

Consultation on a new PSA Code of Practice (Code 15)

8 April 2021

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Chairman's foreword

In 2020, the PSA launched a comprehensive review of our Code of Practice. The market had changed fundamentally over the ten years since the previous comprehensive review. Consumer expectations had changed and outcomes-based regulation had not kept pace.

We have developed a new Code on which we are now consulting which raises expectations in the market by introducing regulatory Standards, focuses on the prevention of harm rather than cure, and is simpler to implement and comply with.

We are replacing outcomes with ten regulatory Standards. These are a clear articulation of PSA and consumers' expectations of the market and providers. They will raise standards in the way services are offered and delivered.

By introducing supervisory powers and clearer registration and verification, Code 15 will shift focus to prevent harm rather than enforcing outcomes after harm has occurred. Consumers should have confidence that the services they buy will deliver what they expect. For industry, we will support you to deliver good services for consumers. Code 15 will enable us to use our limited resources more effectively.

We have also simplified the Code and its structure where we can. The proposed Code is easier to navigate. The current Code is supported by 22 pieces of guidance, 14 sets of special conditions and six exemptions. The proposed Code 15 removes much of this complexity. We have dropped special conditions, incorporating only necessary requirements from these into the Code. As Standards will reduce regulatory ambiguity, much less guidance will be needed from the PSA.

Enforcement will remain a key part of our regulatory activity but with a variety of enforcement tools that will allow us to be more flexible in addressing harm. The draft Code has new engagement powers that will bolster our ability to resolve issues quickly without the lengthy and often costly investigations. When there is a full investigation, Code 15 is proposing new powers to prevent unnecessary delays.

Code 15 will be transformative. It is a new approach to regulation that will benefit consumers and industry. It is a Code for a mature market.

This consultation document owes much to the contributions we have received during the review period. There will be many opportunities to engage during the consultation period and we look forward to more fruitful discussion, so please do take the time to contact us.

I am proud of the work of the PSA team who have delivered this ambitious draft Code in a tight timeframe and in unique circumstances, and I thank them for that. We are at an opportunity to improve still further on the progress we have made.

David Edmonds CBE

About the PSA

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

Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS).

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

- establishing standards for the phone-paid services industry
- verifying and supervising organisations and services operating in the market
- gathering intelligence about the market and individual services
- engaging closely with all stakeholders
- enforcing our Code of Practice
- delivering organisational excellence.

Executive summary

Background

This review of the Code is the first comprehensive one in more than a decade. The current Code of Practice (14th edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12th Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011.

The market we now regulate is fundamentally different to what it was ten years ago. When we first introduced outcomes-based regulation under Code 12, mobile-based services accounted for roughly 40% of market revenues. Consumers spent over £200 million on Directory Enquiries services and smartphone penetration was less than 50% of the population. Mobile-based revenues have now accounted for more than 80% of revenues for the past three years in a row.

Consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. It is time for us to ensure our regulation is up to date and fit for purpose to regulate today's and tomorrow's market.

The new strategic purpose we published in December 2019 signalled our intention to be a more proactive regulator that seeks to address harm – or potential harm – before it occurs to build consumer trust and confidence in the market. Our Code is at the heart of how we do this.

We want to deliver a new Code 15 that:

- introduces Standards in place of outcomes
- focuses on the prevention of harm rather than cure

- is simpler and easier to comply with.

Code 15 also needs to be underpinned by efficient and effective enforcement.

This document is a formal consultation on the draft Code 15. We want to ensure that our decisions are based on a sound understanding and accurate assessment of all available information and evidence and informed by stakeholder input.

This document sets out the context to the draft Code and our proposals. For each of our proposals we explain the rationale for the changes we are proposing, which is based on our regulatory experience to date and the feedback we have already received from stakeholders. We also include our assessment of the impact of the proposed changes against a set of general principles. These are: effectiveness, balance, fairness, proportionality and transparency.

Revising our regulatory approach

Our current Code is primarily focussed on the achievement of outcomes, but with a range of more prescriptive rules built in, over time. This approach has served us well in the past but we are increasingly finding that it does not always deliver good consumer outcomes.

Our current approach can lead to a lack of clarity in terms of our requirements and expectations of industry and it has resulted in a relatively complex regulatory system – because it relies on reactive and responsive regulatory action. Regulation is built up bit by bit over many years, resulting in unnecessary cost and uncertainty. We want to move to a regulatory regime that is built around establishing **market standards**.

Currently, entry to the phone-paid services market is relatively open, with limited PSA registration requirements and responsibility for delivering compliant services held by various regulated parties throughout the value chain. It is currently far too easy for non-reputable firms to enter the market and cause consumer harm. We want to move to a model which has an **increased focus on verification and ongoing supervision**.

We want to ensure that the draft Code is simpler and clearer for industry to comply with and that it allows us to meet the needs of consumers in a changing market, not least by giving us greater scope to **regulate more flexibly and proactively**.

Our proposals

Regulatory Standards and Requirements

Under Code 15, we are proposing to introduce seven consumer-focused Standards and three organisational Standards. These are:

Consumer-focused:

- integrity
- transparency
- fairness
- customer care

- vulnerable consumers
- consumer privacy
- prevention of harm and offence

Organisational:

- organisation and service registration
- DDRAC
- systems

Each Standard sets out the expected level of quality that relevant providers must achieve in relation to the provision of phone-paid services. These Standards will cover the provision, content, promotion and marketing of phone-paid services and will be enforceable on their own. Each Standard is supported by a set of more detailed Requirements.

Supervision

Under Code 15, we propose to carry out supervisory activities to ensure we have ongoing oversight of phone-paid services and their providers to achieve and maintain compliance with the Code to prevent, or reduce, actual and potential harm to consumers and the market.

We propose to do this using a range of targeted compliance monitoring methods, including assessing complaints and other intelligence, audits, periodic reporting of data and information, targeted information-gathering, thematic reviews, skilled persons reports, engaging with PRS providers and conducting pre-arranged visits (by consent) to the premises of PRS providers.

Engagement and enforcement

Under Code 15 we propose to carry out engagement and enforcement activities to ensure that PRS providers comply with the Code. This includes engaging with PRS providers to understand issues and trends in specific services, service types, sectors or the market in general. We also propose to engage with PRS providers where we have concerns about compliance matters, including in relation to the Standards and/or Requirements.

We are proposing the following key changes to our enforcement powers and procedures:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

General Code considerations

There are also some other general Code considerations on which we are consulting which are set out in section 8 of this document. These include general funding requirements, definitions, specified service charges and call durations and amendment of Code provisions.

1. Background

Introduction

1. In December 2019, we published a new strategic purpose. The new strategic purpose sets out how we intend to regulate in the consumer interest. It signalled our intention to be a more proactive regulator that seeks to address harm – or potential harm – before it occurs to build consumer trust and confidence in the market. While flexible, our existing regulatory approach focuses on addressing harm – either through enforcement or policy intervention – after the fact.
2. To enable us to meet our strategic purpose, we embarked on a review of our regulatory framework – the Code of Practice. The current Code of Practice (14th edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12th Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011. This review of the Code is, therefore, the first comprehensive one in more than a decade.
3. As we set out in our [discussion document](#), the market we regulate has changed significantly in that period. When we first introduced outcomes-based regulation under Code 12, mobile-based services accounted for roughly 40% of market revenues. Consumers spent over £200 million on Directory Enquiries services and smartphone penetration was less than 50% of the population.
4. The market we now regulate is fundamentally different. Mobile-based revenues have accounted for more than 80% of revenues for the past three years in a row. Operator billing is the largest market segment (including games, entertainment, betting, gambling and lotteries). Voice-based services have declined over that period.
5. Consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. Be it through research, engagement or complaints, consumers tell us that they expect phone payment to be consistent with other payment mechanics.
6. With this in mind, we feel it is time for us to ensure our regulation is up to date and fit for purpose to regulate today's and tomorrow's market.

Aims and objectives

7. Our aim is to develop a new Code (Code 15) more suited for this new market and which meets consumers' expectations. We aim to do this by delivering a Code that:
 - **Introduces Standards in place of outcomes.** Code 15 will set minimum consumer-facing and organisational Standards for providers operating in the market to meet. We believe Standards should be clearer and easier for industry to implement and set minimum requirements for providers to adhere to that meet consumer expectations, while retaining the space for innovation to the benefit of consumers.

- **Focuses on the prevention of harm rather than cure.** Our strategic purpose sets out our intention to be a more proactive regulator that seeks to address potential harm before it emerges. Our current approach to regulation allocates significant resources to addressing harm once it has occurred. We believe this approach no longer benefits consumers, providers or us. We want Code 15 to enable us to work with providers to build in best practice and compliance in the first place to avoid harm where possible and deliver services that consumers enjoy.
 - **Is simpler and easier to comply with.** We want regulation to be as simple and easy to implement as possible, therefore enabling legitimate services to flourish in the consumer interest. We understand that the current Code of Practice, and associated special conditions, guidance and exemptions, can be complex and we aim to address this.
8. While an emphasis on the prevention of harm in the first place should reduce the need for enforcement, we also recognise that any new Code must be underpinned by efficient and effective enforcement.

The process

9. Since we embarked on this review of our Code, we have taken a number of steps to ensure we have developed robust proposals that meet our aims and objectives and consider the views of all stakeholders. These are:
- **Published a discussion document.** We published a discussion document in February 2020, which set out our early thinking and sought stakeholder input on our analysis of the market, review objectives and some early proposals. We received 18 submissions in response to the discussion document from a range of stakeholders, including consumers, consumer advocates and industry¹.
 - **Engaged with stakeholders.** We engaged extensively with consumers, industry, regulators and other interested parties to get stakeholder thoughts and insight and test our early proposal development. We hosted 12 stakeholder webinars to date for consumers and industry, held numerous one-to-one meetings with industry, consumer advocates and fellow regulators, and sought the views of the PSA Industry Liaison Panel and the PSA Consumer Panel
 - **Published this consultation.** We are now seeking stakeholder input on our formal proposals and the draft Code.
10. **Ofcom will also consult on approving our Code.** Under the Communications Act 2003, Ofcom may only approve our Code where it meets certain legal tests. Our Code of Practice must be approved by Ofcom for it to have legal force. Ofcom will shortly be publishing a consultation on approving Code 15. Under the current agreed approach,

¹ Annex 2 provides a list of published respondents

Ofcom consults stakeholders during the same period as the PSA issues its consultation document on proposed changes to the existing Code. This more co-ordinated [approach to consultation](#) was introduced in 2009 to reflect the close working relationship between the PSA and Ofcom.

11. Following consultation:

- **We aim to publish a statement in autumn.** We will consider all responses and subsequently make any required changes to our proposals and/or the Code. Our intention is to publish our final statement on Code 15 in autumn 2021.
- **We will give you plenty of time to implement any proposals we proceed with.** Following publication of our final statement, we will allow a reasonable implementation period for proposals we decide to proceed with. We are proposing a period of between three to six months before the draft Code comes into force. We would welcome stakeholder views on this. We intend to work with industry during the implementation period to support the implementation of any necessary changes for providers so that they are ready to operate services in compliance with the new Code from the implementation date. Once the new Code is published, we encourage providers to comply with the new Code before that date where possible.

About this document

12. This document is a formal consultation on the draft Code. We want to get stakeholder feedback on our proposals. This document, together with feedback we receive, will inform our final decisions on Code 15. We want to ensure that our decisions are based on a sound understanding and accurate assessment of all available information and evidence and informed by stakeholder input. This document sets out the context to the draft Code and our proposals. For each of our proposals we explain the rationale for the changes we are proposing, which is based on our regulatory experience to date and the feedback we have already received from stakeholders. We also include our assessment of the impact of the proposed changes.
13. We would welcome evidence from stakeholders that will assist us in deciding on our proposals for Code 15. This includes any additional evidence about the impact of our proposals, including likely costs/benefits, so we can factor this into our final decision and our related assessment of the impact of these changes on consumers and businesses.
14. This consultation document also includes a number of questions, listed in Annex 2, to which we would welcome responses. More details about how to respond can be found in Section 10 – Next steps.
15. The closing date for responses is **5 July 2021**.

16. Where possible, comments should be submitted in writing and sent by email to: consultations@psauthority.org.uk
17. Alternatively, you can send them to: Barbara Limon, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.

A note on terminology

18. For the purposes of Code 14, there are currently three categories of defined providers. These are: network operators, Level 1 providers, and Level 2 providers². In this consultation, we are consulting on changing the names of Level 1 and Level 2 providers to intermediary providers (intermediaries) and merchant providers (merchants), respectively (see paragraphs 523-539 for further details).
19. Throughout this document we will use these terms interchangeably but, wherever possible, when we are referring to Code 14 requirements, we will use the existing names (Level 1 and Level 2 providers) and when we are referring to our Code 15 proposals, we will use the proposed new names of intermediaries and merchants. This is not intended to pre-judge the outcome of this consultation – it is simply to facilitate our consultation process and to ensure that we are able to explain our proposed changes as transparently as possible.

² See glossary for definitions.

2. The regulatory framework and our current regulatory approach

The regulatory framework

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

Our regulatory approach

24. We regulate phone-paid services in the UK, primarily through the Code. The Code currently sets outcomes and rules to protect consumers as well as the processes we apply when regulating phone-paid services. We have responsibility for enforcing and administering the Code.
25. As well as broad outcomes, the Code currently includes a range of more prescriptive rules, including special conditions, as well as guidance, to support compliance in line with consumer expectations and protection requirements. The Code also enables us to exempt providers from strict adherence to Code provisions, where a Code objective can

be achieved in other ways. This enables us to support the development of services that provide value to consumers.

26. From time to time, we review the Code to ensure it continues to operate in consumers' best interests and provides a fair and proportionate regulatory regime for industry. Ofcom has powers to approve the Code where it meets certain legal tests.
27. Our new [strategic purpose](#), published in December 2019, states that we build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive.
28. We do this by:
 - **Establishing regulatory standards for the phone-paid services industry.** We set standards, via our Code of Practice, to ensure that consumers who charge a purchase to their phone bill do so knowingly and willingly and receive good customer service. The Code standards are supported by guidance, free compliance advice, and examples of best practice.
 - **Verifying and supervising organisations and services operating in the market.** We require all organisations operating in the phone-paid services market to register comprehensive details about themselves and the services they provide, and we make this information available to consumers. We require all parties in the phone-paid services industry to check the credentials and behaviour of who they work with, and to have systems in place to identify and deal quickly with issues affecting consumers.
 - **Gathering intelligence about consumers, the market and individual services.** We invest in research and our expert monitoring capabilities to improve our understanding of market trends, consumer behaviour, experience and expectations, and use this to inform and enforce the standards we set.
 - **Engaging closely with all stakeholders.** We engage with all stakeholders – consumers, industry, government and other regulators, and the media – to inform and facilitate our regulatory approach.
 - **Enforcing our Code of Practice.** Where apparent breaches of the Code are committed, we investigate and enforce, where appropriate, in the most efficient and effective way possible. We aim to eliminate sharp practices, negligent behaviour, and the deliberate use of phone-paid services to exploit consumers.
 - **Delivering organisational excellence.** As a regulator, we are committed to acting in a transparent, accountable, proportionate, consistent, and targeted manner in everything we do.

3. Market and consumer context

Background

29. One of the key motivations for undertaking a comprehensive review of the Code is the extent to which the market has evolved and matured. Code 15 needs to be relevant and fit for purpose for today's and for tomorrow's market. This requires us to consider market developments and consumers' experiences and expectations. In our discussion document we set out, in some detail, how the market has evolved over the past decade and outlined the consumer research we have conducted during this time.

Market context

Discussion document

What we said

30. We noted in the discussion document how the market has moved from being heavily dominated by voice-based services, to one which is now dominated by digital services consumed via mobile phones, with traditional voice services declining. While the phone-paid market continues to be dominated by SMEs, we have seen a number of large blue-chip companies enter the market.
31. We also noted the increasing number of purchases are now made online and consumers increasingly use smartphones to access the internet. We said that there has been significant growth in operator billing, largely driven by app stores and over-the-top (OTT)³ providers. Both gaming and entertainment services were growing and in recent years radio and television competition services have also grown significantly.
32. Over this period the payments market more generally has also changed significantly with the introduction of the revised [Payment Services Directive](#) (PSD2), open banking and e-wallet services such as Apple Pay.
33. The discussion document noted that there are significant opportunities for continued market growth as consumers become both more aware of, and confident about, making purchases using their smartphones, with an increasing number of merchants offering phone-paid services as an option. We also concluded that there is a need to better align the regulation of phone-paid services with broader market issues to support a more consistent and trusted consumer experience.

Stakeholder responses

Network operators

34. *Telecom 2* said that our assessment was largely derived from outdated research and questioned the extent to which it truly represented consumers. It also noted that nothing was mentioned about how PSD2 limits both providers and innovation. It commented that attracting blue-chip companies should not stifle the small and medium-

³ See glossary

sized businesses who they felt are often more innovative. It noted there was little mention of Rich Communication Services (RCS). It also asserted that growth in operator billing is driven by operators reducing options for other payment methods rather than by consumers. It noted that revenue from voice was not what it was but that since some services can only be provided by voice products there will always be a market, but it may become more specialised.

35. *Telefonica UK* argued that our market assessment was incomplete, one-sided and in places lacked detail, and they urged us to consider evidence directly from industry. It noted that market growth has stagnated, with no new blue-chip companies entering the market and no new services being developed. It noted that Covid-19 had led to a substantial increase in conference calling voice services and that this trend is at odds with the overall decline in voice services observed by Ofcom, the PSA and industry prior to Covid-19.

Level 1 providers

36. *Donr* asserted that the market assessment did not take into account changes in the advertising market (e.g. the impact of Facebook/Google) and that Code 15 needed to align with the realities of operating within these platforms and also allow charities to advertise online with confidence. It felt that there was little recognition to competing payment mechanics such as Apple Pay and felt that market growth would depend on phone-paid services staying relevant to charities and businesses against the benefits of these alternatives. It expressed concern that charities seemed to be considered only as an afterthought.
37. *Fonix* agreed that there has been significant growth in the broadcast and charity sector, contributing to overall growth within the phone-paid services market.
38. *Infomedia* said that it did not consider that phone-paid services are like other payment methods and did not agree that they should not be compared. It also felt that there was only limited examination of the market outside of the UK in our market assessment, and that it was important to consider the competition from e-wallet services. It considered that Direct Carrier Billing was a very expensive payment mechanism for industry and that it cannot compete with other payment mechanisms, particularly as the frictionless nature of phone-paid service transactions has been eroded over the years.

Trade associations

39. *Action 4* largely agreed with our market assessment and noted the ever-changing nature of the industry.
40. *aimm* agreed that operator billing had grown but felt this was due to operator focus and not consumer demand. It noted that in the three months following the introduction of the subscription services special conditions, there was a decline in market revenue, and noted that there was no evidence that app store billing will fill the gap. It noted that voice was still important for broadcast and felt that charity donations were unlike other payments. It noted that their members did not agree that app stores were always good

growth as some do not look after consumers and cause harm. It also raised concerns about US tech companies' lack of regard for UK requirements. It said that SMEs needed to join the industry to encourage growth and wanted reassurance that regulation would not just be tailored to blue-chip companies.

41. UKCTA noted that revenue generated by information, connection and/or signposting services (ICSS) is declining, but highlighted an observed spike in the use of ICSS during the Covid-19 crisis in early April 2020. They also expressed the view that nobody would choose to spend significant amounts of money on calls which could be free or at basic rate unless they had been 'misled'.

Consumers and consumer advocates

42. *One individual respondent* considered that there are growth opportunities in phone-paid services but noted the number of non-compliant services and said that this needs to be stamped out.
43. *Another individual respondent* said that there is massive scope for market growth but would not want to see that growth stifled or dragged down by the bad actors and rogue companies that have damaged consumer confidence in the industry. They felt that large blue-chip companies will be reluctant to associate themselves with a payment platform where it is perceived to be full of scammers.
44. *Phone-paid Services Consumer Group (PSCG)* suggested that the networks should act in a similar way to other payment service providers as a dispute settlement mechanism under PSD2, and that Code 15 should take a similar approach. It broadly agreed with the market assessment and noted that there is an opportunity for phone payments to thrive, but that operator billing and premium SMS (PSMS) have an existential threat from bad actors in the industry. It also noted that consumers are becoming aware of the consequences of exempting phone payments from PSD2. It wanted to see networks accept the same level of responsibility as the Financial Conduct Authority (FCA) regulated payment processors to improve trust and confidence in the market. It also suggested that there has been lots of technology change in the past ten years and charge to mobile is cumbersome compared to other payment mechanisms such as facial recognition.

