions

D.1.1

Premium rate service or **PRS** has the meaning set out in section 120 of the Act.

Section 120(7) provides:

“A service is a premium rate service for the purposes of this Chapter if –

- (a) it is a service falling within subsection (8);*
- (b) there is a charge for the provision of the service;*
- (c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and*
- (d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.”*

Section 120(8) provides:

“A service falls within this subsection if its provision consists in –

- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or*
- (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.”*

Section 120(14) provides:

“References in this section to a facility include, in particular, references to –

- (a) a facility for making a payment for goods or services;*
- (b) a facility for entering a competition or claiming a prize; and*
- (c) a facility for registering a vote or recording a preference.”*

D.1.2

Controlled Premium Rate Service has the meaning set out in, and is to be construed in accordance with, the Condition issued by Ofcom under section 120 of the Act from time to time. At the date of publication of this Code, the Condition states that a Controlled Premium Rate Service is:

“... a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by

the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:

- (i) the service is obtained through a PRS Number and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;
- (ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);
- (iii) the service is a Chatline Service;
- (iv) the service is an Information, Connection or Signposting Service;
- (v) the service is Internet Dialler Software operated; or
- (vi) the service is a Sexual Entertainment Service.”

Network Operators

D.1.3

General conditions of entitlement means the general conditions set by Ofcom pursuant to section 45 of the Act which are applicable at the material time.

Total metering and billing system has, for the purposes of this Code, the same meaning as in Condition C3 of the general conditions of entitlement or any successor condition established by Ofcom from time to time.

A **lead network** is an electronic communications network provider which is obliged to obtain approval for its total metering and billing system in accordance with Condition C3 of the Ofcom general conditions of entitlement.

D.1.4

Subject to paragraphs D.1.5 and D.1.6 below, **network operator** means, for the purposes of this Code and in respect of any PRS, a person who falls within section 120(10) or 120(11) of the Act and:

- (a) is a lead network;
- (b) has a direct network connection and has direct billing arrangements in respect of that connection with the lead network;
- (c) through arrangements made with a lead network, provides electronic communications services to the public and bills the public directly;
- (d) through arrangements made with a person falling within sub-paragraphs D.1.4(a)-(c):

- ii. provides electronic communications services to other PRS providers;
 - iii. terminates PRS calls on their platform; and
 - iv. can perform or can require the performance of the Standards and Requirements set out in Section 3 of this Code;
- (e) if no person falls within sub-paragraphs D.1.4(a)-(d) above, the network operator shall be the person who falls within section 120(10) or 120(11) and, in respect of the PRS or the services in question, provides or has, in the reasonable opinion of the PSA, the closest or most substantial connection with the provision of the communications network used for the provision of the PRS.

A direct network connection exists when a person provides switching equipment (to currently accepted industry standards), which by interconnection arrangements made between that person and the lead network, enables the conveyance of signals between the lead network and that person.

D.1.5

If a PRS is provided which is accessible only through the use of **Voice over Internet Protocol (VoIP)** technology or in any other form so that, in respect of that service, there is no network operator identifiable under paragraph D.1.4 above, then the network operator, for the purposes of this Code, is the person who provided the facility through which the user gained access to the service.

D.1.6

If a person's primary function is to aggregate or collate the content of services for third parties and/or acquire network access through wholesale arrangements which it then provides to third parties on a retail basis, that person will be treated as an Intermediary Provider for the purposes of this Code and not a network Operator, unless there is no other identifiable network Operator involved in the provision of the relevant PRS.

Intermediary providers and Merchant Providers

D.1.7

Any person who falls within sections 120(9)(a)-(d), 120(10) or 120(11) of the Act who is engaged in the provision of a PRS but is not a network operator in respect of that service may be an **intermediary provider** and/or a **merchant provider**.

D.1.8

An **intermediary provider** is a person who provides a platform which, through arrangements made with a network operator or another intermediary provider, enables the relevant PRS to be accessed by a consumer or provides any other technical service which facilitates the provision of the relevant PRS.

D.1.9

A **merchant provider** is the person who controls or is responsible for the operation, content and promotion of the relevant PRS and/or the use of any facility within the PRS.