Others

45. *Evina* agreed that that PSMS will continue to migrate to new uses while online payment will continue to grow and said that if operator billing was to grow, the customer journey must be competitive with other forms of digital payments. It noted that in France and Belgium they had a generalised, secured and smooth payment experience which has largely eliminated the problems associated with purchase awareness. It said that in these countries, protection against generalised fraud, coupled with daily collaboration between the different market players, ensures the market's sustainability.
46. *One industry respondent* noted that voice-based services were still an important channel and that PSMS covers the majority of their traffic and felt that there was little

recognition of this in the outlined approach. It felt that there was little in the discussion document on phone-paid services for donations and the obligations that come with a donation rather than a payment.

Annual Market Review

47. Our latest [Annual Market Review](#) 2019/20⁴ (AMR) confirmed many of the conclusions set out in the discussion document and comments we received from respondents. The review found that PSMS was the fastest-growing spending channel, primarily due to the strong performance of TV and radio competition services. It also noted that operator billing continues to grow, although there have been no new agreements between mobile network operators (MNOs) and large OTT players.
48. It also noted that there was unexpected growth in spending on voice-based services, driven in large part by promotional efforts of providers of ICSS but that spend on voice short codes has continued to fall.

PSA's assessment of inputs received

49. Having considered stakeholder responses, and our latest AMR findings and revenue data, our provisional assessment is that the market analysis we set out in our discussion document is broadly correct. We have, however, noted feedback relating to the need to ensure that Code 15 works for the whole market – for blue-chips and SMEs and for both payments and donations – and that we should aim for a greater degree of consistency across the whole payment infrastructure.

Consumer behaviour, experience and expectations

Discussion document

What we said

50. In our discussion document, we noted that phone-paid services are not as well-known as some other forms of digital payment, but consumers' expectations are informed by their experience of using other forms of digital payment. Generally, consumers are positive when they are engaging with larger and more well-known brands who offer phone-paid services but are less positive, or less certain, when they are engaging with a lesser-known service and in circumstances where they may not have sought the service out. Consumers are now more familiar with paying for things online, but they still sometimes find themselves inadvertently signed up to a phone-paid service with a lack of awareness of how to seek a refund for that service.
51. We noted that the regulatory and enforcement action we have taken has led to a significant fall in complaints. While the market is delivering well for consumers, there are some problem areas and still opportunities to improve the consumer experience.

⁴ The AMR is drawn from a nationally representative consumer survey of 9,061 individuals and also in-depth interviews with executives in senior positions from 17 organisations across the value chain.

Stakeholder responses

Network operators

52. *BT* largely agreed that there is an opportunity to improve consumer experiences within the digital payments sector. It urged the PSA to carefully consider how to balance the interests of consumers and industry to avoid any negative unintended consequences for market innovation.
53. *Telecom 2* asserted that not all consumer complaints are genuine and that there needs to be more consumer education. It considered that the research used in the discussion document was dated, had limited sample size and was qualitative. It also said that the PSA Consumer Panel does not represent consumers. It noted that it would be useful to understand how other regulators assess and deal with wrongdoing and complaints. It said that it would be wrong to damage a sector because of an insignificant level of complaints, many of which it felt could be spurious.

Level 1 providers

54. *Donr* drew attention to the age of some of the research used in the discussion document and that it was skewed towards problem areas rather than market growth and relevance. It noted that consumers often have stronger relationships with smaller charities and disagreed with the reasons cited for why consumers are unhappy with phone-paid services. It also considered that issues surrounding consent to charge and fraud have been largely resolved through special conditions and that it would like to see the PSA educate consumers around lifting barring facilities or enable MNOs to offer more granular control.
55. *Fonix* said it would be prudent to have more consumer feedback regarding all service types within the market. It did not believe that some figures used in the discussion document could be relied on as some of the consumer research included in the discussion document is dated. Its customer care statistics lead it to believe that it is a small number of services operating within the phone-paid services market which are causing consumer harm rather than the majority.
56. *Infomedia* questioned the value of the 2014 [Jigsaw research](#) due to the number of changes there have been since then.

Trade associations

57. *Action 4* commented that if the PSA and network operators were doing a good job of educating consumers, then there would be better understanding of services and how to get redress or help. It felt that there was potentially a big opportunity with younger consumers to spend more via these services if they have confidence in them.
58. *aimm* commented that consumer education should be included in the Code review and that the research studies quoted in the discussion document were good but that there was a need to go further and be bigger. It did not feel the PSA should just rely on qualitative research. It noted that the PSA Consumer Panel were not 'industry

consumers' and so may be misguided or lacking in knowledge. Some of its membership feel that research is needed into why consumers complain globally and how to protect the industry against fraudulent consumers. It also said the PSA should use social media to positively engage with active individuals who spread false information.

59. UKCTA agreed with our overall assessment and said that there was a need to build on the research done by the University of Nottingham to understand consumer views on ICSS and whether they meant to call ICSS or not.

Consumers and consumer advocates

60. *One individual respondent* agreed with our overall assessment and highlighted concerns that consumers are not always aware of having provided their consent to charge. They also noted that vulnerable consumers may not know if they had been subject to a scam or fraudulent transaction and so this would not be reflected in industry complaint figures. They suggested that the PSA should use online social media forums and Google searches to gather consumer evidence.
61. *Another individual respondent* commented that the PSA has closed avenues of communication with consumers and it is out of step with consumers. They said the PSA Consumer Panel is welcome but is no replacement for real consumers. They also raised concerns that consumers are not advised that they can block phone-paid services.
62. PSCG said that the market is not working well for consumers who do not know how to contact and negotiate with providers. It also raised concerns on consumers' level of understanding of instructions, either failing to read, or being unable to read due to English not being a primary language or use by children. It was suggested that the PSA should look at Trustpilot reviews of services which have generated a disproportionate number of complaints in the past year. It also expressed disappointment that PSA does not routinely tell consumers that they can ask their network to bar phone-paid services.

Others

63. *One industry respondent* noted the very low level of complaints it received.

Annual Market Review 2019/20

64. In our latest published [Annual Market Review](#) (AMR) just over half (52%) of UK adults used at least one phone-paid service in 2019/20 with more consumer spend on TV and radio engagement (£146.1 million) than any other category, closely followed by games (£146 million). Half of people report that convenience is the main reason for using phone-paid services, followed by price (46%) and impulse purchasing (45%)
65. The industry participants to our latest AMR confirmed both that consumer confidence in phone-paid services is increasing and that there was more that could be done to reduce complaints. This is further confirmed by the fact that the Net Promoter Score for the phone-paid services industry (-17) saw a significant improvement compared with the previous year (-26). 24% of users over the past year have reported problems with phone-paid services with the three most-commonly cited problems being: difficulties in

accessing or using a service (41%), differences from what was advertised (39%), and the price (38%).

66. Other commonly cited problems include undelivered services, charges or subscriptions without consent and that the service was not as useful as expected.
67. These problems correspond to the remarks made by industry participants to the discussion document around what they saw as a lack of customer awareness on pricing and the nature of services, especially with access charge fees for premium rate voice services.
68. The largest number of problems were reported when using sexual entertainment services and personal and relationship services, while survey respondents reported the fewest number of issues when making charity donations.
69. The AMR also noted that our recent regulatory interventions – including special conditions for subscription services and our enforcement focus on due diligence, risk assessment and control (DDRAC) – have helped to deliver a more compliant market.

Consumer vulnerability

70. In August 2020, we published a report on [consumer vulnerability](#). We conducted this study to help inform both our own work and the development of Code 15. The report highlighted some of the features of the phone-paid services market which affect consumer vulnerability. Examples include that phone-paid services payments are usually made on a small screen, which can be difficult to access for some consumers, and that consumers may be reluctant to complain or seek redress if they encountered problems using some phone-paid services, such as adult services.
71. The report also noted that it is difficult to quantify with any precision the level of detriment that vulnerable consumers might experience, but that the impact could be significant. For example, a consumer could be susceptible to feeding a gambling addiction through phone-paid services that are quick and convenient to use.

PSA's assessment of inputs received

72. We note that many of the respondents to our discussion document broadly agreed with the conclusions we drew. Some cautioned us not to rely on some of the older pieces of research evidence we presented, but did not offer any new research for us to consider or any evidence to support a view that the situation is now different or that the conclusions of previous research are now invalid. We have noted the comments about the need to balance the interests of consumers, while avoiding stifling market innovation which is in the interest of consumers. The latest AMR has confirmed the overall trend towards a more compliant market and increasing levels of consumer engagement and confidence. But it is equally clear that more can be done to improve consumers' experience of the phone-paid services market and there remain intrinsic features of the market which put some consumers at greater risk of harm.

Future trends

Discussion document

What we said

73. In our discussion document, we observed that the future was likely to see more engagement from blue-chip companies and that this would be driven in large part by the continued growth of app-store purchases. We also expected to see continued growth of operator billing and some PSMS (such as radio and broadcast competitions) and the continued decline of voice-based services. We felt that there would be increases in consumer awareness, confidence and trust of phone-paid services, particularly as a result of blue-chip companies offering phone-paid services either as an option or as default.

Stakeholder responses

Network operators

74. *BT* stated that the PSA may wish to consider whether Brexit affords any new flexibility or opportunity to stop harmful practices used by some providers marketing and selling services to UK customers while located in EU Member States.

75. *Telecom 2* highlighted that RCS does not appear to have been considered. Another issue it felt could impact the market is the access charges being raised by some consumers' network operators. These are unregulated and at times more expensive than the service charge. It also highlighted that there was no mention of potential conflicts with other regulation such as, for example, with society lotteries.

Level 1 providers

76. *Donr* noted that with the advent of e-money services, it was important to consider services outside the scope of digital goods and services, which feature as part of many Level 1 providers' business development plans. While it was not an area that they were currently able to attribute a financial value to, it felt it would continue to grow as the expectations of blue-chip companies rarely align with the nuances of the current phone-paid services sector.

77. *Infomedia* was concerned that the development of an immediate payments infrastructure may have a significant dampening effect on operator billing. Alongside the issue of high transaction cost was the processing time and it noted that e-commerce was rapidly moving to instant, or at worst seven-day, payments.

Trade associations

78. *Action 4* observed that the regulation and laws were now so overcomplicated that it was prohibiting people wanting to come into the industry.

79. *aimm* was surprised that there is no mention of RCS. It also thought that voice short codes should be considered, as well as any restrictions on gambling.

Consumers and consumer advocates

80. *One individual respondent* highlighted the FCA's 'sandbox' approach and the opportunity for mobile to further develop.

81. *Another individual respondent* said that they felt that phone-paid services need to modernise to survive.

82. *PSCG* considered that there is enormous scope for the development of a reputable, safe phone-paid services system. Such a system could be FCA regulated, allowing it to handle payments for a much wider range of goods and services.

Others

83. *Evina* agreed that large blue-chip companies can do good by helping to "democratize" usage but felt that smaller and local merchants should not be side-lined.

84. *One industry respondent* noted the absence of any discussion about RCS and said that it should be considered as it could change the way the market works. It also observed that changes to the gambling restrictions could impact on its businesses who use credit as a form of payment. While it is still a relatively new restriction, it felt that an assessment should be conducted as to how this may impact the industry.

Annual Market Review

85. Our latest AMR concluded that there is likely to be a continued increase in consumer spend on TV and radio engagement, games, entertainment, betting, gambling and lottery services but noted that some growth may be constrained in 2021-22 due to the impact of the pandemic. Charity donations were expected to continue to reflect the seasonality of telethons. It was also felt that spend on voice-based services and on services relying on limited marketing and advertising would continue to decline but noted the small core of loyal users who continue to use these services.

Mobile network operators

86. In light of comments received to our discussion document, we also specifically sought views from MNOs on future market trends. In their responses, they made the following observations:

- a steady but rising market for operator billing, it was noted that the lead in time for new sectors to enter and grow in the market can be long
- a steady but rising market for PSMS
- the surge in growth of radio and TV competitions is probably not sustainable and a number of legacy services will see a decline which will temper overall growth

- demand for voice short codes was expected to be either flat or in decline
- the emergence of opportunities from new technologies, such as RCS.

PSA's assessment of inputs received

87. Our provisional assessment is that the future market and consumer trends which we identified in the discussion document have been broadly confirmed by the latest AMR. However, we also note responses on the disruption caused by the Covid- 19 pandemic and the, as yet unknown, long-term impact this might have. Respondents from right across the value chain commented on the impact of new technologies and development of other payment mechanisms, and the need for phone-paid services to retain their attractiveness as a payment mechanism, especially for the blue-chip companies.
88. However, we note that where goods are consumed on a phone, this increases the potential for payments to be made using a phone bill. Several industry respondents mentioned RCS. We did not mention RCS in the discussion document, but we have been monitoring the development of RCS. To date, we have not seen RCS deployed to any significant degree associated with phone-paid services – it has largely been used as an enhanced and improved method of bulk messaging. There has been nothing to date in our discussions with industry that suggests that RCS will significantly change our assessment of market and consumer trends in the near to medium term.

4. Proposed regulatory approach

Background

89. In our discussion document, we set out our initial thinking for a new regulatory approach, taking account of our new strategic purpose, with a view to ensuring our regulation remains fit for purpose, now and into the future. We highlighted the following key broad themes in terms of possible changes to our regulatory approach:

- introduces Standards in place of outcomes
- focuses on the prevention of harm rather than cure
- is simpler and easier to comply with.

Introduces Standards in place of outcomes

What we said

90. In our discussion document, we said we currently operate a broad outcomes-based Code which is primarily focussed on the achievement of outcomes, but with a range of more prescriptive rules built in over time.

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

92. We noted that another common criticism of our current approach is that it results in a relatively complex regulatory system. This is because it relies on reactive and responsive regulatory action to clarify expectations, either through policy or enforcement-based interventions. Consequently, regulation is built up bit by bit over many years, resulting in unnecessary cost and uncertainty. We said that through this review, we want to consider the merits of moving to a regulatory regime that is built around establishing market standards. We identified the following benefits:

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

Stakeholder responses

Network operators

93. *BT* said it was very supportive of raising market standards but was concerned that this may mean a return to a more prescriptive regime and that it would, therefore, welcome clarity on how harmful practices would be better addressed using an alternative regulatory approach.
94. *Telecom 2* agreed that the current Code is too open to interpretation and that while it would welcome more clarity around the requirements of the Code, it was not sure that prescriptive standards were the answer. It noted that outcomes-based regulation provided flexibility which would be absent from standards. However, it also said it was difficult to comment further without more detail on the standards.
95. *Vodafone* said it strongly supported the detail of Mobile UK's response and that, once it has sight of the consultation document, it will be able to determine how/if the PSA intends to merge the outcomes-based Code with the detailed rules bound in the numerous special conditions and slimmed down part four of the Code.
96. *Telefonica UK* welcomed the PSA's recognition that the Code can, at times, be unclear and difficult to comply with. It agreed that there is merit to moving to a regulatory approach that offers providers greater 'before the event' clarity. However, it argued that such an approach should be treated with caution as an overly prescriptive approach to regulation could have unintended consequences that might stifle innovation and undermine the PSA's attempts to raise market standards.

Level 1 providers

97. *Donr* suggested that anecdotal evidence from Code 14 such as subscription sign-ups without consent was not a relevant consideration for Code 15. This was because the special conditions and consent to charge work has resolved these issues and that Code 15 should focus on the future.
98. *Infomedia* was supportive of regulatory 'sandbox' proposals as a way of encouraging innovation. It did, however, discourage developing 'best practice' templates which it felt could discourage innovation. It argued the process should be relatively quick, and the outcomes of sandbox trials could then feed into the more detailed full exemption process.

Trade associations

99. *aimm* said that its members suggested that the justification for an outcomes-based Code was that it was future-proofed. It was concerned that if raising market standards resulted in a set of hard and fast rules for various technologies, it may not be appropriate. It noted that its research into regulation in other territories highlighted other approaches which work elsewhere, in markets which it considered have parity to

those in the UK, including models which have greater collaboration between the regulator and regulated companies.

100. *Mobile UK* was concerned that there has been a failure of corporate memory and that the PSA was not recognising why it moved to a principles-based approach in the first place as part of the shift to Code 12. It said that no regulatory system can hope to anticipate every way in which rogue actors will seek to work round rules – that is why the principles-based approach was developed. The regulator found the prescriptive rules were too inflexible to change when found wanting.

Consumers and consumer advocates

101. *Communications Consumer Panel (CCP)/Advisory Committee for Older and Disabled people (ACOD)* believed the regulator should set clear standards for providers to comply with – before making purchases, during a sale and afterwards – putting the onus on providers to be accountable and to operate under a culture of fairness. It saw the setting of standards at all stages of the consumer journey as important in empowering consumers and building trust in this sector – and ultimately providing consumers with an easy and efficient experience of using telecoms services.

102. *PSCG and one individual respondent* agreed that the regulatory approach needs to change from the current, outcomes-based approach. They argued the subjective nature of many of the “outcomes” makes it possible for providers and aggregators to claim that a service complies with the Code despite causing significant consumer harm. They argued that fundamental reform was long overdue, and that MNOs should take the lead on this.

Webinars

103. A common theme that emerged was that while an outcomes-based Code has benefits, there have been many changes over time which have resulted in costs, complexities and uncertainty for industry, and impacted on their ability to be flexible in achieving outcomes. It was also noted that the current approach meant that the PSA has had to become more reactive over time, with lots of service types now having special conditions in place which set out much more prescriptive requirements for how a Code outcome must be met, as well as guidance. A number of stakeholders considered this can impact on their ability to innovate and can negatively impact compliant companies.

PSA's assessment of inputs received

104. We note that many stakeholders were supportive of moving to a new approach based on regulatory standards as our existing approach is considered to be too open to interpretation. This, it was argued, has resulted in a relatively complex regulatory system, built up over time, through the imposition of special conditions and development of guidance. We note that stakeholders requested further clarity from the PSA in terms of what we meant by a ‘standards-based’ approach and were concerned about moving to a more prescriptive regime. We intend to provide this clarity through

this document. Our view is that moving to standards is more about setting out an expected level of quality that providers would have to meet – somewhere in between outcomes and prescriptive rules – and would provide increased certainty to industry stakeholders in terms of our requirements and consumer expectations. We note the views expressed on prescriptive rules. We agree that narrowly drawn prescriptive rules could be overtaken by changes in a dynamic market or simply become obsolete. We believe the approach we have taken in setting standards avoids that problem as we set out in detail in this document.

Focuses on the prevention of harm rather than cure

What we said

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

106. Accordingly, we said that through this review we want to explore the benefits of moving to a model which has an increased focus on verification and ongoing supervision, for the benefit of market health, integrity and reputation and consumer confidence.

Stakeholder responses

Network operators

107. *BT* supported an increased focus on preventing, rather than curing, consumer harm within the market. It said that should the PSA choose to adopt a more proactive approach to monitoring the market and intelligence gathering, it would welcome a discussion about the pros and cons of using the levy to fund the PSA's efforts.

108. *Telefonica UK* agreed that focusing on prevention rather than cure was the right approach but, also, that the PSA must recognise the obvious trade-offs. It agreed, and welcomed, the PSA's recognition that it can do more as a regulator to support the due diligence and security checks already undertaken by MNOs in the market. It said that the PSA needs to consider how it can best align and complement the due diligence already undertaken by MNOs (and vice versa).

Level 1 providers

109. *Fonix* supported the initiative to raise industry standards based on prevention rather than retrospective action. It argued that there should be more onus on the MNOs to

take action at a network level for the small number of bad players operating within the market.

Trade associations

110. *Action 4* said that it welcomed a move by the regulator to prevention rather than cure but that the industry would need to see what this means.
111. *aimm* expressed concerns around making a prescriptive set of standards and then increasing the amount of verification and supervision around those. It argued that members would want to be fully included in any process that results in a set of standards, and any monitoring of those, to ensure they remain future proof, technologically possible and consumer friendly.
112. *Mobile UK* noted that the fact that bad behaviour still goes on in the market does not mean that the rules are wrong, or that the whole regulatory framework needs changing to deal with a small minority. It argued that proportionate regulatory steps should be taken to minimise the risk of rogue actors. It noted that some of the steps proposed in the discussion document, including the proposed focus on prevention rather than cure, could achieve this.