D.1.10

In respect of any relevant PRS where the PSA considers there to be a material doubt over whether a person involved in any way in the provision of that service and/or who directly or indirectly receives any part of the charges made to the consumer for provision of that service is a PRS provider falling within paragraph D.1.8 or D.1.9 above the PSA will make a determination with reference to Guidance which it will issue from time to time.

D.2

General definitions

D.2.1

The **Act** is the Communications Act 2003.

D.2.2

An **action plan** is a plan that is agreed between the PSA and the relevant PRS provider following the issue of a warning letter in order to remedy apparent breaches of the Code and prevent any repeat breaches.

D.2.3

An **adjudication by consent** is a settlement agreement between a Relevant Party and the PSA which has been formally approved by a Tribunal.

D.2.4

An **administrative charge** is a charge invoiced to a Relevant Party found to be in breach of the Code for the PSA's relevant administrative and legal costs.

D.2.5

Age verification is the process used to verify the age of PRS users. This includes any technical protection measure used to restrict access to content by those who are not of an appropriate age.

D.2.6

Associated individual means:

- (a) any sole trader, partner or director or manager of a PRS provider;
- (b) any **person with significant influence or control** over a PRS provider;
- (c) any person having day-to-day responsibility for the conduct of a PRS provider's relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act; or
- (d) any member of a class of individuals designated and published by the PSA.

D.2.7

An **auto-populated** field is a field that is filled without any user action or intervention.

D.2.8

Best practice information is information published by the PSA from time to time which sets out the most effective approaches, methods or processes that PRS providers may adopt to meet consumer expectations and which go beyond the Standards and Requirements set out in the Code. The PSA may publish non-binding Best Practice Information from time to time.

D.2.9

Biometric technology is technology that is capable of identifying a person based on some aspect of their biology. Examples include fingerprint and facial recognition.

D.2.10

The **Board** is the board of directors of Phone-paid Services Authority Limited.

D.2.11

Broadcast Services are PRS that are promoted on television and/or radio (other than through commercial advertising), however transmitted, and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise.

D.2.12

A **call** is any communication which passes through an electronic communications network whether initiated by a user, or initiated or facilitated by a PRS provider. **Caller** shall be construed accordingly.

D.2.13

Call TV Quiz Services are those services which broadcast output on television where the primary purpose and content of the entire output is participation in competitions by viewers. Viewers are invited to call or text a premium rate phone number to give their answer (normally either by being connected to the presenter or via a call-back), and if viewers are not selected initially, they have the option to make repeat attempts.

D.2.14

CAP means Code Adjudication Panel.

D.2.15

Chatline Service has the meaning set out in the Condition issued by Ofcom under section 120 of the Act effective from time to time.

D.2.16

Children are people under 16 years of age.

D.2.17

A **complaint** is a written or oral expression of dissatisfaction made by a consumer of PRS in relation to:

- (a) a network operator, intermediary provider or merchant provider regarding the promotion, operation or content of a PRS; or
- (b) the customer service experience that the consumer has received from a network operator, intermediary provider or merchant provider regarding the promotion, operation or content of a PRS,

and where a response or resolution is explicitly or implicitly expected.

D.2.18

A **compliance audit** is the process of conducting a thorough examination of the internal procedures that a PRS provider has in place to ensure that it is able to comply with its obligations under the Code.

D.2.19

Confidential information is information that relates specifically to the affairs of a particular PRS provider or associated individual, where publication of it would or might, in the PSA's opinion, seriously and prejudicially affect the interests of that provider or individual.

D.2.20

A **connected company or person** has the meaning set out at section 993 of the Income Tax Act 2007.

D.2.21

A **coordinated vulnerability disclosure scheme** is a scheme established to enable network operators and/or intermediary providers to work cooperatively with security researchers and other relevant persons to find solutions to remove or reduce any risks associated with an identified vulnerability in their services and/or systems. Such a scheme involves the reporting of vulnerabilities to network operators and/or intermediary providers by security researchers, and the coordination and publishing of information about a vulnerability and its resolution. The aims of vulnerability disclosure within such a scheme include ensuring that identified vulnerabilities are addressed in a timely manner; removing or minimizing any risks from any identified vulnerabilities; and providing users with sufficient information to evaluate any risks arising from vulnerabilities to their systems.