Others

113. *Evina* believed the increased focus on prevention is absolutely critical.

Webinars

114. There was broad consensus by stakeholders that we should look at what we can do through Code 15 to ensure that only well-intentioned providers that put consumers at the forefront of what they do can enter the market. Another key theme related to the need to review responsibilities across the value chain and the opportunities to strengthen due diligence requirements, alongside considerations about market entry. The importance of striking an appropriate balance between getting the entry requirements right, while supporting innovation and enabling new and different services to enter the market to the benefit of consumers, was also raised.

PSA's assessment of inputs received

115. We note there was broad agreement that barriers to entry into this market are too low, with many problems associated with bad actors who are able to enter and exit the market too easily and without consequence. We note that many stakeholders saw Code 15 as an opportunity to introduce greater discipline at the market entry level, which we welcome. However, we also note the concerns raised about striking an appropriate balance between getting the entry requirements right, while supporting innovation. We agree with these comments so long as innovation is in the interests of consumers.

Is simpler and easier to comply with

What we said

116. In our discussion document, we said that we wanted to ensure that the draft Code was simpler and clearer for industry to comply with. To do this, we said that we considered it appropriate to review the role, purpose and structure of the Code. We said that some of the proposals we are considering would allow us to meet the needs of consumers in a changing market, not least by giving us greater scope to regulate more flexibly and proactively. We highlighted the following potential benefits of such an approach:

- providing increased certainty to industry stakeholders in terms of our requirements and expectations through the establishment of regulatory standards
- making it easier to update certain standards in response to market developments and changes in best practice
- the potential for more flexible regulation, including the ability for regulated parties to achieve the regulatory standards through alternative means, where regulated parties commit to meeting the agreed standards.

Stakeholder responses

Trade associations

117. *Action 4* agreed with our intent to have a Code which “is simpler and clearer for industry to comply with”.

118. *aimm* agreed that compliance with the Code should be simple. In particular, it highlighted research into four other international jurisdictions which was carried out by Fladgate LLP on its behalf. In so doing, *aimm* stated that it wanted to provide context around its response, but also to “provide strong evidence to demonstrate that there are other successful frameworks beyond either that which is currently utilised within the UK for regulating this market, or that which is being proposed”. It argued that the research showed several frameworks “which are simpler, more efficient, more collaborative and on a smaller budget”.

119. The report stated that the countries surveyed/considered were carefully chosen to represent a range of models of regulation against a baseline of being (fairly) well aligned with the UK market for PRS. It highlighted the following key takeaways from the research:

- short and simple Code documents (Sweden)
- elements of a self-regulating industry (France, Sweden, The Netherlands)
- collaboration with industry on Code reviews and agreement from industry on Code changes (France, Sweden, The Netherlands, and South Africa)

- clear communication pathways, swift processes, and quick turnaround times (France, Sweden, The Netherlands and South Africa)
- a mainly informal process for dealing with initial issues (The Netherlands and South Africa)
- a thorough registration process (The Netherlands)
- a considerably lower budget model (Sweden, The Netherlands, and South Africa).

120. aimm's conclusion of the research was it shows that in other territories consumer outcomes can be improved by helping them to self-serve in a more efficient way, removing the requirement for regulatory intervention.

Others

121. *One industry respondent* agreed that developing best practice templates would be helpful to the industry. It would be good to better understand how the exemption regime may work in practice.

Webinars

122. At our webinars, the importance of clarity and simplicity came through strongly in discussions, including strong agreement about the need to think about how we can develop a Code that is easier to navigate and simpler to comply with, and one that is not too prescriptive.

PSA's assessment of inputs received

123. We note that there was strong stakeholder support in terms of moving to a simpler and clearer Code for regulated parties which would aid compliance in the consumer interest. One stakeholder was also keen to understand more about how our proposed exemptions process will work.

124. We have also considered the research provided to us by aimm. However, while the research is an interesting look into the regulatory models which are employed in other countries, we do not think this research and the conclusions being drawn from it are relevant to the UK market, for the following reasons:

- the research is making comparison with industry self-regulation models. The UK's approach to PRS is governed by the Act, which includes the requirement at section 121(2)(b) that Ofcom should only approve a Code of Practice for the regulation of the market if the organisation operating the Code is "sufficiently independent of the providers of premium rate services". It is difficult to see how a self-regulatory model on the lines advocated by aimm would be consistent with that requirement.
- the research provides no real detail about the legal basis for the regulation in the territories surveyed. It neither details the legal underpinning that allows for self-regulation nor does it provide any detail on the legal/contractual arrangements that make them work.

- as importantly, there is very strong evidence that industry self-regulation is not appropriate for the UK market. There is a long history of significant harm and specific incidents or reasons for that harm which have not been adequately addressed by industry measures, ranging over time from consumer harm caused by internet diallers to internet-based subscription services offering various forms of content. We also note that the Payforit scheme was originally set up by MNOs with the intention of not needing regulatory oversight - indeed the MNOs argued for it not to be included in the PSA's remit. However, it ultimately failed to provide the level of protection that consumers expected and needed, with exploitation of the weaknesses in the scheme by unscrupulous industry participants leading to a highly damaging impact on the brand and the scheme being withdrawn. It has taken strong regulatory intervention to deliver a major reduction in harm.
- the research provides no information about the levels of compliance or harm in the markets referenced. A [recent research report](#) by an industry monitoring company placed South Africa last for compliance among all the countries referenced in the report, for example.

Consultation proposals

125. Based on our key themes identified earlier, we are proposing the following changes to our regulatory approach.

Regulatory Standards and Requirements

126. Under Code 15, we propose that our regulatory approach is based on setting overarching regulatory Standards, each of which is supported by a set of more detailed Requirements. We are proposing to introduce seven consumer-focused Standards and three organisational Standards. These are:

Consumer-focused:

- integrity
- transparency
- fairness
- customer care
- vulnerable consumers
- consumer privacy
- prevention of harm and offence

Organisational:

- organisation and service registration
- DDRAC
- systems

127. We propose that each Standard sets out the expected level of quality that relevant providers must achieve in relation to the provision of phone-paid services. These

Standards will cover the provision, content, promotion and marketing of phone-paid services and will be enforceable on their own.

128. We propose that each Standard should be underpinned by Requirements that are designed to support providers in achieving the Standard.

129. Further detail as to these Standards is set out in Chapter 5.

Q1 Do you agree with our proposed regulatory approach relating to regulatory Standards and Requirements? Please provide an explanation as to why you agree or disagree.

Service-specific requirements

130. In the current regulatory framework, there are 14 special conditions which apply to specific categories of service. As we outlined earlier in this document, we are proposing to remove special conditions in Code 15 and incorporate some of them into the proposed Standards.

131. However, we are proposing to retain some elements of current special conditions and guidance within a service-specific requirements section of Code 15. This is where we believe the requirements are so specific to certain types of service that they cannot be easily applied to all services.

132. We are proposing service-specific requirements for the following service types:

- society lottery services
- professional advice services
- competition services (including TV and radio broadcast services and voting services, and call TV quiz services)
- remote gambling services
- live entertainment services
- services using virtual currency.

133. All the proposed requirements have been adapted from the current special conditions, except the proposed requirements for services using virtual currency and some of the proposed requirements relating to competitions, which have been adapted from relevant guidance notes.

134. The proposed requirements have also been simplified and condensed where, in our provisional view, it is appropriate to do so. For example, where a category of service is dual regulated, such as remote gambling and society lotteries, we have reduced the number of applicable requirements by not replicating Gambling Commission rules. We have also removed the requirement for a bond for live entertainment services – this is

on the basis that we believe the Standards and increased supervision/compliance monitoring combined will provide adequate consumer protection.

135. We are also proposing to move away from the concept of “high risk” services which is the current threshold to be met for the introduction of special conditions. Our provisional assessment is that the need for such a threshold is obviated by the move to Standards which apply across the board. The move away from the “high risk” threshold will also provide us with greater flexibility to update or amend these service-specific requirements as needed (following consultation) without the need to consider whether or not a service is “high-risk”. This will mean we are able to respond to issues, or changes in technology or consumer expectations, much more swiftly.

Q2 Do you agree with our proposed regulatory approach relating to service-specific requirements? Please provide an explanation as to why you agree or disagree.

Guidance and advice to support compliance with the draft Code

136. We propose to continue to provide guidance to set out the PSA’s expectations and provide more detail on how PRS providers can comply with the Standards and Requirements, both generally as well as in relation to specific service types and charging mechanics. While the guidance will not be binding on providers, we will take into account whether or not providers have followed the guidance in considering any alleged breach of the Code and/or the imposition of sanctions. We will also take into account the extent to which providers have attempted to comply with the Code by using methods other than those set out in the guidance, and/or the extent to which providers have engaged with us as part of developing any such alternative methods.

137. We will consult on guidance following on from the publication of our statement on Code 15. We would welcome comments from stakeholders on our proposed approach to guidance as well as areas where guidance would be helpful. We have included in Annex 3 a provisional list of the guidance which we intend to consult on following publication of our statement.

138. We also propose to continue to offer compliance support by issuing non-binding compliance advice to providers on request. Our provisional view is that whether or not providers have sought and/or followed compliance advice will be taken into account in considering any alleged breaches of the Code and/or imposing sanctions.

Q3 Do you agree with our proposed regulatory approach relating to guidance? Please provide an explanation as to why you agree or disagree.

Q4 Are there any areas where you consider that guidance would assist with compliance with the Standards and Requirements?

Q5 Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.

Best practice information

139. We propose to publish and update best practice information following appropriate consultation. This will aim to focus on actions and behaviours that go beyond compliance with the Standards and Requirements by setting out what we consider to be the most effective way of meeting consumer expectations in the provision of phone-paid services.

140. We propose to take compliance with best practice information into account when considering any alleged breach of the Code and/or imposing sanctions.

141. Where a PRS provider has achieved an expectation set out in the best practice information, we propose that we are able to review and vary any compliance monitoring requirements in respect of that provider.

Q6 Do you agree with our proposed regulatory approach relating to best practice information? Please provide an explanation as to why you agree or disagree.

Q7 Are there any areas where you consider that best practice information would be helpful?

Supervision and verification

142. Under Code 15, we propose to move to a model which has an increased focus on verification and ongoing supervision, for the benefit of market health, integrity and reputation, and consumer confidence. Our provisional view is that this will work as follows:

Enhanced notification through the registration scheme

143. We propose to carry out checks on PRS providers through an enhanced registration system, which will enable us to collect and verify essential information about PRS providers and their services. We consider this should include, among various other requirements, information relating to relevant contact details of individuals in the organisation, relevant numbers and access or other codes as well as the identity of other providers involved in the provision of the service.

Strengthened DDRAC requirements

144. We propose to put in place more stringent 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.

Supervision

145. We propose to carry out supervisory activities 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
- ensuring that the PSA can take informed decisions in carrying out its regulatory functions.

146. We propose to carry out these activities through a range of targeted compliance monitoring methods, including assessing complaints and other intelligence, audits, periodic reporting of data and information, targeted information-gathering, thematic reviews, skilled persons reports, engaging with PRS providers and conducting pre-arranged visits (by consent) to the premises of PRS providers.

147. Our provisional assessment is that our proposed new approach to supervision and verification will enable us to have a more comprehensive understanding of PRS providers and the services that are offered to consumers. This will help us better protect consumers by taking proactive regulatory action that is proportionate, efficient, timely, targeted, and effective.

148. Further detail as to our approach to supervision and verification are covered in Chapter 6.

Q8 Do you agree with our proposed regulatory approach relating to supervision and verification? Please provide an explanation as to why you agree or disagree.

Code compliance: engagement and enforcement

149. We propose to carry out engagement and enforcement activities which seek to ensure that PRS providers comply with the Code. This includes engaging with PRS providers to understand issues and trends in specific services, service types, sectors or the market in general. We also propose to engage with PRS providers where we have concerns about compliance matters, including in relation to the Standards and/or Requirements.

150. We propose to do this by moving away from the current model of 'Track 1' and 'Track 2' procedures to a new structure which involves use of enquiry letters, warning letters and formal notification and enforcement notices. Our provisional view is that this will provide a much clearer overall structure of the engagement and enforcement routes open us and provide a clearer framework around the informal resolution of issues or cases, which currently sits outside Code 14.

151. Although it is currently open to us to engage with industry informally, we consider that it would be beneficial to have clarity within Code 15 and any supporting procedures on the use of informal engagement or resolution tools, to help ensure that such tools are given due weight by the industry.

152. We also consider that this would provide more flexibility for us in terms of how we deal with any compliance concerns and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action. We consider this would work as follows:

- **Enquiry letters.** This would be a tool through which we are able to engage with PRS providers to better understand Code compliance issues and trends. This engagement will support and inform our decisions on appropriate regulatory priorities and action. Failure to respond to an enquiry letter without good reason and/or repeated failures to respond would be a relevant factor which we would take into account as part of our proposed new co-operation requirements.
- **Warning letters.** Where it appears to us that a breach of the Code has occurred or is likely to have occurred (whether or not an enquiry letter has been sent or a response received), we would be able to issue a warning letter to the relevant PRS provider. In a warning letter, we would set out our concerns 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 (at which point sanctions can be applied).

Q9 Do you agree with our proposed regulatory approach relating to Code compliance: engagement and enforcement? Please provide an explanation as to why you agree or disagree.

Tailored approach to regulation

153. We propose that Code 15 provisions will apply to all PRS providers unless an alternative approach to achieving compliance is agreed with, or proposed by, the PSA. This approach builds on the current permissions regime set out in paragraph 3.10 of Code 14.

Bespoke permission

154. Where PRS providers demonstrate to our satisfaction that they are able to achieve any of the objectives of the relevant Code provision(s) through means other than strict adherence to such provision(s), we propose being able to grant permission in writing for the alternative means to be used. Granting of such permission may be subject to conditions which we would agree with the provider and which might include for example enhanced reporting requirements. Whenever we grant bespoke permission,

we would publish certain information on our website, prior to the permission taking effect.

General permission

155. Where we consider, following consultation, that any requirement or other obligation in any other part of this Code can be met by means other than strict adherence to these requirements or obligations, we propose being able to grant permission to all relevant PRS providers by issuing a notice which sets out certain details relating to this general permission, including who the notice applies to, what the alternative means are, the relevant provisions of the draft Code and any relevant conditions which we propose to attach to the use of the alternative means.

156. In terms of general and bespoke permissions, we see these as largely building on our current permissions regime under Code 14, which already provides [permission](#) for certain services to operate without having to comply with specific Code provisions where we believe they can achieve the relevant outcomes of the Code through other means.

157. Following on from the publication of our statement on Code 15, we intend to set out through a published notice the existing permissions under Code 14 that will continue to apply under Code 15. We also intend to set out a list of exemptions published under the current registration provisions of Code 14 that will also continue to apply under Code 15 for the purposes of the organisation and service registration Standard and Requirements.

Q10 Do you agree with our proposal to tailor our approach to regulation, including introducing bespoke and general permissions as part of the draft Code? Please provide an explanation as to why you agree or disagree.

Q11 Do you have any comments about the existing permissions and exemptions under Code 14 and/or our proposed approach to ensuring certainty and clarity on their status under Code 15?

Prior permissions

158. We propose to retain the existing prior permissions regime within the draft Code that will enable us to require particular categories of service to only be provided with prior written permission from us. We propose to give reasonable notice of any such requirement and the category of service to which it applies. We would publish a full list of such service categories on our website from time to time. In deciding whether to apply prior permissions, we propose to take account of all relevant factors including the compliance of the relevant PRS provider. We also propose that it should be open to PRS providers who have applied for prior permission and are not satisfied with our determination, to apply to the chair of the Code Adjudication Panel (CAP) for a review of the determination.

Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.

5. Regulatory Standards and Requirements

Introduction

153. In this section, we describe the overarching regulatory Standards, and detailed supporting Requirements, which we propose will form the basis of our new regulatory approach. As described in section 4, we are proposing to introduce seven consumer-focused Standards and three organisational Standards:

Consumer-focused:

- integrity
- transparency
- fairness
- customer care
- vulnerable consumers
- consumer privacy
- prevention of harm and offence

Organisational:

- organisation and service registration
- DDRAC
- systems

Integrity Standard

Proposed 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.

Rationale

This Standard aims to ensure that providers act in a manner that supports the integrity and orderly functioning of the phone-paid services sector, observe proper standards of conduct, and uphold the reputation of the market at all times. This helps to build consumer trust in the phone-paid services sector and ensures that consumers are well served by a healthy market that is innovative and competitive and works in their interests.

Our regulatory approach under Code 14

159. Under Code 14, there are a number of general responsibilities which apply to providers of phone-paid services and which set out various rules and responsibilities relating to their role in helping to support PSA regulation. These include, among others, the following responsibilities:

- to ensure that that PSA regulation is satisfactorily maintained by taking all reasonable steps to meet the requirements of the Code and to carry out their obligations promptly and effectively, including ensuring that all consumer complaints are handled quickly and fairly (paragraph 3.1.1)
- having regard to the funding provisions of the Code and to comply with such provisions where so required (paragraph 3.1.2)
- not engaging or permitting the involvement of an organisation or individual in the provision of PRS in respect of whom a sanction has been imposed and published (paragraph 3.1.5).

Our regulatory experience to date

160. As discussed in section 3, the phone-paid services market has transformed in recent years, including moving from a market in transition to a more mature and increasingly compliant market. These developments have resulted in [increased consumer confidence](#) in the market and an improved [Net Promoter Score](#). Despite these positive trends, our experience over recent years, as evidenced by our investigations and adjudications activity, is that not all of the industry puts the interests of consumers and the orderly functioning of the market at the heart of its culture. While this is a small part of the market, it generally results in significant consumer harm and negatively impacts the reputation of the phone-paid services market.

Early stakeholder engagement

Discussion document

What we said

161. While we did not specifically discuss the concept of integrity in our discussion document, we did set out our intention to develop a new Code that builds public trust and confidence in the sector, which provides the right incentives for businesses to operate responsibly and the right deterrents for those firms that seek to enter the market to exploit consumers. One of the overarching principles⁵ we articulated was that consumers should be able to trust that they are dealing with reputable service providers and individuals.

PSA's assessment of inputs received

162. We did not receive stakeholder feedback in relation to the issue of integrity during our early stakeholder engagement.

163. However, we did meet with other regulatory bodies, including the FCA, to understand their regulatory approach to market integrity. The financial services sector provides a number of helpful insights, as the FCA has a clear [objective](#) relating to “protecting and enhancing the integrity of the UK financial system”. Among other important principles,

⁵ This was articulated in relation to what we defined as the pre-operational regulatory phrase which relates to setting market entry at an effective level.

this includes issues relating to soundness, stability and resilience, prevention of financial crime, avoidance of market abuse and the orderly operation of the financial markets.

Consultation proposals

164. We are proposing to introduce a new Integrity Standard to establish a clear expectation that providers must act with honesty and integrity at all times. We propose that this Standard will incorporate a number of existing general responsibilities from Code 14, namely paragraphs 3.1.1, 3.1.2 and 3.1.5 (as described above).

165. We propose to include the following new Requirements under this Standard:

- that PRS providers must act honestly at all times in all their interactions with consumers and the PSA (paragraph 3.1.1)
- that 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 (paragraph 3.1.2).

Assessment framework

166. We consider that our proposed new Integrity Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they are designed to build consumer trust in the phone-paid services market and act as a deterrent to more disreputable providers. The changes aim to ensure that consumers are well served by a healthy market that is innovative and competitive and works in the interests of consumers. We consider that improving the performance of the industry in relation to honesty and integrity will improve the industry's reputation. We also note that ensuring market participants act with integrity is an important aim in other regulated markets such as the financial services market.⁶
- **balanced** as our provisional view is that acting with honesty and integrity is critical for efficient, well-functioning markets that deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. It will benefit firms through enhancing the reputation of the industry as a whole which in turn should lead to healthy innovation and consumer choice by attracting an increasing number of reputable firms delivering good products to enter the market.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled PRS, as defined in the PRS condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently

⁶ The FCA, for example, have a 'Senior Managers and Certification Regime (SM&CR)'. The regime aims to strengthen individual accountability in the regulated firms and raise standards of professionalism, conduct and governance.

subject to any obligations under Code 14, now being subject to obligations set out in the new Code 15.