D.2.22

A **Counselling Service** is a service where a caller seeks advice in relation to a personal problem such as marital, relationship, emotional and other such problems. The service may consist of actual advice as to the such problems or information as to where the caller may obtain advice.

D.2.23

Consumer Credit Services are services provided by PRS providers that offer and/or provide credit to consumers and which are regulated by the Financial Conduct Authority.

D.2.24

Data controller has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679) as enacted in the Data Protection Act 2018.

D.2.25

A **data retention notice** is a notice issued by the PSA from time to time specifying any retention period for personal data and other data requirements with which PRS providers must comply to the extent permitted by law.

D.2.26

A **Decision** is a full, written, reasoned decision made by a Tribunal or single legally qualified CAP member following an oral hearing or a determination on the papers.

D.2.27

DDRAC means due diligence, risk assessment and control.

D.2.28

The **e-Commerce Directive** is Directive 2000/31/EC.

D.2.29

The **e-Commerce Regulations** are the Electronic Commerce (EC Directive) Regulations 2002.

D.2.30

Electronic communications network has the meaning given to it in section 32(1) of the Act.

D.2.31

Electronic communications service has the meaning given to it in section 32(2) of the Act.

D.2.32

An **enforcement notice** is a formal notice produced by the PSA and sent to a relevant PRS provider where it decides that a case or matter should be placed before a Tribunal. The Enforcement Notice provides details about the service and potential breaches identified, together with any supporting evidence and a recommendation on sanctions.

D.2.33

An **enquiry letter** is an informal letter sent to any party in a PRS value chain seeking information where the PSA receives intelligence or wishes to understand compliance issues and trends.

D.2.34

An **exemption** refers to a specific category of PRS providers and/or services to which the duty to register and/or the requirement to pay a registration charge, will not apply in certain circumstances, as specified by the PSA.

D.2.35

A **formal notification** is a written notification to a Relevant Party which is given where the PSA decides that a case or matter is sufficiently serious to warrant action that is or may be likely to lead to a determination by a Tribunal or single legally qualified CAP member.

D.2.36

Guidance explains the PSA's expectations with regard to certain provisions of the Code in order to assist providers in interpreting and applying those provisions, and to help facilitate compliance.

D.2.37

Independence and its cognates mean that a person is not controlled or influenced by any person in any way, including through officers, staff, representatives or others with significant control within, or connected to, that person.

D.2.38

Information Society Services are any services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of such services (as defined in Article 1(b) of Directive 2015/1535/EU), subject to the exceptions set out in the Directive.

D.2.39

Interim measures refer to any directions to suspend services (i.e. Suspension Directions) or to take some other corrective action and/or directions to withhold certain service revenue payments (i.e. Withhold Directions) which may be issued by the PSA to a network operator or intermediary provider prior to a Decision on breaches of the Code and sanctions being made by a Tribunal.

D.2.40

An **interim enforcement notice** is a written notice issued to a Relevant Party by the PSA where it intends to seek a suspension direction, a withhold direction or any other direction under paragraphs 5.6.2-5.6.3 above.

D.2.41

Live Entertainment Services are services which allow the caller to speak live with a live operator or one or more other consumers for entertainment purposes, including, but not limited to, one-to-one Chatline (sexual or non-sexual), psychic or tarot services.

D.2.42

MO SMS means a mobile originating (MO) short messaging service (SMS). This is an SMS message that originates from a mobile network user's handset.

D.2.43

MT SMS means a mobile terminating (MT) SMS. This is an SMS message that is received on a mobile network user's handset.

D.2.44

Multi-factor authentication is an authentication method that requires two or more verification factors.

D.2.45

Ofcom is the Office of Communications. References to Ofcom and to any statutory authority or other regulatory body include any replacement successor bodies.

D.2.46

An **online gateway** is an online portal or route to access a service or make a payment.

D.2.47

An **originating network operator** is a network operator falling within sub-paragraphs D.1.4(a)-(c) above.

D.2.48

Person means any natural or legal person.

D.2.49

Personal data means data which relates to an identified or identifiable natural person. Such a person might be identified or identifiable directly or indirectly, in particular from an identifier such as a name, number, online identifier or location data, or by factors relating to the person's physical, physiological, genetic, mental, economic, cultural or social identity. This includes where a person can be identified from a combination of those identifiers and other information which is in the possession of, or is likely to come into the possession of, the **data controller**, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

D.2.50

A **person with significant influence or control** over a company is a person who:

- (a) directly or indirectly holds more than 25% of the company's issued share capital;
- (b) directly or indirectly holds more than 25% of the company's voting rights;
- (c) directly or indirectly holds the right to appoint or remove a majority of the board of directors;
- (d) has the right to exercise, or actually exercises, significant influence or control over the PRS provider;
- (e) has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of sub-paragraphs (a)-(d) above if it were an individual;

- (f) directs the activities of a PRS provider;
- (g) can ensure that a PRS provider generally adopts the activities which they desire;
- (h) has absolute decision rights over decisions related to the running of the business of a PRS provider;
- (i) has absolute veto rights over decisions related to the running of the business of a PRS provider;
- (j) has absolute veto rights over the appointment of the majority of directors, meaning those directors who hold a majority of the voting rights at meetings of the board on all or substantially all matters;
- (k) is not a member of the board of directors but regularly or consistently directs or influences a significant section of the board, or is regularly consulted on board decisions and whose views influence decisions made by the board;
- (l) is a company founder who no longer has a significant shareholding in the company, but who makes recommendations to the other shareholders on how to vote and those recommendations are always or almost always followed;
- (m) otherwise falls within Part 21A and Schedule 1B to the Companies Act 2006, by reference to the statutory guidance published under paragraph 24(5) of Schedule 1A to the Companies Act 2006, or any superseding or successor legislation.

D.2.51

The **PSA** is the Phone-paid Services Authority. References in this Code to the PSA mean the employees of the PSA and/or members of the Board save where the context otherwise requires.

D.2.52

The **PSA Register** is the online registration system maintained by the PSA which contains such information about PRS providers as the PSA may require for the purpose of efficient and effective regulation of PRS.

D.2.53

Prior permission is written permission that may be required by the PSA before particular categories of service can be provided by a PRS provider.

D.2.54

Procedures are published by the PSA from time to time to provide details of the processes and criteria that the PSA will adopt, undertake and/or apply in relation to certain parts of the Code.

D.2.55

PRS provider means any network operator, intermediary provider or merchant provider.

D.2.56

Professional Advice Services are services that involve the provision of specialist advice to consumers, that is, advice which requires knowledge and skill obtained through extensive study and specialised training (including, but not limited to, that required of doctors, lawyers, vets and accountants) and in relation to which membership of a professional body is normally required.

D.2.57

Promotion and its cognates refer to any activity where the intent or effect is, either directly or indirectly, to encourage the use of PRS. The term **promotional material** shall be construed accordingly.

D.2.58

Recurring donation services are services that involve a donation of money on a recurring basis to a PRS that operates solely for the purpose of donating such money to charity or charities registered with the Charities Commission of England and Wales, Northern Ireland, or Scotland. For the avoidance of doubt such services are a subset of **subscription services** for the purposes of this Code.

D.2.59

A **refund** is any repayment of money to a consumer including partial repayments and repayments made without admission of fault and/or in goodwill.

D.2.60

A **Relevant Party** is a PRS provider that has received an enforcement notice.

D.2.61

Remote Gambling Services are services which enable gaming or betting to take place remotely, that is, delivered at a distance electronically or by voice telephony. Such services do not include prize competition or betting tipster services.

D.2.62

A **Retention** and its cognates refer to an outstanding payment due to a network operator, intermediary provider or merchant provider which has been retained by a network operator, intermediary provider or merchant provider in compliance with a PSA direction.

D.2.63

Requirements are enforceable obligations on PRS providers which support the PSA's regulatory Standards.

D.2.64

Service charge has the meaning set out in the Condition issued by Ofcom under section 120 of the Act effective from time to time.

D.2.65

Sexual Entertainment Services are entertainment services of a sexual nature, or any services for which the associated promotional material is of a sexual nature, or indicates or implies directly or indirectly, that the service is or may be of a sexual nature. This includes such services that do not involve nudity or involve partial nudity.

D.2.66

Single point of contact (SPoC) means a nominated person(s) serving as the coordinator or focal point of information concerning various regulated activities.

D.2.67

Skilled persons reports are reports ordered by the PSA under paragraph 4.6 above concerning any matter relating to the provision of PRS.