- **proportionate** as they should not unnecessarily increase the regulatory burden as we would expect that all firms operating in this sector should already be acting with honesty and integrity. For the vast majority of providers, this proposed new Standard will not impact significantly in terms of how they already operate. In particular, we note that the majority of Requirements which we are proposing under this Standard are largely drawn from a number of existing general responsibilities from Code 14. The proposed new Standard and Requirements will simply set out what is expected from phone-paid service providers in a way that can be easily understood by both consumers and providers.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above, and the effects of the changes are clear on the face of the proposed new Standard. We, therefore, provisionally consider that the draft Code and this accompanying consultation document clearly set out to industry the Requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q13 Do you agree with our proposed Integrity Standard and Requirements? Please provide an explanation as to why you agree or disagree.

Q14 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Transparency Standard

Proposed Standard

Consumers must receive full and clear information to enable them to make fully informed decisions when purchasing phone-paid services.

Rationale

This Standard aims to ensure that the entire phone-paid service process from service promotion to service exit, including service proposition and cost, is clear and transparent, so that consumers can make fully informed decisions, before any charge is incurred.

Our regulatory approach under Code 14

167. Under Code 14, the Outcome relating to “Transparency and pricing” (Outcome 2.2) states:

“That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

168. This Outcome is supported by a number of rules. These rules focus on the transparency of all information likely to influence the consumer’s decision to purchase, including that pricing information should be prominent and proximate to the means of access to the service. There are also transparency rules relating to accessibility of information, including the name of the provider and their contact details.

169. There are various special conditions which set out specific requirements relating to transparency dependent on service type including subscription services, online adult services, online competition services, and ICSS. These cover a range of different issues, including clear information about the service on offer, the purchasing environment/distinctive points of purchase, pricing and receipts.

170. In addition, there is published guidance on promoting phone-paid services which can be applied to all service types.

Our regulatory experience to date

171. Our experience is that the current regulatory framework can be confusing and difficult for providers to understand. Currently, requirements relating to transparency are distributed throughout the regulatory framework – be that the Code, special conditions, and other notices. This introduces additional complexity and often results in providers having to contact us to clarify what they need to do to comply. We have also found that Code 14 outcomes can be interpreted in different ways by providers which leads to inconsistencies in the consumer experience. This is particularly evident when it comes to pricing information and what constitutes clear, prominent and proximate pricing. Guidance on ‘promoting premium rate services’ assists with this as it provides additional clarification in terms of pricing information and prominence.

172. The [consumer research](#) we have done shows that consumer expectations are formed from their experiences of using other payment methods, particularly digital payments. The research highlighted that there are a number of instances where consumers’ expectations are not being met. These include expectations that there should be some final confirmation before a payment is made and that this purchase decision should be made based on full payment information and should be followed up with a receipt. Consumers also expect that the company behind the service is clearly identified, that there are clear ways to contact them and that it should be easy to find out how to exit a service. The majority of consumers who contact the PSA complain about unsolicited charges on their phone bill or phone account. These complaints also highlight that the

company behind the service is not always clearly identified and that there are often no clear ways to contact them.

173. Another concern relates to method of exit. Our experience of the complaints which we receive from consumers is that it is not always clear and simple for consumers to exit from services. For example, we have identified that where the method of exit requires the consumer to send a STOP command to a shortcode, it is not always clear what shortcode to use – often consumers will reply to service messages to attempt to exit, but this does not always work as the service message may not have been sent from the designated STOP shortcode.

Early stakeholder engagement

Discussion document

What we said

174. We highlighted the important principle that all promotional activity, including the cost, must fully and clearly inform consumers about the service, such that any decision to purchase is made willingly and knowingly. We said we wanted to raise standards in this area to ensure that the market was delivering well for consumers and that our experience was that it did not always work well for consumers, in this area, including consumers alleging they have been charged by a service or signed up to a subscription service without their knowledge.

175. We said we were keen to consider the following:

- whether there is additional information that consumers should be made aware of which would help them make more informed decisions
- whether there should be more specificity of location of pricing information
- the clarity of the purchasing environment
- purchasing mechanics used in other sectors.

Stakeholder responses

Network operators

176. *BT* agreed there is an opportunity to improve consumer experiences within the digital payments sector. Although subscription services are historically problematic, it considered that the special conditions for subscription services had significantly improved the customer journey. It also agreed that all promotional activity must fully and clearly inform consumers but must be balanced. It also believed there is a risk that too much information may cause 'information overload' – impairing decision-making or affecting the ability of consumers to engage effectively. It observed that consumers are generally well engaged with mobile payments but there is room for improvement. It also stated that it believes there are rules within the PSA Code that inhibit the evolution of customer experience.

177. *Telecom2* did not believe additional pre-purchase information will add any value to consumer decision making and that current information is more than adequate. It

suggested that consumers do not read information already provided and additional information will make little difference. It also suggested that a consultation on the placement of information would provide clarity and that a wide range of devices and screens need to be considered. It did not consider that it is appropriate for PSA to compare phone payment with other payment mechanics, adding more friction will reduce consumer convenience/impulse buying and will not be in their best interests.

178. *Vodafone* took the opportunity to comment that ICSS are a problem and regulation fails in this area. It stated that ICSS must be required to have a free pre-call announcement with IVR⁷ acceptance of cost to continue.

Level 1 providers

179. *Fonix* stated that there are already clear pre-purchase standards in place, through the introduction of recent special conditions and through MNO Codes of Practice. It suggested that a number of these requirements are open to interpretation by merchants and aggregators. It also argued that there are already a number of clear requirements in place for purchase standards, including the addition of the security framework and annual penetration testing. It did not believe anything further is required.

180. *Infomedia* commented that it is important to define and/or separate 'pre-purchase' and 'purchase'. It said that promotional material that does not contain a call to action which instigates an immediate charge is out of scope for the PSA. It believed that greater authentication of customer's consent to be charged reduced the need for strict regulation of promotional activity. It also commented that listing all parties in the value chain in promotional material and/or at the point of sale will be confusing for consumers. It also suggested that there should be clearer guidance about who the consumer needs to contact for help. It also suggested that the 'purchase' stage should be referred to as 'point of sale', to adequately differentiate it from 'pre-purchase' requirements.

181. *Donr* suggested that issues relating to subscription sign-ups without consent was not a relevant consideration for Code 15, and that special conditions and consent to charge work had resolved these issues. It commented that there is little evidence to suggest charity is a cause for concern and if there are concerns, the Fundraising Regulator is better placed to deal with them. It also suggested the PSA should primarily deal with Level 1 providers and their safeguarding activities and that post-purchase standards were not required as Level 1 providers are able to provide adequate oversight and control activity. It also suggested that prescriptive regulation would only be required if there was no verification and supervision.

⁷ see glossary

Trade associations

182. *Action 4* welcomed some of the proposals but noted that not all operators in the industry have the technical capabilities and infrastructure to do this. It also said that positive affirmation is simple and could be operated on most if not all services.
183. *aimm* stated that some of its members supported quite prescriptive rules on pricing placement if it is evidenced. It also noted that there are risks because there are lots of different approaches to advertising. It also sought clarity on 'third-parties' and stated that companies should not be held accountable for the acts of parties they do not control, where they have undertaken robust due diligence.
184. *UKCTA* highlighted the significant harm they felt ICSS can cause and felt that the review of the Code was an opportunity to remove the risks presented by ICSS. It expressed the view that the only way to protect consumers was to prohibit the use of premium rate numbers for ICSS.

Consumers and consumer advocates

185. *One individual respondent* stated that a lot has changed in technology in the past ten years and that charge to mobile is cumbersome compared to other payment mechanisms. They suggested that MNOs should provide a 'check out' screen which displays the consumers billing details followed by a text message from the MNO about the charges. They also suggested that MNOs should manage consumer purchases and subscriptions by allowing consumers to edit subscription preferences via the MNO website, or over the phone.
186. *CCP & ACOD* argued that 'smartphones' require greatest regulation. They commented that qualitative research carried out by Ofcom in 2016 found that the limitations of smartphone screens make it difficult for users to understand and find out who to contact.
187. *PSCG* agreed that consumers should be fully informed that they are entering a purchase environment. It raised concerns regarding unsolicited subscription charges, mentioning 'iFraming' and 'Clickjacking' as a cause. It also had concerns about consumers' ability to fully understand instructions.

Others

188. *Evina* argued that the entire consumer journey should be considered. It also said that implementation of purchase templates is appropriate but absolute standardisation should be avoided as this is detrimental to free competition.
189. *One industry respondent* considered current requirements on transparency, pricing and obligation to pay are sufficient. It expressed concern that if requirements become more prescriptive this would remove editorial control.

Webinars

190. This was not an issue which was discussed at length during our webinars. Some of the points made were as follows:

- in terms of receipting, it is already possible for consumers to see the charges on their phone bill which should be sufficient
- that the PSA should do more to encourage people to check their phone bills.

The PSA Consumer Panel

191. The PSA Consumer Panel discussed the subjective nature of transparency and noted that additional guidance may be needed to support the proposed Standards and Requirements. It also noted that if something isn't clear to consumers that are vulnerable then it shouldn't be considered clear or transparent, and that 'misleading omissions' should be considered in this context.

192. It also asked whether there is a way to require that receipts link to the consumer's phone bill to help them understand how they have been charged. It also suggested that exiting a service should be as easy as signing up to a service. It also asked whether it is possible to differentiate between calls that are on a mobile and those that are on a landline. If the system can distinguish, then it suggested that receipts should be required to be sent to calls made on a mobile.

PSA's assessment of inputs received

193. We note that stakeholder responses were mixed in relation to transparency. While some providers and consumers felt that more could be done to improve transparency, there were also providers who felt that nothing further was required. There were also different views expressed regarding the benefit of providing more information to consumers and whether it would aid or hinder decision making.

Consultation proposals

194. We are proposing to introduce a Transparency Standard. This proposed Standard will build on the current Code 14 "Transparency & pricing" Outcome and Rules, as well as a number of special conditions, including subscription service, online adult services, online competition services, recurring donations, society lotteries, directory enquiries and ICSS.

195. The new Requirements we propose to include under this Standard are:

- placing responsibility on merchants for ensuring that third parties contracted to carry out promotional activities comply with the Standards and Requirements
- requirements for the point of purchase to be clearly separate and distinct from promotional material and other aspects of the service
- receipts to be sent to consumers who purchase services over mobile using non-voice-based services after initial sign-up and each subsequent transaction

- methods of exit to be simple and should include the same method as sign-up, where possible.

Promotion - third-party marketing

196. To tackle the issue of non-transparent third-party marketing, we are proposing a new Requirement for merchants to have ultimate responsibility for ensuring that any third parties they contract with to carry out promotional activities on their behalf comply with the Standards and Requirements.

Point of purchase

197. We are proposing a number of new Requirements relating to the point of purchase which apply to all phone-paid services. The proposals are based on special conditions which are currently in place for some services. These include:

- the point of purchase must be clearly signposted and distinguishable from other aspects of the service
- the obligation to pay must be clear and consumers must explicitly acknowledge the obligation
- consumers are made aware of the associated costs directly before they commit to the purchase
- that the charge will be added to the consumers phone account.

198. These requirements were introduced for subscription services in 2019. Our commissioned [research](#) for the purpose of the subscriptions review found that ensuring consumers are fully aware when they are leaving a promotional environment and about to make a purchase is critical to building consumer awareness of and confidence in phone-paid services.

199. With regards to voice-based services, and ICSS in particular, we continue to see a consistent level of consumer complaints whereas complaint levels for other phone-paid services have been falling. The ICSS complaints we receive demonstrate that consumers are very often completely unaware that they have purchased a service. To address this issue, we are consulting on applying the point of purchase Requirements listed above to all services including voice-based services. Currently, these requirements only apply to certain service types which are not voice-based. This should ensure that consumers are fully aware when they are entering a purchasing environment and their expectations are met. Our intention is that, coupled with the proposed new promotional Requirements (above) and sign-up Requirements (discussed below), these Requirements will work together to effectively prevent consumers from unwittingly purchasing phone-paid services.

Use of service

200. We are proposing two Requirements which are based on current Code 14 provisions and special conditions which address service usage. The proposals are:

- consumers to be notified upon connection when calls are recorded or monitored
- voice-based services that connect consumers to other organisations must clearly state the cost of continuing the call plus that it attracts the phone company access charge as well before onward connection.

201. Notifying consumers when calls are being recorded or monitored is a legal requirement. We currently only explicitly reference the requirement to notify consumers within special conditions for live entertainment services. However, we recognise that there can be various types of voice-based services that record or monitor calls. Accordingly, we are proposing to codify this requirement to reinforce its importance.

202. We are also proposing to require pricing information before onward connection. This is based on current special conditions for ICSS and directory enquiry services. Evidence from consumer complaints demonstrates that consumers can often experience 'bill shock' when using services that connect to other organisations. This reinforces the importance of ensuring consumers are reminded of the cost of continuing the call so that they are able to make an informed decision to continue or not.

203. We are not proposing, at this stage, to go further and require a free pre-call announcement for ICSS which states the full cost before any charge is incurred. In light of feedback received, it is not clear to us that this is something that would be technically feasible for all providers to implement.

Receipting for mobile network consumers

204. We are proposing a new Requirement for receipts to be sent to consumers who have purchased any non-voice-based services after the initial charge and after each subsequent charge. We are proposing that receipts include the following information:

- service name
- name and contact details of provider responsible for customer care
- amount charged
- how to exit if applicable (subscription services).

205. We currently require receipts to be sent for all subscription services, and some other services such as society lottery services. However, we note that sending receipts for all purchases would bring phone-paid services in line with other payment methods (digital and otherwise) and ensure that consumers have a record of each purchase made. This also aligns with feedback received from the PSA Consumer Panel as part of the subscriptions review about the importance of consumers receiving a receipt or payment notification after any charges.

206. Taking this into account, we are proposing to consult on the following new Requirements:

- that merchants ensure 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
- that receipts must set out the name of the service, customer care contact details, the amount charged and billing frequency (if applicable), and clear instructions on how to exit (if applicable)
- that receipts must be either an SMS sent to the consumers phone or an email sent to the email address the consumer has provided as part of the sign-up process (where applicable) and in a format that can be easily retained.

207. We are not proposing to apply these Requirements to voice-based services on the basis that we do not believe it would be practical to send a receipt to a handset – mobile or landline – following completion of a call. In this scenario, records of calls made are more easily obtained and can be more easily verified through call logs and phone bills.

Method of exit

208. We are proposing to update current Code provisions regarding method of exit from a service. We propose that there are simple methods of permanent exit from services in place and that this should include the same method used by a consumer to sign up to a service, or the same method of access to the service, where it is possible to do so.

Assessment framework

209. We consider that our proposed new transparency Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they have been designed to improve overall consumer awareness of phone-paid services by enabling them to make fully informed decisions about purchases before charges are incurred and preventing instances of uninformed consent. We believe the proposed Requirements will do this by:
 - creating a purchasing experience that is consistent with other forms of digital purchases that consumers are more familiar with and trust – for example PayPal, debit/credit card – where it is clear to a consumer when they have entered a purchasing environment and where a receipt is received following payment.
 - setting clear expectations regarding the responsibility of merchants to ensure promotional material is compliant and that third-party marketing partners are satisfying the Standards and Requirements. Holding merchants accountable for the promotional activities of the parties they contract with should act as a deterrent and incentivise compliance by enabling more effective enforcement where things go wrong.
- **balanced** as they have been largely adapted from current Code 14 requirements, special conditions and existing guidance. Accordingly, providers should be familiar with

the concepts and expectations regarding transparency. Therefore, the regulatory burden is not increased unnecessarily as many compliant providers will already be doing what the proposals require. In particular:

- we consider that by consolidating all current rules, special conditions and guidance relating to transparency into a single Standard will provide a simplified approach to regulation, making compliance easier. Providers should be able to understand more easily what they are expected to do. While we continue to include service-specific requirements for those services which it would be disproportionate to apply more widely, these are significantly reduced from Code 14.
- we consider that clearer requirements about the point of purchase needing to be clear and distinct, regardless of what service is on offer, should enable competition and consumer choice. This is because we consider it removes any perceived advantage of offering one particular service type over another. For example, under the current framework we have seen many providers stop offering subscription services to avoid having to comply with special conditions. This approach still enables innovation as providers retain full editorial control over their promotional material and service content and we do not consider the proposals to be overly prescriptive.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled PRS, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

We note there are some differences of approach in the proposals for non-voice-based services versus voice-based services regarding receipting. However, this is because we consider that it would be both impractical and unduly costly to require voice-based services to do this.

- **proportionate** as we consider that they would not disproportionately increase the regulatory burden on providers. Any potential regulatory burden is reduced as many of the transparency proposals have been adapted from existing requirements and guidance. We expect that providers will already be meeting the proposed Requirements. Of particular note:
 - The proposals relating to clear and prominent information including pricing and clear and distinctive purchase environments have been brought across from subscription special conditions. Since the introduction of these special conditions, we have seen a significant reduction in complaints about subscription services. In 2019/20 we received 9,492 complaints about subscription services and in 2020/21 we estimate that the total figure will be less than 3,000. Despite this reduction, complaints about subscription services

are still consistently higher than for single payment services. Complaints for ICSS are also disproportionately high. While ICSS typically represent around 3.5-4% of the market, they account for approximately 13% of the complaints we received in 2020/21 – this is up from about 5% of total complaints in 2019/20. The most common reason for complaints is that the charges are unexpected or unsolicited. We believe that the proposed new transparency Requirements will address the continuing consumer harm associated to all service types.

- We are also proposing to narrow the scope relating to the proposed new receipting Requirements and, in particular, are proposing not to apply these to voice-based services (whether landline or mobile). This is because we are concerned that to extend this Requirement to voice-based services may be disproportionate as such providers would need to make arrangements for bulk messaging facilities or obtaining and recording email addresses which they may not already have in place.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above, and the effects of the changes are clear on the face of the proposed new Standard. We, therefore, consider that the draft Code and this accompanying consultation document clearly set out to industry the Requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q15 Do you agree with our proposal to introduce a new Transparency Standard? Please provide an explanation as to why you agree or disagree.

Q16 Do you agree with our assessment of the Transparency Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Fairness Standard

Proposed Standard

Consumers must be treated fairly throughout their experience of PRS including being charged for PRS only where they have provided informed and robust consent.

Rationale

This Standard aims to ensure that consumers are not misled into using phone-paid services. It recognises the importance of ensuring that consumers are treated fairly and equitably throughout their experience of phone-paid services (including during service promotion, point of purchase and when providing consent to charges) and have confidence that this is the case.

Our regulatory approach under Code 14

210. Code 14 has the following fairness Outcome:

“That consumers of PRS are treated fairly and equitably.”

211. A number of rules support this fairness Outcome. The rules focus on fair and equitable treatment requiring that services do not mislead or are likely to mislead in any way, and that consumers must not be charged without prior consent⁸. In recent years, the PSA has introduced new regulations and guidance relating to the fair treatment of consumers – from misleading promotions through to authentication and consent.

212. There are also various special conditions which set out specific requirements relating to fairness dependent on service type. For example, subscription services, online adult services, online competition services, and ICSS.

Our regulatory experience to date

213. Fairness has been a significant regulatory issue for many years. One indicator of the extent to which consumers are treated fairly is the number of complaints received by the PSA. These have reduced over recent years, from 20,035 in 2018/19 to 13,914 in 2019/20 and we estimate they will be around 5,400 in 2020/21. In particular we have seen a significant drop in complaints about subscriptions, following the introduction of new special conditions and guidance on subscription services. Despite this, evidence from complaints and monitoring demonstrates that issues regarding fairness remain. We continue to see misleading promotions and providers using misleading practices. We also continue to see consumer complaints about unintentional sign-ups due to a lack of informed consent and lack of friction in sign-up processes. There are also some complaints and practices we see that may amount to fraud. We would expect that our proposed new Systems Standard, and the need to ensure that payment and consent verification platforms must be technically robust and secure, will help to tackle attempted fraud.

214. Our experience to date is that introducing special conditions to specific service types can encourage providers to migrate to other services which are less regulated. For example, following the introduction of special conditions for online competitions and online adult services, we saw that a number of providers switched to selling other forms of content that were not subject to special conditions. This led to increased complaints and led to the subscriptions review and the introduction of special conditions more widely. Even then, a few providers switched to high price point single transaction services.