D.2.68

Society Lottery Services are PRS services that enable consumers to participate in a “lottery” operated by, or for the benefit of, a “non-commercial society”, such terms being defined in the Gambling Act 2005.

D.2.69

Service-specific requirements are additional Requirements with which network operators, intermediary providers and merchant providers of specific categories of services must comply.

D.2.70

Standards refer to the overarching standards that PRS providers must reach in relation to the provision of any PRS. Each Standard is underpinned by Requirements.

D.2.71

Subscription services are services which incur a recurring premium rate charge, irrespective of whether the charge is a regular or irregular one.

D.2.72

Supervision refers to the activities undertaken by the PSA under Section 4 of this Code.

D.2.73

A **suspension direction** is a direction made by a Tribunal on the application of the PSA, or by the PSA of its own motion where permitted to do so, for the suspension of all or part of a PRS.

D.2.74

A **terminating network operator** is a network operator falling within paragraph D.1.4(d) above.

D.2.75

A **thematic review** may be conducted where the PSA has reason to believe there are potential common or industry-wide issues regarding compliance with particular Standards, Requirements and/or other obligations under the Code.

D.2.76

Tribunals are PSA Code Adjudication Tribunals made up of members of the CAP.

D.2.77

VAT means Value Added Tax at the rate applicable from time to time.

D.2.78

Virtual Chat Services are services which do not involve live conversation but which enable two or more users to exchange separate messages, whether by recorded voice, text or pictures, while engaged in the service.

D.2.79

A **vulnerable** consumer is a consumer who is less likely to be able to make fully informed or rational decisions due to a specific characteristic, circumstance or need and may be likely to suffer detriment as a result.

D.2.80

A **warning letter** is a letter sent to a Relevant Party where it appears to the PSA that a potential breach or breaches of the Code have occurred and which sets out its concerns and any corrective action that is required.

D.2.81

A **withhold direction** is a direction made by a Tribunal, on the application of the PSA, requiring a network operator or intermediary provider to retain any payment or proportion of such payment relating to a relevant PRS from a Relevant Party.

Annex 1: Specified service charges and call durations

1.1

The rules set out in this Annex apply to all PRS providers involved, or intending to be involved, in the provision of the relevant service types set out at paragraph 1.3 below.

1.2

Failure to comply with the actions specified in relation to any service type will amount to a breach of the Code in accordance with paragraph 3.18.5 of the Code.

1.3

The rules set out in this Annex apply to the following service types:

- (a) Sexual Entertainment Services
- (b) Live Entertainment Services
- (c) Chatline Services
- (d) Professional Advice Services
- (e) Virtual Chat Services
- (f) Counselling Services
- (g) Children's Services

Rules for Sexual Entertainment, Live Entertainment, Chatline and Professional Advice Services

1.4

When a service Charge of £15 (inclusive of VAT) has been spent on the call, callers must be notified that such a charge has been incurred.

1.5

When a service Charge of £30 (inclusive of VAT) has been spent on the call, the call must be terminated immediately unless the consumer positively confirms a wish to continue to use the service.

1.6

When a service Charge of £40 (inclusive of VAT) has been spent on the call, the call must be terminated immediately.

Requirements for Virtual Chat Services

1.7

All Virtual Chat Services must, as soon as is reasonably possible after the consumer has spent £10 (inclusive of VAT), and after every £10 (inclusive of VAT) of spend thereafter:

- (a) inform the consumer separately from the service or any promotion that £10 (inclusive of VAT) has been spent; and
- (b) terminate the service promptly if the consumer does not interact further with it following the provision of the message sent in accordance with (a) above.

Requirements for Counselling Services

1.8

Counselling Services offered on a one-off basis must terminate after 20 minutes.

1.9

Where a pre-arranged number of counselling sessions is offered, each call must terminate after 60 minutes.

Requirements for Children's Services

1.10

Children's Services must not charge more than £5 (inclusive of VAT) per call in a single transaction or per month for a subscription.

1.11

Children's Services must not charge more than £20 (inclusive of VAT) over a single monthly billing period.

Annex 2: Due Diligence

2.1

The due diligence information required to be collected under this Annex is for the purpose of aiding compliance with paragraphs 3.9.1 and 3.9.2 of the Code. In addition to all other relevant DDRAC requirements set out under paragraph 3.9 of the Code, PRS providers must collect the information set out under paragraph 2.3 below. PRS providers must collect such information in compliance with any applicable **data retention notice** issued by the PSA from time to time in accordance with paragraph 6.2.25 of the Code.