⁸ These rules also address undue delay, method of exit, and aspects of vulnerability including age restrictions and protecting children. We are proposing that under Code 15 these are taken forward under the Customer care, Transparency and Vulnerable Consumers Standards respectively.

215. ICSS remains an area of focus and concern despite the introduction of updated special conditions on ICSS in December 2019, which included more prescription in terms of regulating ICSS. Our experience since the introduction of the new ICSS special condition is that complaint levels have remained disproportionately high despite reductions in other areas.

216. In the discussion document, we considered fairness in a broad context, looking at pre-purchase, purchase and post-purchase. We said that we wanted to consider how best to ensure consumer expectations are being met, including:

- aligning customer authentication with standards of other payment mechanics
- the clarity of the purchasing environment.

Stakeholder responses

Network operators

217. *BT* considered that consumers are generally well engaged with mobile payments. However, it acknowledged there is room for improvement, and it argued current rules inhibit the evolution of customer experience and engagement tools that deliver efficient and effective authentication and fraud prevention.

218. It raised concerns regarding considerations for multi-factor authentication (MFA) to apply to all services charged to a mobile phone. It commented that while MFA seems appropriate for products such as online services, the friction it would introduce for PSMS would be too severe. It suggested that there is little evidence of harm in this area, adding the additional friction of MFA may be disproportionate and lead to market decline.

219. *Telecom 2* commented that authentication is covered by PSD2 legislation and so further PSA regulation is only required for subscription services. It argued that it is not appropriate to compare phone-paid services with other payment mechanics as phone payment is built on convenience, and that adding more friction will reduce consumer convenience and impulse buying which will not be in the best interests of consumers.

220. *Vodafone* asserted that the PSA should recognise that PSMS remains a viable mechanic which is not always triggered by online activity for example charity donations, broadcast services and ticketing. It suggested that the PSA should prohibit PSMS for online services that are subscription based. It also raised concerns about ICSS and suggested that regulation fails in this area.

Level 1 providers

221. *Fonix* stated that incorporating MFA for all services including PSMS would have a hugely detrimental impact on the media, broadcast and charity services. It suggested that the consideration would be disproportionate as these sectors have demonstrated

significant growth in the past ten years with little consumer harm and few complaints. It commented that it would like to see PSMS broadcast and charity services excluded from any potential MFA requirements.

222. *Donr* stated that, in its view, there is no justification for MFA for PSMS charity donations and that issues with other service types should not be used as evidence for charities to adopt unnecessary and expensive safeguards. It argued that the emphasis should be on getting Code 15 right for the market rather than changing the compliant market to fit the constraints of a streamlined new Code aimed at the non-compliant parts of the market.

Trade associations

223. *aimm* expressed concerns about MFA due to technical limitations and sought clarity on whether PSMS and voice-based services would be required to have MFA.

Consumers and consumer advocates

224. *One individual respondent* argued that MNOs must take responsibility for evidencing consent before charges are applied through their networks. They also asserted that industry needed to demonstrate clear consent and provide it to consumers at their request.

225. *PSCG* commented that it is hard for consumers to prove that they did not provide consent and it is upsetting for them when they believe providers accuse them of making false claims. It raised concerns about double click opt-in, PIN loop and onscreen PIN authentication methods. It also commented that the '120 day' rule that previously existed under PayForIt scheme rules⁹ seemed to be a good option but was never enforced. It also said that while it welcomed MFA for subscriptions, it was disappointed that some providers moved to operating single transaction services to avoid the new subscription special conditions. It commented that it believed requirements should be more stringent as strong consumer authentication is essential – noting that consumers have to opt-in to other payment mechanics such as PayPal. It argued that the two-click opt-in method currently seen in the market is too easily abused and consumers do not understand it and, therefore, this opt-in method should not be allowed.

Others

226. *One industry respondent* commented that requiring MFA is unnecessary and commercially prohibitive for broadcast providers.

227. *Another industry respondent* commented that it would welcome more clarity on MFA methods and expressed concerns about how MFA would work for PSMS. It said that the PSA should look to provide a list of acceptable opt-in methods for different billing mechanics.

⁹ See glossary.

Webinars

228. There was broad consensus at our industry webinars that MFA would be very difficult to implement across the board and would prove especially challenging for the charity and broadcast sectors. It was suggested that charity donations had been negatively impacted since MFA was introduced for recurring donation services. It was also suggested that this approach would not work for fixed-line/voice services.

229. We also received several comments on this at our consumer-based webinars, including that 12 months was a reasonable period for requiring an opt-in requirement where consumers were using services. However, where they were not, it was felt that 12 months was potentially too long. It was also noted that a two-stage opt-in process is standard practice across numerous online purchasing environments.

The PSA Consumer Panel

230. The PSA Consumer Panel supported the option of re opt-in requirements but considered that six months rather than 12 months was a more appropriate time period.

PSA's assessment of inputs received

231. We note that stakeholder responses were mixed in relation to fairness. In particular, there was a clear difference of views between feedback from consumers and industry. We note that consumers argued that industry must do more and take on greater responsibility to demonstrate consumer consent and ensure this was provided to consumers on request. In terms of industry, there was broad consensus about the risks of incorporating MFA requirements for voice-based services or single transaction services that are accessed via PSMS which it was argued would have a detrimental impact on the media, broadcast and charity services. We note that despite the concerns expressed about the impact on charity donations, these have actually increased. In 2018/19 charity donations were £49.6 million, in 2019/20 £40.1 million and our current estimate is that they will be £68.8 million in 2020/21¹⁰.

Consultation proposals

232. We are proposing to introduce a new overarching Fairness Standard which builds on the Code 14 fairness Outcome, rules and various special conditions (including those relating to subscriptions, online adult services, online competition services, recurring donations, society lotteries and ICSS).

233. The new Requirements we are proposing to include under this Standard are that:

- providers must not use any misleading marketing technique, language or imagery that may mis-represent themselves

¹⁰ The level of charity donations tends to vary bi-annually due to the impact of large telethons.

- MFA must be used by providers to establish and demonstrate informed and explicit consumer consent to charges where: the service is accessed fully or in part via an online gateway; the service is a subscription service, including services involving a recurring donation; and the service is a society lottery service. To be clear, we are not proposing at this stage to apply MFA Requirements for voice-based services or single transaction services that are accessed via PSMS
- consumer consent is required to be established every 12 months for all subscription services, including recurring donation services. In making this proposal we are fully aware that many subscription services are valued by consumers and do not cause harm but we believe that the principle of equal protection for all consumers is of primary importance. We have considered alternative options, including notification, automatic opt-outs, introducing a 120-day rule. However, on balance, our provisional assessment, in line with our overarching aim to simplify regulation, is that a Requirement for consumers to automatically opt into services every 12 months is the simplest and clearest way forward. We have also taken account of the [cross-market principles of good business practice](#) which the government expects regulators to follow. These include, among others, that:

“Auto-renewal should generally be on an ‘opt-in’ basis upfront, and include a clear and prominent option without auto-renewal in most markets”

- where verification of consumer consent to charges is undertaken by third parties, the third party must be independent of the merchant provider.
- to demonstrate consumer consent to charges for a phone-paid service provided fully or partly through an online gateway, the need to retain records in compliance with any relevant time periods specified in the data retention notice.

Assessment framework

234. We consider that our proposed new fairness Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they have been designed to improve overall consumer awareness of phone-paid services by enabling them to make fully informed decisions about purchases before charges are incurred and preventing instances of uninformed consent. Of particular relevance, we would highlight the following:
 - we are broadening Requirements aimed at preventing consumers from being misled, to all services. Currently, there are very specific Requirements which relate to ICSS and are effective in reducing consumer harm and we consider that these could be usefully extended to other forms of phone-paid services.
 - we currently require MFA for subscription services through special conditions. This has proved to be highly effective in dealing with consent to charge issues for subscription services. In 2019/20 we received 9,492 complaints, and in

2020/21 we estimate the figure will be less than 3,000. We consider that MFA should be extended to all services which are accessed fully or in part via an online gateway. This will provide enhanced consumer protection from unsolicited charges and provide a level playing field for online-based services. We also consider this should prevent the issue of providers deliberately migrating their business models to offer higher priced one-off transactions to evade regulation. This will also more strongly align the consumer purchasing experience of phone-paid services with other digital payment mechanics such as PayPal, Apple and Google Pay where MFA is widely used, including account and password, PIN and biometrics.

- we consider that our proposal to require providers to obtain consumer consent every 12 months for subscription services will be effective by ensuring enhanced consumer protection from unsolicited charging. In particular, while consumer complaints about subscription services have fallen, we do continue to receive consumer complaints about them being unknowingly subscribed to services. Complaints about subscription services are still consistently higher than for single-payment services. This was also an option which was strongly supported by the PSA Consumer Panel. We also consider our proposals align with [the good business principles set out by the government](#) that “auto-renewal should generally be on an ‘opt-in’ basis and that ‘customers must be sufficiently informed about the renewal and any price changes (through sufficient notifications) in good time”.
- **balanced** due to the potential harm to consumers and the industry which we are looking to address through this proposal. It will benefit firms through enhancing the reputation of the industry as a whole which in turn should lead to healthy innovation and consumer choice by creating a climate which is attractive to reputable firms with good products or services who are considering entry to the market. We also consider that by consolidating all current rules, special conditions and guidance relating to transparency into a single Standard, this will provide a simplified approach to regulation, making compliance easier. Providers should be able to understand more easily what they are expected to do.

This is particularly the case with regards to MFA which already exists for subscription services but for which we are proposing to extend to all services which are accessed fully or in part via an online gateway. We have listened to stakeholder feedback and are not proposing MFA Requirements for voice-based services or single-transaction services that are accessed via PSMS.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. We do not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

There are some differences of approach in the proposals relating to the scope of MFA but we consider these differences are fair and do not unduly discriminate between providers. The proposed Requirements will also create a level playing field for all providers of online-based services and subscription services. This will aid healthy competition as providers will not be able to benefit through avoiding elements of regulation by offering one form of online-based service over another.

- **proportionate** as they will address actual and potential harm relating to unknown sign-ups by introducing friction and authentication at the point of purchase for online-based services as well as subscriptions, including recurring donations, and society lotteries. The costs of implementing the fairness Requirements should be minimised as many providers already have relevant capabilities in place. The PSA is not looking to introduce any Requirements that are unfamiliar to providers.

We recognise that the proposal of obtaining a valid opt-in every 12 months may increase costs for some providers. However, we believe that these costs will be offset by reduced costs associated with less consumer complaints and dissatisfaction, and increased levels of consumer satisfaction, trust and confidence.

- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We, therefore, consider that the draft Code and this accompanying consultation document clearly set out to industry the Requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q17 Do you agree with our proposal to introduce a new Fairness Standard? Please provide an explanation as to why you agree or disagree.

Q18 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Customer care Standard

Proposed Standard

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

Rationale

This Standard aims to ensure that consumers have a good experience in their dealings with providers of phone-paid services. Providers should offer a high level of customer care and when things go wrong, complaints should be resolved promptly and effectively. Consumers

should have a positive experience of seeking and obtaining a refund.

Our regulatory approach under Code 14

235. Code 14 contains a number of Requirements relating to how providers must deal with complaints, including a clearly defined outcome (paragraph 2.6) and supporting rules. These rules require that consumers have complaints resolved quickly, easily and fairly and that any redress is also provided quickly and easily.

236. The current complaints handling Outcome states:

“That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily.”

237. There are a number of rules which support the complaints-handling Outcome. These include:

- the need to have appropriate and effective complaints processes which are free or low-cost
- the need to handle consumer complaints promptly, providing refunds promptly and in an accessible manner
- the need to signpost to the PSA to escalate complaints where consumers remain dissatisfied with the handling of their complaint
- providing relevant information on the handling of any consumer complaint to the PSA on request.

238. We have also published [guidance on complaints handling](#) which clarifies our expectations by:

- clearly defining the roles and responsibilities of all relevant providers in the value chain
- setting out some desired consumer outcomes, along with examples of how to deliver the ‘minimum Standard of customer care’ that would achieve them.

Our regulatory experience to date

239. We know that consumers’ experiences of phone-paid services can be poor and our experience of applying Code 14 is that the market, in relation to customer care, has not always worked well for consumers. We have identified deficiencies in both the scope and clarity of the rules and note the very low awareness among customers of providers’ complaints-handling processes and consumers’ rights when complaining.

240. The evidence we have had regard to includes:

- our consumer complaints data, our [consumer research conducted by Futuresight into customer care, complaints handling](#) and more recently [refunds](#), shows that many consumers do not know who to contact when they have a query or complaint and/or wish to seek a refund regarding a phone-paid service
- the research referred to above also demonstrates that consumer expectations are informed by their experiences in other digital payment markets, and that improvements are needed in order to meet those expectations
- this research also shows that customer care in the phone-paid services market can be very poor compared to customer care experiences in other markets, particularly when engaging with lesser-known services and providers. Customers' experiences are generally more positive when they engage with larger, well-known services and providers. This is primarily because consumers know who to contact and are more confident that their issues will be resolved satisfactorily.

Refunds guidance consultation

241. In January 2020 we published a [consultation on new general guidance](#) to enable providers to meet consumer expectations and improve the experience of receiving refunds for phone-paid services.

242. In our consultation, we said we wanted to:

- clarify the roles and responsibilities of all providers, confirming that where refunds are due the responsibility lies with the Level 2 provider in the first instance and, therefore, Level 2 providers should have easily accessible refund policies in place
- set out desired outcomes and what constitutes a quick and easily accessible refund
- set out that seeking refunds should not unduly cost consumers time and effort and/or money as a result
- reiterate the importance of easily accessible customer care details within all service material and that providers should clearly communicate to their customers, managing their customers' expectations at the outset and keeping them informed throughout the process
- provide a recommended timeframe of 14 days to process a refund once it has been agreed. This timeframe mirrors the timeframe specified for refunds in the Consumer Rights Act 2015
- set out that consumers should ideally be presented with choice in how they would like to be refunded to ensure the refund method is the most appropriate for them and meets their individual needs
- acknowledge that Level 2 providers may offer their preferred method of making refunds to consumers in the first instance.

Stakeholder responses

243. We received 12 responses to the refunds guidance consultation. These responses were relatively mixed. The key themes which emerged were:

- there was broad agreement that guidance would be helpful, particularly in providing clarity on what constitutes a 'quick and easy' refund
- there was broad agreement relating to the principle that consumers should have choice in how they receive refunds and that they should be easily accessible. One respondent, however, disagreed, and said that choice is disproportionate and is not something which happens in other sectors
- of those who were supportive of consumer choice, most also suggested that providers should be able to decide what choices are offered and that they should be able to offer their preferred refund method in the first instance and then offer a different method if this was not accepted by the consumer
- some stakeholders considered that the research focussed more on customer care and complaint handling rather than refunds
- some stakeholders said the research did not represent the market accurately and that it was not appropriate to compare to other markets
- stakeholders were also keen to draw clear distinctions between genuine refunds (where something has gone wrong) and goodwill gestures. It was argued that the PSA should not look to regulate goodwill gestures.

244. In March 2020, [we announced](#) that, due to the Covid-19 pandemic, work on our consultation on new refunds guidance would be suspended and that it would be progressed instead under the Code 15 consultation.

aimm customer care best practice guide

245. In January 2020, during our refunds guidance consultation, aimm published a 'Best Practice Guide to Customer Service'. It noted that the aim of this was to give Level 2 providers a flexible approach to offering a positive consumer journey and encourage the publication of a customer complaints handling procedure. The guide addresses customer service methods of contact and makes various recommendations, including:

- customer service available hours – recommends opening hours are aligned with MNO opening hours
- how to handle enquiries through various contact channels, including example scripts
- publishing FAQs and complaint procedures
- the use of Alternative Dispute Resolution (ADR)

- the need for merchants to offer a range of refund methods - one or two easily accessible methods in the first instance.

Early stakeholder engagement

Discussion document

What we said

246. We said we were keen to consider how best to raise standards and whether we should introduce greater requirements for high standards of customer service, including in relation to after-sales support and complaint handling. We asked:

- whether we should require automatic refunds (on a 'no quibble' basis)?
- how can we encourage greater take-up of ADR schemes in the sector?
- what data we need to be able to better monitor the consumer experience (such as complaint volumes, customer referrals to PSA and/or ADR schemes)?

Stakeholder responses

Network operators

247. *BT* was supportive of higher standards of complaint handling and after-sales support. However, it noted that should the PSA wish to use information about complaints handling to monitor consumer experience, it needs to implement a proper framework to ensure data among industry firms is comparable and tracked appropriately. It also argued that, given the different methods available to consumers to register a complaint, there should be a mechanic in place to avoid duplicate reporting across the value chain. It also requested further clarity on how the PSA envisages implementing a 'no quibble' refund.

248. *Telecom 2* argued the biggest issue lay with telephone service providers who are not regulated by the PSA. The customer service call centres of the major telephone service providers are all too ready to simply say that a call to a genuine, compliant service is a scam and to contact the PSA. Until this behaviour is amended, complaint levels will be high. It was also unhappy with compulsory 'no quibble' refunds to bank accounts or phone bills; it did not believe that such a policy was sensible or technically feasible. It also said it would be concerned if any complaints it received were escalated to ADR but agreed there may be a place for ADR.

Level 1 providers

249. *Donr* argued that within charity services it had not seen a Requirement or inclination to offer 'no quibble' refunds and would, therefore, query the logic supporting this. It also recognised that ADR can play a role in the case of complex complaints.

250. *Fonix* agreed that post-purchase standards need to be improved across the value chain to ensure that consumers can easily identify a merchant and seek recourse where

appropriate. It said that the industry has been asking MNOs for direct to bill refunds for many years so that consumers can have a full refund via the mechanic they purchased through, without having to receive a cheque, post office SMS or bank transfer. It also disagreed with the suggestion of 'no quibble' refunds and, in particular, that this was dangerous for the broadcast and media sectors.

251. *Infomedia* agreed that this was a clear definition of the Standard expected for a consumer's experience post-purchase, capturing key aspects of communication and support. It did not support the concept of 'no quibble' refunds. It also did not support the concept of making the default refund mechanism a refund back to bill. It also expressed some reservations with bank transfers. It also felt that MNOs must make bill descriptions clear, to help consumers reach the right support.

Trade associations

252. *Action 4* commented on the issue of refunds and, in particular, noted that operators do operate a 'no quibble' refund policy. It argued the more important consideration related to how to make sure it is easy for the consumer to contact the relevant operating party for the service involved. It also noted the consumers were not always right.

253. *aimm* commented that some of its members questioned whether further regulation was necessary given its recently published guide. It argued that customer care should include customer education, and that its members supported the ongoing accurate publication of advice that consumers can use to establish if they have cause for complaint/refund. *aimm* also said that its members were strongly opposed to the concept of automatic refunds (on a 'no quibble' basis) which default to bank account or phone bill. In terms of ADR, it said that this can still be an expensive option for Level 2 providers when the refund amount may only be a few pounds, but that some of its members felt that it does have an important role to play.

Consumers and consumer advocates

254. *One individual respondent* argued that MNOs should do more to refund consumers in the case of unauthorised payment transactions. This includes restoring the affected account to the state in which it would have been had the unauthorised transaction not taken place.

255. *Another individual respondent* welcomed 'no quibble' refunds for purchases made without consent but said that consumers should be able to obtain refunds from the MNO and not have to chase the service provider.

256. *PSCG* welcomed the idea of automatic 'no quibble' refunds and believed that such a system would be best operated by the MNOs, so that refunds could be paid back into the complainant's phone account.

Others

257. *One industry respondent* accepted there was a desire to raise such standards across the board and welcomed the considerations to do so for consumers. However, it expressed

concern at the possibility of changes to the post-purchase standards and, specifically, automatic refunds on a 'no quibble' basis. It expressed concern that this approach may open the door for some individuals to exploit such a loophole. It argued that providers must always have the right to determine whether any consumer request for a refund is legitimate and genuine.

258. *Another industry respondent* agreed that after-sales support and complaints handling procedures are a key part of the provision of PRS. However, it did not agree that refunds should be automatic and on a no quibble basis as it did not consider that this worked with the type of service that it provides.

Webinars

259. This was not an issue which was discussed at length during our webinars. The main discussion point, however, related to our early proposal to consider introducing 'no quibble' refunds. This was broadly opposed by most industry members.

PSA's assessment of inputs received

260. We note that there was broad consensus by the majority of stakeholders that improvements were needed to the current industry standards relating to complaints handling and after-sales support. This was particularly the case in relation to helping consumers easily identify the relevant merchant to approach to seek redress where appropriate.

261. We also note there was a clear difference of views between feedback from consumers and industry in respect of 'no quibble' refunds. While consumer stakeholders were largely supportive of this, industry stakeholders opposed this proposal. We have carefully considered these responses and are not, at this stage, proposing to consult on the option of 'no quibble' refunds. We will be consulting on a range of different options which we consider will improve the consumer experience of refunds. We consider that the issue of 'no quibble' refunds may be better dealt with through our proposed publication of best practice information.

262. We have also considered aimm's customer service best practice guide. We welcome the publication of this guide which we consider is a helpful contribution to raising standards around customer care in the market. We do not agree, however, that it removes the need for regulation of customer care as it is important that standards are raised across the market as a whole and that providers can be held to account when things go wrong.

Consultation proposals

263. We are proposing to introduce a new Customer care Standard to encompass Requirements relating to customer care, complaints handling and refunds.

264. We are proposing to integrate the following provisions from our existing complaints-handling guidance as supporting Requirements within the proposed new Standard:

- that relevant providers must keep consumers informed about the status of any complaint and/or associated refund request (paragraph 3.4.3)
- that the relevant provider in the value chain with primary responsibility for customer care must respond to consumers who contact them promptly and in any event within five working days (paragraph 3.4.4)
- that the relevant provider in the value chain with primary responsibility for customer care must use all reasonable efforts to resolve all PRS-related issues raised by a consumer (paragraph 3.4.5)
- that relevant providers must provide clear information to consumers about how to contact them, including: name as registered with the PSA and details of the service the consumer has been charged for; and contact details and hours of operation (including customer care details and website). (paragraph 3.4.9)

265. We are also proposing to introduce the following new Requirements:

General

- customer care facilities are available to consumers as a minimum during the normal business hours of 9am to 5pm, Monday to Friday (excluding public holidays) (paragraph 3.4.2)
- taking 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 (paragraph 3.4.5)
- customer care, complaints handling, and refund policies are clear and publicly available when handling complaints (paragraph 3.4.10)
- the need to consider the particular needs of consumers who are vulnerable and who may be likely to suffer harm or detriment as a result (paragraph 3.4.11).

Refunds

- where refunds are provided to consumers, they must be provided promptly and using a method that is easily accessible for each consumer (paragraph 3.4.12)
- any decision as to whether a consumer is owed a refund is made promptly and that the basis for the decision is clearly communicated to the consumer (paragraph 3.4.13)
- once agreed, all refunds are processed within 14 working days (paragraph 3.4.14)
- where a refund is due, the merchant must take responsibility for providing it in the first instance. Where they are unable to do so, they may enter into arrangements with an intermediary or network operator to provide refunds instead or on their behalf (paragraph 3.4.15).

- where consumers pursue a complaint and seek a refund, they are not required to expend undue time, effort or money in doing so (paragraph 3.4.16).

Assessment framework

266. We consider that our proposed new Customer care Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they are designed to address deficiencies identified by the PSA in operating Code 14, and to take account of additional intelligence and insights obtained through other sources, in the most proportionate way. This includes consumer complaints, consumer research and our recent refunds consultation. These have given us a clear understanding of what consumers expect when they contact providers to complain. As such, we believe the proposed Standard and Requirements will deliver consumer benefits regarding customer care and, therefore, result in increased trust of phone-paid services. They will also benefit vulnerable consumers which, in turn, will benefit industry as non-compliance and the unfair treatment of vulnerable consumers should be reduced thus improving industry's reputation.

We also consider that it will better meet consumer expectations formed by their customer care experiences in other markets. As a result of the proposed changes, we consider that consumers should know who to contact. This should reduce the time and effort spent by consumers identifying the correct contact point as well as reduce the number of calls that are fielded by network operators and other parties (including PSA). This will lead to improved consumer experience overall and, therefore, increased consumer trust and confidence in the sector.

- **balanced** as they represent a fair balance between the requirements of fairness, effectiveness and efficiency, and address relevant regulatory needs. In particular:
 - by clearly defining the procedural requirements which relevant providers must comply with, they fulfil our objectives of making providers' complaints handling procedures more transparent and accessible, improving the effective and timely resolution of complaints by providers and ensuring that the process of providing refunds to consumers is quick and easy.
 - they provide for a more simplified Code as it seeks to consolidate different provisions related to complaints handling, which are currently spread between Code 14 and our published guidance, into the draft Code. It will be clearer to providers what they are expected to do and, therefore, this should aid compliance with the Code.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by

Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.

In addition, all providers in the value chain will continue to have roles and responsibilities related to customer care in accordance with prescribed minimum Standards. Where the draft Code differentiates in terms of requirements on providers, this is based on a clear understanding of those roles and responsibilities in terms of where different providers sit within the value chain, and a clear understanding as to why it is necessary and appropriate to target particular requirements to particular groups of providers. Our provisional view, therefore, is that these changes are fair and do not unduly discriminate in relation to certain providers.

- **proportionate** as they are important requirements and are the minimum which we consider necessary to ensure consumers have a positive experience, including high levels of customer care, in their dealings with providers of phone-paid services. They have been designed to address identified deficiencies in the scope and clarity of the current rules in the most proportionate way, including on accessibility, transparency, effectiveness and timeliness. Ensuring consumers have a positive experience when engaging with their provider, including prompt and effective resolution of complaints and a positive experience of seeking and obtaining a refund, is critical for efficient, well-functioning markets that want to deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. Our provisional view, therefore, is that these proposals are proportionate measures and are designed to address relevant regulatory needs. Most of the changes being proposed should positively impact on the regulatory burden across the industry, insofar as we consider that they will benefit industry by ensuring clarity and consistency improving consumer outcomes.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. Additionally, the effects of the changes are clear on the face of the proposed new Standard. We, therefore, consider that the draft Code and this accompanying consultation document clearly set out to industry the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q19 Do you agree with our proposal to introduce a new Customer care Standard? Please provide an explanation as to why you agree or disagree.

Q20 Do you agree with our assessment of the proposed new Customer care Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Vulnerable consumers Standard

Proposed 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.

Rationale

This Standard aims to ensure that measures are adopted for consumers who, due to their particular circumstances, characteristics, or needs, are or may be vulnerable¹¹, to ensure that they are protected from harm as far as is reasonably possible, and do not suffer detriment as a result. It is important that providers consider the particular needs of vulnerable consumers, in service provision and promotion, as well as customer care (including complaints handling).

Our regulatory approach under Code 14

267. Under Code 14, we include a rule relating to vulnerability under paragraph 2.3.10. This states:

“PRS must not be used or provided in such a way that it results in an unfair advantage being taken of any vulnerable group or any vulnerability caused to consumers by their personal circumstances where the risk of such a result could have been identified with reasonable foresight.”

268. We have also published accompanying [guidance on the issue of vulnerability](#) to support firms. This guidance points out that the key aspects of this approach are to identify the risks of potential harm, monitor those risks and, once an issue has been identified, take adequate steps to address it.

269. Code 14 also states in relation to children¹² that:

- “PRS must not directly appeal to children to purchase products or take advantage of children’s potential credulity, lack of experience or sense of loyalty.” (2.3.9)
- “PRS aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way.” (2.5.8)

¹¹ We define a vulnerable consumer as “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”. This definition is deliberately broad and recognises that all consumers could potentially be vulnerable. This approach is consistent with the approach increasingly used by other regulators to define vulnerability

¹² In both Code 14 and draft Code 15 a child is defined as people under the age of 16

270. We have also published accompanying [guidance on children's services](#) which clarifies what providers who offer services that are aimed at, or are likely to appeal to, children should do, especially in relation to the promotion material and content of those services.

Consumer vulnerability research

271. To inform our own approach to consumer vulnerability, in relation to the development of Code 15 as well as changes to our strategic purpose and regulatory framework, we commissioned a [review on consumer vulnerability](#). The aim of this review was to assess best practice across some of the UK's key regulators in relation to vulnerability, and to see how our approach compares, [to ensure we are working in the best interests of consumers](#). The review highlighted a number of features of the phone-paid services market which affect consumer vulnerability, including:

- the instantaneous nature of phone payment lends itself to impulse purchases and, although these are typically low value transactions, they do present a greater degree of risk to some vulnerable consumers
- payments for phone-paid services are usually made on a small screen which can be difficult for some consumers to read and navigate through.
- the market is potentially accessible to children if they are using a smartphone which does not have spending restrictions set up or that they can reset.

272. The conclusions of this review were that while it is difficult to quantify with any precision the level of detriment that vulnerable consumers might experience, the impact which could be caused to vulnerable consumers includes:

- a consumer could be susceptible to feeding a gambling addiction through phone-paid services which are quick and convenient to use
- inadvertently running up an excessively high phone bill from phone-paid services could contribute to wider debt problems
- those on low incomes are more likely to rely on a mobile phone for internet access and so for consumers whose phone stops working as a result of unexpected bills (either from running out of PAYG or the contract being terminated), it may severely impact on their ability to access vital services, e.g. claiming Universal Credit.

Early stakeholder engagement

Discussion document

What we said

273. We only briefly touched on the issue of consumer vulnerability in the discussion document. We did, however, note that a key principle under our proposed 'pre-purchase' requirement was that due care and attention must be given towards vulnerable consumers.

Stakeholder responses

Consumers and consumer advocates

274. *CCP and ACOD* raised the importance of consumer education and that the PSA's guides must be accessible and usable by all. It recommended using alternative formats e.g. subtitles on video content, easy read documents, colour and contrast options that cover a range of needs and documents that can be used with screen readers.

275. *One individual respondent* highlighted that not everyone complains, and many are affected in silence, particularly those who are vulnerable and are not even aware that they may have been affected. They also raised concern about lack of action by MNOs on a number of issues, including the lack of safeguarding for vulnerable consumers. They also suggested that where phone-paid services are operating through shortcodes, it can be difficult for consumers to know who to contact, not least vulnerable consumers.

276. *Another individual respondent* also expressed concerns about the lack of awareness relating to blocking phone-paid services, particularly for children and vulnerable consumers.

277. *PSCG* raised concerns about consumers' level of understanding of instructions, either because consumers do not read them, or are unable to read due to English not being a primary language or because of use by children. It also highlighted that small regular charges can go unnoticed, particularly where bills are paid for by relatives of vulnerable adults or children. It was disappointed that the PSA does not routinely tell consumers that they can ask their network to bar PRS if they wish to avoid third-party charges, particularly an issue where phones are supplied to children and vulnerable adults.

Webinars

278. This was not an issue which was discussed during our webinars.

The Consumer Panel

279. The PSA Consumer Panel discussed the findings from the vulnerability report and noted that they would be progressed in Code 15. The Panel highlighted the risk of situational vulnerability based on the social isolation being experienced due to the Covid-19 pandemic.

PSA's assessment of inputs received

280. We welcome the feedback we received in this area, which was predominantly from consumers and consumer advocates. We agree with many of the comments raised, many of which resonate with the findings from our consumer vulnerability report, including issues relating to the importance of consumer education as well as accessibility and using alternative formats, where appropriate. We also note the concerns raised about vulnerable consumers and the need for them to have a greater awareness of the option to bar phone-paid services from their phones. We agree that

barring has an important role to play for all consumers, including vulnerable consumers, in terms of being able to control their expenditure and reduce the potential for 'bill shock'.

Consultation proposals

281. We are proposing to introduce a new Vulnerable consumers Standard. This proposed new Standard includes the existing requirements on appropriate age verification (from both Code 14 and special conditions) and children's services (from Code 14). We propose to include the following new Requirements under this Standard:

- the need to have a nominated person (or persons) within organisations that has overall responsibility for ensuring that the organisation and the service it promotes and provides takes account of vulnerable consumers (paragraph 3.5.1)
- the need to have policies and procedures in place for vulnerable consumers and to provide these to the PSA on request (paragraph 3.5.2)
- the need for relevant providers to ensure that their customer care and complaint handling policies and procedures are robust and take account of the needs of all consumers, including those who are or may be vulnerable (paragraph 3.5.3).

Assessment framework

282. We consider that our proposed new Vulnerable consumers Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they are designed to improve the performance of the industry in relation to vulnerable consumers by ensuring that providers take the necessary steps to protect vulnerable consumers, with an emphasis on preventing harm before it occurs. In addition, having to nominate individuals to have overall responsibility within an organisation will ensure greater accountability within firms. We also consider that requirements to provide information to the PSA will support our proposed compliance monitoring activities as well as help us identify and share best practice as a way of driving up standards across the industry. Bringing all the Requirements relating to vulnerability into one place will have the following benefits:
 - greater simplification, making it easier for consumers to understand what they can expect from the industry
 - improved clarity for providers in terms of compliance with these Requirements
 - more consistency with the approach taken by other regulators.
- **balanced** as requiring relevant providers to take account of the needs of consumers who are or may be vulnerable will reduce the risk of potential harm and ensure fair treatment of vulnerable consumers. This will benefit all providers of phone-paid services by enhancing the reputation of the industry as a whole. Our provisional

assessment is that this new Standard, by bringing all the Requirements in relation to vulnerability into one place within the Code, is an improvement on the existing Code and will provide greater clarity for providers.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they should not disproportionately increase the burden on industry. We would expect providers to already take their obligations towards vulnerable consumers seriously and so our provisional view is that this proposed new Standard and Requirements should not unnecessarily increase the regulatory burden as many firms will already have policies and procedures relating to vulnerable consumers.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We therefore consider that the draft Code and this accompanying consultation document clearly set out to industry the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q21 Do you agree with our proposal to introduce a new vulnerable consumers Standard? Please provide an explanation as to why you agree or disagree.

Q22 Do you agree with our assessment of the proposed new vulnerable consumers Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Consumer privacy Standard

Proposed Standard

Consumer privacy must be respected and protected.

Rationale

This Standard aims to ensure that consumers are able to trust that their privacy is respected, and their data used lawfully and responsibly. It is essential that consumers have confidence that phone-paid services providers will respect their privacy in the way in which consumer data is collected and used.

Our regulatory approach under Code 14

283. Code 14 has the following privacy Outcome at paragraph 2.4:

“That PRS do not cause the unreasonable invasion of consumers’ privacy.”

284. A number of rules support this privacy Outcome, including paragraph 2.4.1 which states:

“Level 2 providers must ensure that PRS do not cause the unreasonable invasion of consumers’ privacy.”

Early stakeholder engagement

Discussion document

What we said

285. We did not specifically discuss the issue of a Consumer privacy Standard in the discussion document.

Stakeholder comments

286. We did not receive stakeholder feedback in relation to a Consumer privacy Standard during our early stakeholder engagement.

PSA’s assessment of inputs received

287. We did not receive stakeholder feedback in relation to our proposed Consumer privacy Standard during our early stakeholder engagement.

Consultation proposals

288. Under Code 15, we are proposing to introduce a new Consumer privacy Standard. In terms of the detailed Requirements, we are not proposing to introduce any additional Requirements over and above the existing rules which are defined under Code 14. However, the proposed Requirements have been amended to:

- reflect the need for providers to comply with applicable privacy and data protection laws (paragraph 3.6.1)
- clarify our expectations in relation to the lawful basis and exemptions that can be used by providers (as appropriate) when collecting or sharing consumers’ personal data (paragraph 3.6.2)
- ensure consumers are provided with greater transparency as to the purpose for which their information is to be used, and that a positive acknowledgement and consent is received before such information is collected (paragraph 3.6.4).

Assessment framework

289. We consider that our proposed new Consumer privacy Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they confirm the levels of protection that consumers are legally obliged to receive and which they have come to expect in terms of the use of their data and their provision of consent from their engagement with other markets.
- **balanced** as they require relevant providers to respect and protect consumers' privacy and information. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as we are not proposing significant changes to the existing Requirements of Code 14 but rather simply looking to align more closely with the current privacy laws and clarify our expectations. Therefore, the proposed changes should not add to the regulatory burden for providers. In our provisional view, these rules remain important and are the minimum which we consider necessary to ensure consumers' privacy is respected and protected.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. The effects of the changes are clear on the face of the proposed new Standard. We therefore consider that the draft Code and this accompanying consultation document clearly set out to industry the
- Requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q23 Do you agree with our proposal to introduce a new consumer privacy Standard? Please provide an explanation as to why you agree or disagree.

Q24 Do you agree with our assessment of the proposed new consumer privacy Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Prevention of harm and offence Standard

Proposed 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.

Rationale

This Standard aims to ensure that providers act in the consumer interests at all times, and that phone-paid services do not cause harm or unreasonable offence or distress to consumers or the general public.

Our regulatory approach under Code 14

290. Code 14 contains a number of Requirements that providers must take to achieve the “Avoidance of harm” Outcome. In particular, paragraph 2.5 states the following:

“That PRS do not cause harm or unreasonable offence to consumers or to the general public.”

291. There are a number of Requirements which support this Outcome, including that

- PRS must not promote or incite or be likely to promote or incite hatred in respect of any group or individual (as specified)
- PRS must not encourage or be likely to encourage consumers to put themselves or others at risk
- PRS must not promote or facilitate prostitution
- PRS must not induce and must not be likely to induce an unreasonable sense of fear, anxiety, distress or offence.

Early stakeholder engagement

Discussion document

What we said

292. We did not specifically discuss the issue of ‘harm or unreasonable offence or distress’ in the discussion document.

Stakeholder comments

293. We did not receive stakeholder feedback in relation to ‘harm or unreasonable offence or distress’ during our early stakeholder engagement.

PSA's assessment of inputs received

294. We did not receive stakeholder feedback in relation to 'harm or unreasonable offence or distress' during our early stakeholder engagement.

Consultation proposals

295. We are proposing to introduce a new Prevention of harm and offence Standard.

296. Under this Standard, we are not proposing to introduce any additional Requirements over and above the existing rules which are set out under Code 14. This includes rules relating to:

- PRS must not promote, incite or be likely to promote PRS must not promote, incite hatred in respect of any group or individual identified by age, disability, sex, gender identity, race, religion or belief or sexual orientation (paragraph 3.7.1)
- PRS must not encourage or be likely to encourage consumers to put themselves or others at risk (paragraph 3.7.2)
- PRS must not induce and or be likely to induce an unreasonable sense of fear, anxiety, distress, or offence (paragraph 3.7.3)

297. We are also proposing to remove a number of rules which we consider are no longer necessary, either because we have largely not used these rules, or the rules are covered more broadly through our new proposed Standards. These include:

- PRS must not promote or facilitate prostitution (paragraph 2.5.4)
- Level 2 providers must ensure that their services are not promoted in an inappropriate way (paragraph 2.5.6)
- Level 2 providers must use all reasonable endeavours to ensure that promotional material is not targeted at or provided directly to those for whom it, or the service which it promotes, is likely to be regarded as being offensive or harmful (paragraph 2.5.7)
- PRS aimed at or likely to be particularly attractive to children must not contain anything which a reasonable parent would not wish their child to see or hear in this way (paragraph 2.5.8)
- Where PRS involve the possibility that two or more consumers might be able to exchange contact details or make arrangements to meet, then clear advice should be given regarding appropriate safeguards, in line with any generally available police advice (paragraph 2.5.9)

Assessment framework

298. We consider that our proposed new Prevention of harm and offence Standard and Requirements meet the tests which we set out in the discussion document, namely that these proposed changes are:

- **effective** as they are designed to ensure consumer trust in the phone-paid services market is maintained and act as a deterrent to providers who are intent on causing harm. They would also continue to meet consumers' expectations of being provided with promotional material and services which do not cause harm or unreasonable offence or distress. Our provisional view is that continuing to ensure high performance by the industry in relation to reducing harm offence and distress will improve the industry's reputation.
- **balanced** since requiring promotions and phone-paid services to be provided in a manner which does not cause harm or unreasonable offence or distress is critical for efficient, well-functioning markets that deliver good outcomes for consumers. This is vital to the overall reputation of markets as it drives consumer confidence and trust in markets which helps the phone-paid services market by supporting growth. Our view is therefore that these proposals can be objectively justified as they will benefit firms through enhancing the reputation of the industry as a whole, which in turn should lead to healthy innovation and consumer choice.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as we are not introducing anything new, but proposing to retain some existing Requirements from Code 14, and removing some others and so will not be adding to the regulatory burden. In our view, the rules which would remain are important and are the minimum which we consider necessary to ensure consumers are well protected from the risks of harm or unreasonable offence or distress which the promotion and use of some phone-paid services could potentially give risk to.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the draft Code and this accompanying consultation document clearly set out to industry

the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q25 Do you agree with our proposal to introduce a new Prevention of harm and offence Standard? Please provide an explanation as to why you agree or disagree.