2.2

The information listed under paragraph 2.3 below must be reviewed on an annual basis and updated promptly where any such information has changed. Where any such information is updated the previous version of the information should be stored for reference as to the information held by the PRS provider at any particular point in time.

2.3

The information to be collected and reviewed under paragraphs 2.1 and 2.2 above are as follows:

- (a) confirmation that the intermediary and/or merchant provider(s) have an accurately completed and up-to-date registration with the PSA.
- (b) evidence that the intermediary provider and/or merchant provider is aware of the regulatory requirements applicable to them, and evidence of any steps taken to ensure compliance; for example, records of any engagement with the PSA.
- (c) a copy of the intermediary provider's and/or merchant provider's PSA registration number.
- (d) the intermediary provider's and/or merchant provider's compliance history with the PSA, including consideration of how long they have been operating in the UK PRS market.
- (e) the compliance history of key officers and staff within the intermediary provider and/or merchant provider with significant influence (such as the directors).
- (f) copies of each intermediary provider's, merchant provider's and/or contracted third party's current entries (and first entries, if different from the current entries) in the Companies House register (or if the company is based outside of the United Kingdom, the equivalent register) where such an entry exists.
- (g) the credit, insolvency and/or other legal proceedings history of the intermediary provider and/or merchant provider, and information on any previous or ongoing credit arrangements, insolvency proceedings or arrangements and/or judgments or decisions made by a court or other relevant body.

- (h) verified contact details for the place of business, such as the address and telephone number of the intermediary provider, merchant provider and/or contracted third party.
- (i) copies of the organisation chart of the intermediary provider, merchant provider and/or contracted third party.
- (j) the company structure of the intermediary provider, merchant provider and/or contracted third party, such as names and details of any parent or holding company, if relevant.
- (k) verified names and contact information for all relevant persons with significant influence or control over the intermediary provider, merchant provider and/or contracted third party, such as owners and directors.
- (l) verified names and addresses of all individuals connected to the intermediary provider, merchant provider and/or contracted third party who receive any share of PRS revenue generated.
- (m) where appropriate, undertakings by the intermediary provider and/or merchant provider that no other natural or legal person is operating in the capacity of a shadow director under the Companies Act 2006.
- (n) information on whether any of the directors of the intermediary provider, merchant provider and/or contracted third party have been involved or connected with other companies that had previous findings, decisions and/or judgments against them as a result of action taken by the PSA or another regulator or enforcement body (such as Ofcom, ICO, FCA, Trading Standards).
- (o) information as to who within the intermediary provider and/or merchant provider is responsible for signing-off on, and accountable for, due diligence within the company.
- (p) documentation evidencing the policies and procedures the intermediary provider and/or merchant provider has in place to manage due diligence and risk assessment as required by paragraph 3.9.6 of the Code.
- (q) the agreed channels/staff within the intermediary provider, merchant provider and/or contracted third party for dealing with correspondence such as those relating to legal, financial and compliance matters.

Annex 3: Technical standards

3.1

All platforms should be hosted strictly independently of any merchant provider. Where an intermediary provider wishes to offer services on its own platform, it must retain ownership, control and responsibility for all aspects of the service.

3.2

All platforms should use the current version of the Transport Layer Security (**TLS**) protocols or, as a minimum, a non-deprecated version.

3.3

All platforms should have in place a strong Content Security Policy (**CSP**) to restrict resource usage.

3.4

Browser Cross-site Scripting (**XSS**) mitigations should be enabled on all platforms by default.

3.5

HTTPS Strict Transport Security (**HSTS**) headers should be enabled on all platforms by default.

3.6

Payment pages should protect against click-jacking, for example by use of HTTP Headers.

3.7

Any phone-paid transaction must only occur over correctly validated HTTPS connections.

3.8

Payload protection should be implemented such that it cannot be edited partway through a transaction.

3.9

Rate-limiting should be in place for login attempts, in order to prevent “brute force” password-guessing.

3.10

Authentication cookies should be encrypted by default on all platforms and must expire within a reasonable amount of time.