Q26 Do you agree with our assessment of the proposed new Prevention of harm and offence Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Organisation and service information Standard

Proposed 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.

Rationale

This Standard aims to ensure that the PSA has appropriate oversight of the whole value chain involved in the provision of phone-paid services through receiving timely, accurate and detailed market information about providers of phone-paid services and their services. This helps ensure consumer confidence in phone-paid services as it provides a greater degree of transparency about the market as a whole and means that consumers can access and rely on information provided about the services and organisations they engage with.

Background

299. Code 12¹³ included specific requirements for parties in the phone-paid services value chain to register their organisation details and services (“registration”). The objectives behind this were:

- **Increased consumer confidence** - consumers should be able to access and rely on information about the services they have engaged with and the organisations that have provided these services.
- **Effective market analysis** - effective regulation needs to be underpinned by timely, accurate and detailed market information. Registration should support the ability of the PSA to fully understand and analyse the market it regulates, particularly around the types of services operating in the market and the number of providers operating within each sector and enable the PSA to take well-informed regulatory decisions.

¹³ This came into force September 2011.

- **Intelligent monitoring** - registration should support the effective and efficient targeting of limited monitoring resources, through establishing a comprehensive database of services provided in the market.
- **Efficient application of Code processes** - registration should support and enable the timely and accurate application and enforcement of the Code, with clarity and certainty of participating organisations.
- **Effective due diligence** - alongside additional information provided by the PSA (such as breach history), registration should support effective due diligence to assist relevant providers in their consideration of their contractual relationships, and to minimise the participation in the market of non-compliant organisations and individuals.

Our regulatory approach under Code 14

300. Section 3.4 of Code 14 sets out registration Requirements. Paragraph 3.4.1 of Code 14 states:

“Before providing any PRS all Network operator, Level 1 and Level 2 providers must register with the PSA subject only to paragraph 3.4.3 below.”

301. It is currently a requirement that registration needs to be renewed annually and any breaches of the Code and sanctions imposed will be linked to the phone-paid service provider’s registered details. It is also a requirement that Level 2 providers must provide the PSA, within two working days of the service going live, with details to identify services and the Level 1 providers involved so that these details can be added to the register and be made available to consumers.

Review of PSA registration details

302. Following a [review of the information which is required as part of registration](#), the PSA issued a [statement](#) in September 2018 which set out the additional information we decided would be required under service registration. This is:

- **core service information** - service name; service start and end dates; customer service contact details (telephone, website, email); service delivery method; service description; other service terms and conditions; service delivery domain; country of service provision; customer service information (service provider can input text to enable specific messaging)
- **branding** - brand name(s) the service is known by; brand images (if relevant)
- **service type and payment** - service category and sub-type; special conditions declaration; payment frequency; charge; price description
- **consumer bill details** - all bill identifiers; all bill identifier types
- **service promotion** - service promotion description; promotion start and end dates; methods used to promote a service (from a defined list)

- **service value chain** - name(s) of other providers in the value chain; other providers service roles.

303. Our review was necessary given changes in the market, for example, the shift to mobile and internet-based services. While we consider these changes to the registration process and associated systems have led to improvements, there are still gaps in terms of people and services being registered and how well it is updated. For example, we still find many providers only identify one account user. It is also evident that account maintenance is limited, with accounts often only accessed during annual renewal.

Early stakeholder engagement

Discussion document

What we said

304. We set out that the overarching principles with regards to 'pre-operational' requirements are that consumers should be able to trust that they are dealing with reputable providers and individuals, and that organisations who want to operate in the market must register comprehensive details about themselves and the services they provide. We also noted that while we have recently strengthened requirements in this area, we wanted to consider the benefits of more stringent, or alternative, controls, and consider more effective and practical up-front checks through optimisation of registration measures, including requirements to provide more comprehensive organisational and service information.

Stakeholder responses

Network operators

305. *BT* suggested that the PSA should validate registrations, i.e. confirm financial viability claims are correct.
306. *Telecom 2* said that Level 1 providers need information from the PSA to help with onboarding new clients. It said that the PSA should check the credentials of new providers through registration.
307. *Telefonica UK* said that stronger due diligence checks made by the PSA at the point of registration would prevent organisations from re-entering the market with the intention of causing harm. It felt that the PSA could carry out its own credit and director checks, including character and fitness tests, to ensure that directors and firm owners have not historically broken the PSA's rules. It said that the PSA could obtain undertakings from the firm's director(s) that they have read, understood and intend to comply with their regulatory obligations. It also highlighted a risk with pre-entry checks as it was not confident that smaller Level 2 providers would be able to facilitate 'regular compliance auditing'. It also expressed concern that a probationary period could disincentivise market entry.

Level 1 providers

308. *Donr* said it would strongly support a verification and supervision model for Level 1 providers based on the FCA's approach to e-money registration. It argued that if done correctly, this would prevent a repeat of [Veoo Ltd case](#). In particular, it considered that verification, supervision and timely service suspension would prevent consumer harm while enabling charities to grow fundraising activities unhindered.

309. *Fonix* said that the PSA should sign off individual aggregators' policies.

310. *Infomedia* said that the PSA should not align with the FCA authorisation model since it can take 34 weeks on average to get authorisation which would not be good in this market.

Trade associations

311. *Action 4* said it was in favour of updated DDRAC guidance and verification checks on new entrants and said that a checklist approach would be a good start. It argued that more market entry requirements, together with a Code that is easy to understand, should reduce investigations and sanctions.

312. *aimm* agreed that a better registration system was one of the ways to improve consumer outcomes and spread responsibility across the value chain.

Consumers and consumer advocates

313. *One individual respondent* said there was a need for a progressive authorisations process. They called for a register of persons operating as 'malicious bad actors' to be maintained.

Others

314. *One industry respondent* commented that a basic level of due diligence should be done by the PSA, coupled with guidelines and confirmation from providers upon registration. It felt that this would raise standards. They also raised the idea of probationary periods.

Webinars

315. Stakeholders were broadly supportive of more upfront checks at the point of registration. The need to ensure that all information required was proportionate to the harm that was being addressed was also discussed. The issue of 'fit and proper' tests and reputational checks was also raised, and it was argued that it was important that the PSA was clear about what this involved. Some stakeholders also commented about the need for more clarity as to the roles and responsibilities of different organisations within the value chain.

316. The issue of bonds (i.e., having to put up a bond or alternative form of security as a condition of being allowed to operate a service) was also discussed, with some stakeholders expressing concern that bonds would act as a high barrier to entry and may be disproportionate.

The PSA Consumer Panel

317. The PSA Consumer Panel noted that it was important that registration information is verifiable and kept up to date. It was also supportive of the proposal to have a nominated overall contact as well as named persons with specific responsibilities.

PSA's assessment of inputs received

318. Almost all respondents agreed that more stringent market entry was a good idea if this does not impact on innovation and were supportive of us carrying out more upfront checks at the point of registration. We welcome stakeholder support to our proposals, and we note the concerns raised about striking an appropriate balance between getting the entry requirements right, while supporting innovation. We agree with these comments so long as innovation is in the interests of consumers.

319. There was a difference in opinion of the value of us developing a similar approach to that used by the FCA, with some providers being supportive of such a move and others not. We note that the FCA follows a much more stringent authorisations-based approach. While we acknowledge that this may have value in ensuring greater discipline in terms of market entry, this is not something which is legally possible under the current statutory framework and, therefore, not something which we are able to consult on.

320. The idea of bonds was generally felt to be disproportionate although one respondent was supportive. We are not proposing to take forward the issue of bonds for the purposes of this consultation – and have also removed the requirement for a bond for 'live entertainment services' – on the basis that we believe our proposals, particularly relating to verification and supervision, will provide adequate consumer protection.

321. Similarly, we are also not proposing to take forward the option of probationary periods which we also feel may be disproportionate and unnecessary given other proposals, particularly relating to verification and supervision.

Consultation proposals

322. We are proposing to introduce a new Organisation and service information Standard. This Standard has been largely adapted from the current Code 14 registration requirements. We are proposing to include the following new Requirements within this Standard:

- phone-paid service providers must identify and provide contact details for the individuals within the organisation with responsibility for DDRAC, platform security, vulnerable consumers and overall regulatory compliance with phone-paid services (paragraph 3.8.3)
- merchants 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 (paragraph 3.8.4 (a))

- merchants 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 (paragraph 3.8.4 (b))
- phone-paid service 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 (paragraph 3.8.6)

Assessment framework

323. We consider that our proposed new Standard and Requirements relating to organisation and service information meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they are designed to ensure that we have appropriate oversight of the whole value chain involved in the provision of phone-paid services through receiving timely, accurate and detailed market information about providers of phone-paid service and the services they provide. This will also result in enhanced transparency for consumers who will be able to make more informed decisions about providers and services. The need for additional upfront checks at the point of registration will be a key aspect of our proposed new regulatory approach in terms of verification.
- **balanced** as the additional information we are requiring seeks to address identified areas of weakness with our current registration system and is in our view objectively justified. We provisionally consider that these proposed changes will provide greater transparency across the value chain, not only for those within the value chain, but also for the PSA. This should result in a far more effective regulatory regime and encourage more effective use of systems and, also, reduce our administrative burden in terms of our engagement with providers. It is also worth noting that some stakeholders have argued that we should implement a far more rigorous regime based on the FCA's approach to authorisations. However, as above, while we acknowledge that this may have value in ensuring greater discipline in terms of market entry, this is not something which is legally possible under the current statutory framework.
- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against particular descriptions of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they should not disproportionately increase the burden on industry, as they are relatively limited and, in our view, represent the minimum necessary to be able to achieve our objective. We note that some of the proposed new changes relating to the provision of individual's contact details (not making services accessible to

consumers before providing information to the PSA; providing information about the identity of any other PRS providers involved in the provision of the service; and keeping information up to date including notifying the PSA promptly of any changes) all build on existing Code 14 Requirements and, in some cases, are very minor changes.

- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. The effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the draft Code and this accompanying consultation document clearly set out to industry the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q27 Do you agree with our proposal to introduce a new Organisation and service information Standard? Please provide an explanation as to why you agree or disagree.

Q28 Do you agree with our assessment of the proposed new Organisation and service information Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Due diligence, risk assessment and control (DDRAC) Standard

Proposed 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.

Rationale

This Standard acknowledges the importance of effective DDRAC processes which are central to good business practice as it enables all parties in the value chain to operate with confidence and assurance that the practices of those they contract with in the delivery of phone-paid services are compliant and effective.

Our regulatory approach under Code 14

324. DDRAC is required to be undertaken by any party that contracts with another party in the delivery of a phone-paid service. This includes undertaking DDRAC on any party involved in the promotion, verification, charging and post-purchase handling of a service. Effective DDRAC has a positive impact on consumers, the phone-paid services market and the parties operating within it.

325. Section 3.3.1 of Code 14 states:

“All Network operators and Level 1 providers must perform thorough due diligence on any party with which they contract in connection with the provision of PRS and must retain all relevant documentation obtained during that process for a period that is reasonable in the circumstances.”

326. In addition to the Code provision, there is currently [DDRAC guidance](#) in place which was first published alongside Code 12. The existing guidance:

- sets out that due diligence, risk assessment, and control are separate and distinct processes to be carried out by MNOs and Level 1 providers on any party that they contract with that forms part of the value chain in the delivery of a phone-paid service.
- expects that DDRAC processes should take place both before a contract commences and throughout its duration.
- sets out that DDRAC processes are built on the cornerstones of:
 - know your client
 - properly identify the risks
 - actions taken to control any risks
 - responding to incidents.
- sets out in detail what information providers at different parts of the value chain are expected to collect about who they are contracting with and when they should collect it, before a commercial contract for the delivery of a phone-paid service begins.
- provides examples of the types of risks that the PSA would expect providers to identify, assess and take actions to control, to ensure consumer confidence in phone-paid services.

327. DDRAC obligations remain an area of high interest to us as a key method of enabling providers to adopt and maintain good practices that benefit them and deliver good outcomes for consumers of phone-paid services. Our current enforcement strategy has a high focus on DDRAC cases.

Review of DDRAC guidance

328. We undertook a review of existing DDRAC guidance in 2019/2020.

329. As part of our review we engaged with industry stakeholders in individual meetings and workshops to better understand their experiences. We also discussed the effectiveness of the existing guidance and where there might be opportunities to strengthen it, clarify our expectations, and to provide greater certainty to providers. Our initial assessment was that the existing guidance was still relevant and in many areas our expectations have not changed. But we identified opportunities for greater

clarity in the guidance. We noted that there are many providers who undertake due diligence to a high standard and have effective risk assessment and control processes in place – but not all companies operate to these high standards. Through our investigations and monitoring work we identified the following issues:

- DDRAC policies and procedures are not always carried out in practice
- initial due diligence is more likely to be undertaken effectively than ongoing risk assessment and control processes
- there is not always a single point of contact in an organisation with overall responsibility and accountability for DDRAC
- across the value chain, roles and responsibilities in relation to DDRAC are not always clearly defined
- sometimes risks are identified by providers as part of their DDRAC but no action, or only limited action, is taken to manage those risks
- where Level 2 services have migrated from one Level 1 provider to another, sometimes only limited DDRAC is undertaken by the receiving Level 1 provider
- if a service is operated across multiple Level 1 providers, not all Level 1 providers have visibility of the whole service
- parties who are not directly contracted with each other within the value chain have poor visibility of the operation of a given service
- information is not always stored securely, which in the past has led to providers being unable to provide us with sufficient due diligence records due to data loss

330. [The high-profile case against a Level 1 provider, Veoo Ltd in September 2019](#), further highlighted the risks and issues associated with very poor due diligence. The Tribunal found that the company had knowingly breached its DDRAC requirements and had provided false or misleading information to the PSA.

331. We intended to consult on revised DDRAC guidance in March 2020 but due to the pandemic this was put on hold and we indicated that this work would be taken forward as part of our [Code 15 review](#).

Early stakeholder engagement

Discussion document

What we said

332. We set out that the overarching principles with regards to 'pre-operational' requirements are that consumers should be able to trust that they are dealing with reputable service providers and individuals. We said we were concerned that it is currently too easy for organisations to enter the market without the necessary protections for consumers always being in place. We noted that while we have recently

strengthened requirements in this area, including DDRAC, we wanted to consider the benefits of more stringent, or alternative, controls, to ensure that market entry is managed at an appropriate and effective level.

Stakeholder responses

Network operators

333. *BT* said that they would be supportive of changes to DDRAC that would require an upward or downward exchange of DDRAC information in the contractual chain which would enable a better understanding of risk and appropriate control.
334. *Telecom 2* stated that providers will perform DDRAC and require compliance with the Code within their contracts, but outside of this they have no control over what Level 2s are doing. It argued that the current categories needed to be expanded to cover all roles in the value chain including the consumer's phone company and any affiliates and/or platform providers because often issues lie with these parties and outside of Level 1 and Level 2 control. It also said that if an issue is outside of Level 1 control then they should not be penalised.
335. *Telefonica UK* opposed placing greater responsibility up the value chain. It argued that Level 2 providers should be responsible as MNOs were not equipped to have oversight. It considered that MNOs should only be responsible for due diligence on Level 1 providers.
336. *Vodafone* commented that some actors directly involved in the provision of a service can be overlooked – such as third-party verifiers and External Lottery Managers (ELMs). It argued these roles need to be accounted for.

Level 1 providers

337. *Fonix* stated that current DDRAC guidance only relates to ongoing due diligence and is very open to interpretation. It argued for a minimum set of standards to be provided for the whole industry to enable all providers to work to the same DDRAC Standards. It suggested that the PSA should sign off individual aggregators' policies. It also called for verification providers to be included within the value chain on the basis there needed to be greater accountability across the entire value chain.
338. *Infomedia* argued that the current categorisation may not capture every party and could also capture merchants too widely where they are not involved directly in purchase flows or billing. It also said that where customer support is at issue the reporting of and ultimate responsibility for this could fall to other value chain partners.

339. *Donr* expressed concerns the role of Level 1s and Level 2s are clear but that the role of “sub-Level 1 providers¹⁴” seems to have been created to bypass full Level 1 status and requirements.

Trade associations

340. *Action 4* was in favour of updated DDRAC guidance and verification checks on new entrants.

341. *aimm* argued that it was important to consider the role of all parties in the value chain, including ad-placement networks, affiliates, ADR providers, call-handling companies, compliance houses, sub-Level 1s, technical supplies, verification providers, and monitoring businesses.

342. *Mobile UK* was concerned by some of the language i.e. exploring more effective ways of holding the whole value chain to account and extending liability. They felt that sanctions should be targeted at wrongdoers and should not be scattered across the value chain. It did not feel it was appropriate for providers to be held to account for problem providers for whom they have no direct knowledge or responsibility. It argued it was not appropriate for the PSA to consult on shared responsibility/liability across the value chain for non-compliant services.

Consumers and consumer advocates

343. *One individual respondent* noted that service providers are too quick to put blame on third parties. They argued that responsibility should rest with authorised providers and that more direct accountability is required.

344. *Another individual respondent* also argued that networks need to be held responsible/accountable for the actions of the Level 2s they contract with.

345. *PSCG* argued that providers typically blamed parties in the value chain who sit outside regulation. He argued that providers need to be held directly accountable for actions of those who they contract with.

Others

346. *Evina* argued that the Level 2 provider role is important and they take on the largest part of the risk. It considered that data was key to ensuring all providers are living up to their responsibilities.

¹⁴ A sub-Level 1 provider is a term often used by industry stakeholders when there is more than one Level 1 provider in the value chain.

347. *One industry respondent* expressed concern that enhanced DDRAC will be time consuming.

Webinars

348. A key theme which emerged during our webinars was the importance of getting right the barriers to entry. Many stakeholders argued that the current barrier to entry into this market was too low, with many problems associated with bad actors able to enter and exit the market too easily and without consequence. Many stakeholders also suggested that we need to look at what we can do through Code 15 to ensure that only well-intentioned providers that put consumers at the forefront of what they do can enter the market. We were also asked to think about responsibilities across the value chain and the opportunities to strengthen due diligence Requirements, alongside considerations about market entry. In addition, we also heard from stakeholders who said we need to strike a balance here between getting the entry requirements right, while supporting innovation and enabling new and different services to enter the market to the benefit of consumers.

The PSA Consumer Panel

349. The PSA Consumer Panel felt that there should be greater risk assessment and control requirements for organisations to ensure that those they contract with are maintaining the same Standards as when they first did the checks.

PSA's assessment of inputs received

350. We note that the majority of respondents were supportive of the need to raise standards relating to DDRAC across the industry and the need to ensure clarity in terms of expectations in order to ensure a level playing field. We welcome this.

351. We note that some respondents expressed concern about extending liability across the value chain for non-compliant services and that providers should not be accountable for providers over whom they have no direct knowledge. While we accept these points, we do not agree that this would be the result of raising DDRAC standards. Indeed, it is our view that providers would only be liable for those elements which are within their control and for which we would expect them to undertake effective due diligence and have in place effective ongoing risk assessment and control processes. This is also our current position under Code 14.

352. We note that a number of respondents argued that we should look to extend regulation to other parties who are involved in the provision of phone-paid services but are not currently regulated by it. This includes, for example, affiliate marketers, verification providers, monitoring businesses and technical suppliers. While we understand these arguments, this is not something we could achieve through an amendment to the Code. This is because we can only regulate those parties which are covered by the definition of "Controlled PRS provider", as defined Ofcom's PRS Condition set under the Act. Our view remains, however, that the more effective model for ensuring compliance with Code requirements should rest with those parties who

directly contract with these organisations, which are typically merchants. We also consider that upstream providers (both intermediaries and networks) have an important role to play by ensuring that compliance responsibilities flow down the value chain through contractual arrangements with those parties with whom they directly contract.

Consultation proposals

353. We are proposing to introduce a new DDRAC Standard. This will combine existing DDRAC Requirements from Code 14, as well as elements from our existing published guidance and our updated (unpublished) guidance which was updated following our review of DDRAC guidance in 2019/2020.

354. The changes we are proposing to make through introducing a new DDRAC Standard are intended to ensure there is a shared understanding between us and industry that effective DDRAC is a fundamental and vital aspect of operating a phone-paid service. The Requirements are that:

- relevant providers must undertake thorough DDRAC on any person with whom they contract in connection with the provision of a phone-paid service, prior to entering into any contract and/or rendering any service accessible to consumers (paragraph 3.9.1)
- relevant 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 phone-paid services (paragraph (3.9.2)
- relevant providers must comply with the additional DDRAC Requirements set out at Annex 2 of Code 15 which sets out a list of the information that should be collected as part of due diligence (paragraph 3.9.3)
- providers of phone-paid services must only contract with other providers which are registered with the PSA, except where an exemption from registration applies (paragraph 3.9.4)
- where services have migrated from one intermediary provider to another, renewed checks and verification of migrated data must be undertaken. Reliance cannot be placed on any previous DDRAC undertaken (paragraph 3.9.5).
- all DDRAC policies and procedures which are in place, and all DDRAC undertaken in relation to third parties, must be approved and signed off by the director or equivalent person who has overall responsibility for DDRAC compliance (paragraphs 3.9.6 & 3.9.7)
- relevant providers must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with parties with whom they have entered into contracts with for the provision of phone-paid services where they reasonably suspect the occurrence of non-compliant activities (paragraphs 3.9.8 & 3.9.9)

- there are provisions in place to make relevant DDRAC information available to the PSA, on request, either relating to providers' own DDRAC policies and procedures or those of third parties with whom they have entered into contracts with for the provision of phone-paid services (paragraphs 3.9.10 & 3.9.15).

Assessment framework

355. We consider that our proposed new DDRAC Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** as they have been designed to add greater simplification, clarity and certainty by bringing all the key Requirements together within a single Standard. Our view is that this will be beneficial for parties both inside and outside of the value chain in terms of improving understanding and awareness of DDRAC Requirements and the information necessary to facilitate good DDRAC policies and processes. This helps not only those performing DDRAC obligations but also ensures those who are subject to DDRAC policies and processes understand what is necessary. We particularly note the following:
 - enhanced specific DDRAC Requirements are effective in protecting consumers from the risks of harm at the earliest point in a contractual relationship. It provides the contracting party with ample opportunity to assess the integrity of those they contract with and use the information established as a basis for ongoing checks throughout the lifetime of the relationship
 - requirements to enable the passing up of information through the value chain strengthen oversight by reducing the blind spots that typically occur between network operators and merchants where one or more intermediaries enables the provision of service. This in turn provides a level of consumer protection - protecting consumers at the earliest stage should potential non-compliance be recognised
 - requirements for network operators and intermediaries to contractually enable the option to suspend or terminate contracts (as appropriate) with those they contract with provides an efficient way to ensure that potential non-compliance can be addressed and controlled appropriately and in such a way that is pro-active and not reliant on subsequent regulatory intervention
 - requirements for senior-level accountability/sign-off of DDRAC policies, processes and activities, ensures oversight that actions are being carried out to the satisfaction of the organisation as a whole, while also ensuring that failures to comply with DDRAC Requirements cannot be apportioned to transitional or junior staff.
- **balanced** as they represent in our view a fair balance between the requirements of fairness, effectiveness and efficiency, and the changes proposed in Code 15 are,

among other things, objectively justified and proportionate measures that seek to address the relevant regulatory gaps and needs set out above. We note that some providers already have effective DDRAC processes whereas others do not, and that clarifying our expectations will help ensure that due diligence is carried out consistently to a high standard, including effective risk assessment and control processes. This will help in terms of creating a more level playing field as to how DDRAC is performed.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they should not disproportionately increase the burden on industry. The majority of changes being proposed should in fact have a positive impact on the regulatory burden across the industry, as we consider that they will benefit industry by ensuring clarity and consistency in the way DDRAC is carried out. We note that some providers already have effective DDRAC processes in place and, in these cases, we would expect any regulatory burden to be limited. Therefore, to the extent there is any additional regulatory burden, this would fall on those providers who currently follow poor DDRAC practices. Our assessment, therefore, is that our proposals will be an improvement on the existing Code and will provide for enhanced consumer protection, without unnecessarily increasing the regulatory burden on industry. This will benefit consumers but will also benefit industry by increasing consumer confidence in these services, and by enhancing its reputation.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the draft Code and this accompanying consultation document, clearly set out to industry the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

Q29 Do you agree with our proposal to introduce a new DDRAC Standard? Please provide an explanation as to why you agree or disagree.

Q30 Do you agree with our assessment of the proposed new DDRAC Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Systems Standard

Proposed Standard

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

Rationale

This Standard aims to ensure that payment platforms are operated to a high standard and consumers are not charged for phone-paid services without their informed and robust consent. The principle of consumer consent is essential to any business and is at the heart of our regulation. If service providers are able to charge consumers without clear, robust and verifiable consent in exchange for phone-paid services, then this is a serious concern, not only in terms of consumer protection, but also for the wider reputation of phone-paid services.

Our regulatory approach under Code 14

356. Code 12 and subsequent editions, including Code 14, have all contained the following rule:

“Consumers must not be charged for PRS without their consent. Level 2 providers must be able to provide evidence which establishes that consent”¹⁵.

357. There is also [published guidance](#) in place which sets out the PSA’s expectations about how to meet the provision.

358. In Part three of Code 14, there are several provisions which are relevant to the technical quality of systems and the oversight of risk posed by providers and/or services¹⁶. These Code provisions are relatively broad and lack detail in terms of clearly setting out our expectations on the steps which we consider are necessary to ensure that payment and verification platforms are technically sound such that they cannot be used to charge consumers without their consent.

¹⁵ Under Code 14, this is set out at paragraph 2.3.3 under the Fairness Outcome.

¹⁶ These include paragraphs 3.1.1, 3.1.3, 3.1.6 and 3.1.7.

Review of consent to charge guidance

359. Over recent years, we have seen an increase in consumers reporting that they did not provide their consent to be charged and that they did not sign up to the service in question. This was particularly prevalent in 2017/18 and 2018/19 in relation to subscription services, which at that time made up over 90% of total complaints to the PSA, and which led to special conditions being put in place in 2019.

360. During PSA investigations, we have seen consent records (presented by either Level 1 or 2 providers, or third-party consent/verification providers) which are not tamperproof.

361. There were also a number of changes that have occurred over recent years which supported the need for revised guidance on consent to charge:

- the MNOs mandated that an increasing number of service and content types must use payment platforms accredited by them
- there has been an increase in the number of companies offering third-party verification services, not all of whom sought advice from the PSA before commencing operation (as is recommended)
- the PSA saw a general rise in complaints about services using direct carrier billing.

362. In light of these developments, [we consulted on draft revised guidance on consent to charge and payment platform security in August 2019](#). Our review of the guidance was aimed at ensuring that Level 1 aggregator payment platforms are operated to high standards, that any consent platform weaknesses that could lead to consumer consent issues are addressed, and that providers ensure they have and can supply robust and auditable records of informed consumer consent for every charge to a phone bill.

363. We issued our statement and published updated guidance in February 2020 which provided:

- clear definitions of informed and robust consent and how this should be obtained
- the types of platform security measures that the PSA would expect providers to have in place
- recommendations and examples of the types of skills and experience that security staff working in this area should have.

364. To inform this revision of guidance we worked with MNOs and an independent security consultancy¹⁷ to test the security of platforms. This testing resulted in detailed recommendations being made to MNOs for improving platform security as well as

¹⁷ Specifically, we worked closely with Copper Horse who made specific recommendations to the providers of each of the platforms tested, as well as making general recommendations in the form of technical Standards and general best practice recommendations. Some of these recommendations were implemented through updated MNO Requirements, and others formed the basis of our revised published guidance.

assisting the PSA in developing the guidance. The MNOs have continued to require annual penetration testing of their platforms.

Early stakeholder engagement

Discussion document

What we said

365. We noted that while there were a number of requirements relating to the purchase environment, including that consumer consent must be auditable and that providers must be able to demonstrate consent, our experience of applying Code 14 is that the market has not always worked well for consumers in this area. We noted that we continued to receive a high volume of consumer complaints about being charged for phone-paid services without giving informed consent.

366. We said we were keen to raise standards in this area and we welcomed views on a number of related areas, including whether there should be increased requirements relating to technical protections, such as:

- proof of established technical standards for networks/Level 1 providers and third-party verifiers
- the ability to require data to be stored and reported in required formats
- aligning customer authentication with standards of other payment mechanics.

Stakeholder responses

Network operators

367. *Telecom 2* expressed concerns about the enforcement of technical standards on the basis it did not consider that the PSA had qualified staff and resources to design and implement technical standards and that hiring qualified people would have a budgetary impact.

Level 1 providers

368. *Fonix* noted there were already a number of clear requirements for purchase standards and as a result they did not believe anything further was required.

369. *Infomedia* considered that pre-operational requirements should have the same, or more, weight than operational requirements. It also argued that the PSA should model its approach to that of the FCA – so that where providers are registered, this should represent proof that those providers are able to meet the standards. It also argued that ISO 27001 certification could be used as evidence that providers are able to meet security/technology standards.

Trade associations

370. *Action 4* welcomed a greater focus with regard to platform security but was concerned that not all operators in the industry would have the technical capabilities and infrastructure to be able to do this.

371. *aimm* argued that technical standards were already covered by the security framework project. It was also concerned that some operators had argued that there were technical limitations to the implementation of two-factor authentication. It was also concerned that to mandate this would remove the convenience and impulse nature of phone-paid services.

Consumers and consumer advocates

372. *One individual respondent* agreed with the proposals to increase technical standards. They considered that provisions in PSD2/PSRs could be worked into phone-paid services.

373. *Another individual respondent* questioned whether it was possible to improve standards until vulnerabilities are fixed. They also argued that on-screen PINs do not work.

374. *PSCG* agreed with the technical proposals set out. It argued that innovation had enabled increased fraud. It also considered that the PSA could learn from FCA regulation and, in particular, the need to make requirements more stringent. It argued that strong consumer authentication was essential. It also argued that MSISDN¹⁸ passthrough needs to be reviewed. It was noted that in Germany it is possible for consumers to opt-out of having their MSISDNs exposed and the PSA should consider something similar.

Others

375. *Evina* argued that Google and Apple have existing standards and that studying these frameworks should be a priority. It considered that it was vital independent verification is carried out to authenticate payments.

Webinars

376. This was not an issue which was specifically raised during our webinars. One Level 2 provider, however, argued that it was important to avoid inconsistencies between the regulatory standards, MNO requirements and the network operator Codes of Practice.

¹⁸ See glossary

PSA's assessment of inputs received

377. We note there was a mixed view from stakeholders about the need to increase the requirements on providers in relation to systems. Some respondents felt that the existing provisions were sufficient and that no further action was required. Some respondents doubted whether all providers had sufficient technical capability to do more. The consumer respondents were generally supportive of increased requirements in technical protections. We welcome these comments albeit would stress in response to concerns raised about further action, that the majority of what we will be consulting on already exists in our recently updated guidance which was extensively consulted on and so should be activities which relevant providers are already doing.

Consultation proposals

378. We are proposing to introduce a new Systems Standard. This new Standard will incorporate many of the changes which we included in our updated guidance relating to consent to charge and payment platform security. These are that:

- there must be one or more suitably qualified or experienced person(s) with overall responsibility for security and fraud (paragraph 3.10.1)
- 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 (paragraph 3.10.2)
- all intermediary provider (except where they are providing voice-based services) must comply with the technical Standards set out at Annex 3 of the Code (paragraph 3.10.3)
- 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 (paragraph 3.10.4)
- 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 (paragraph 3.10.5)
- 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 under the PSA's supervisory powers or any direction for information made under Code 15 (paragraph 3.10.7)
- network operators and intermediary providers must have contracts in place that allow them in appropriate circumstances to suspend or terminate their relationships with parties with whom they have entered into contracts with for the provision of phone-paid services (paragraphs 3.10.8 & 3.10.9)

- any evidence created and stored in relation to the Requirements for obtaining consent to charge must be independently auditable and provided to the PSA upon request (paragraph 3.10.10)
- where a phone-paid service 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 (paragraph 3.10.11)
- 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. (paragraph 3.10.12)

379. In addition, we are proposing to include the following new Requirements:

- (i) network operators must ensure that any platform security test results submitted to them are assessed by suitably qualified or experienced staff with the requisite technical expertise to analyse the results and make appropriate recommendations (paragraph 3.10.6)
- (ii) all network operators and intermediary providers must implement a coordinated vulnerability disclosure scheme¹⁹ and act upon any issues reported (paragraph 3.10.13)

Assessment framework

380. We provisionally consider that our proposed new Systems Standard and Requirements meet the tests which we set out in our discussion document, namely that these proposed changes are:

- **effective** because bringing these provisions into the draft Code will benefit providers by providing additional clarity as to the necessary steps which must be taken to ensure that their payment and verification platforms are technically sound. Consumers should expect phone-paid payment mechanisms to be as technically robust as other payment mechanisms and in our view these changes will help to achieve this. We expect that this will result in the establishment of more secure technical and risk control procedures which will enable providers to demonstrate that any records of charging cannot have been initiated in any other way than through the informed consent of consumers.
- **balanced** as they have been largely adapted from current published guidance under Code 14 which has only been recently consulted on. Accordingly, providers should be familiar with the concepts and expectations regarding consent to charge and payment platform security. Therefore, our provisional view is that these proposals represent a sensible balance between setting out clearly the circumstances in which, and the purposes for which, they apply; and the need to

¹⁹ See glossary

reflect the fast-moving and dynamic phone-paid services industry which delivers services across various different platforms.

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. The draft Code will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act, with one exception. The exception applies to those providing voice-based services who will not be required to comply with paragraphs 3.10.3 and 3.10.5 of the Code as it would be impractical for them to do so. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they do not result in new burdens being placed on industry and are simply aimed at codifying our expectations which were contained in our recently updated guidance. We note that the MNOs have already updated their accreditation standards to include most of the recommendations made by Copper Horse²⁰. We also note that our updated guidance on consent to charge and payment platform security carefully considered all inputs received, both through formal consultation responses and informal mechanisms (such as industry engagement). It also took account of the findings and recommendations from the Copper Horse report which, in our view, made a number of important, and necessary, recommendations. Moreover, the two new Requirements we have added – relating to ensuring platform security test results are assessed by suitably qualified or experienced staff, and that all network operators and intermediary providers must implement a coordinated vulnerability disclosure scheme – were both recommendations from the Copper Horse report.
- **transparent** as they clearly set out our expectations and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the proposed new Standard. We consider therefore that the draft Code and this accompanying consultation document clearly set out to industry the requirements that will apply to them, including proposed changes from Code 14, and do so in a transparent manner.

²⁰ The recommendations from the Copper Horse report are discussed in our consultation on revised consent the charge guidance: [Consultation on revised guidance on Consent to Charge 14 August 2019](https://www.psaauthority.org.uk/consultation-on-revised-guidance-on-consent-to-charge-14-august-2019) [ccc \(psauthority.org.uk\)](https://www.psaauthority.org.uk)

Q31 Do you agree with our proposal to introduce a new Systems Standard? Please provide an explanation as to why you agree or disagree.

Q32 Do you agree with our assessment of the proposed new Systems Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

6. Supervision

Introduction

382. In this section, we describe how we propose to carry out our supervisory role. We see supervision as involving ongoing oversight of phone-paid services and their providers to achieve and maintain compliance with the Code in order to prevent, or reduce, actual and potential harm to consumers and the market. We propose that this oversight will be effected through supporting and monitoring compliance with all the obligations set out in the Code.

Background

383. One of the primary objectives is to develop a new Code that will enable us to engage with industry in a more supervisory capacity, to place greater emphasis on prevention rather than cure.

384. We see our proposed new supervisory functions as building on our recent changes to our regulatory stakeholder manager approach which we introduced in Spring 2020. This was a deliberate strategic change in how we engage with industry stakeholders and was driven by a desire to be more co-ordinated, be able to record engagement more consistently and have clear ownership of relationships and related actions.

Early stakeholder engagement

Discussion document

What we said

385. We said that, under our outcomes-based framework, we have employed a number of ex-post fixes through policy interventions which has resulted in a complex regulatory system. Where breaches have occurred, we have engaged in, often lengthy, formal enforcement activity after consumer harm has already happened.

386. We said that we had also found that while some providers are co-operative and forthcoming about their priorities, business models and approaches to ensuring regulatory compliance, others are not and we have had difficulties obtaining good information about providers and their services, both as part of, and outside of, formal investigations.

387. In light of this we said that we wanted to introduce a new supervisory function through which we will be better able to monitor compliance and engage more proactively with industry, including having access to better and more targeted data, and be able to prevent harm occurring.

Stakeholder responses

Network operators

388. *BT* supported an increased focus on preventing, rather than curing, consumer harm within the market. It agreed that smarter engagement with key parts of the value chain, as well as providing advice and education, is critical to achieving this result. It also said that should the PSA choose to adopt a more proactive approach to monitoring the market and intelligence gathering, it would welcome a discussion about the pros and cons of using the levy to fund the PSA's efforts.

389. *Telecom 2* commented that standards could take more resource and cost more to monitor and enforce than outcomes, causing an increase in the PSA levy and an increase in operating costs for Level 1 and Level 2 providers, making some valued services no longer viable. It expressed concern that the greater powers and higher levels of supervision sought by the PSA may deter new entrants to the market and cause existing companies to leave the market due to the financial and resource cost of compliance. It said it was difficult to comment further without more detail on the Standards.

390. *Telefonica UK* considered that focusing on prevention rather than cure is the right approach, but the PSA must recognise the obvious trade-offs and how it can best support the due diligence and security checks already undertaken by the MNOs in the market.

Level 1 providers

391. *Fonix* supported the initiative to raise industry standards based on prevention rather than retrospective action. It argued it was not reasonable to allow non-compliant services to continue to run, increasing consumer harm, while the PSA investigates. It proposed an additional step within the regulatory assessment should be to introduce a more informal route to allow compliance issues to be addressed rather than allowing more consumers to be impacted over a prolonged period of time. It also noted that it had a good relationship with the PSA and had openly shared information around technical issues or compliance concerns to help protect the market and promote good business. It said it would like to see the PSA adopting a similar stance back to aggregators as an "early warning system" so any issues can be cut off at the pass.

392. *Infomedia* advocated the move towards a more supervisory style of regulation but commented that outcomes should not be abandoned in favour of a more prescriptive approach. It considered that the supervisory approach would promote innovation within the market while simultaneously simplifying the rules that are currently challenging to apply to increasingly complex value chains. It also noted that this would align phone-paid services more closely with the payments industry and consequentially drive-up quality given the more stringent requirements. It also noted that this would lead to a necessary increase in the work the PSA may be required to do in terms of supervision, audits and similar activities.

Trade associations

393. *Action 4* welcomed the proposed move to prevention rather than cure but commented that the industry would need clarity as to what this means.
394. *Mobile UK* agreed that proportionate regulatory steps should be taken to minimise the risk of rogue actors in the market. It argued that some of the steps proposed in the discussion document could achieve this, including the proposed increased focus on prevention rather than cure.
395. *UKCTA* argued that while it welcomed the PSA's proposals to improve regulation in the sector by moving to a model of verification and supervision and a stronger enforcement regime, it did not think those measures were sufficient to protect consumers from harm caused by ICSS.

Others

396. *Evina* believed the increased focus on prevention is absolutely critical.
397. *One industry respondent* said that it broadly supported the aims and objectives, as set out in the discussion document.

Webinars

398. This was a key area of discussion during our webinars, with many stakeholders supportive of our proposed new supervisory approach which was considered as helping to facilitate greater collaboration between the regulator and regulated parties. A number of stakeholders indicated that more detail on our proposed new supervisory regime would be helpful.

PSA's assessment of inputs received

399. We note that there was broad consensus by the majority of stakeholders relating to our proposal to increase our focus on preventing, rather than curing, consumer harm within the market. We also note there were some concerns that this may require additional resource and cost more to monitor and enforce than our current outcomes-based approach.
400. We have carefully considered these comments and welcome the broad support behind our proposed new preventative approach. We consider that our proposed new supervisory function will be a critical part of how we achieve this. We believe this is a necessary shift in our regulatory approach if regulation is to remain fit for purpose and capable of effectively regulating today's market. For the reasons set out above, we do not consider that our current outcomes-based framework is working in the best interests of consumers or industry's interest. In our view, the proposed shift to a supervisory model represents the most effective and least burdensome route to achieving this objective. In particular, we believe it will enable us to better monitor compliance and engage more proactively with industry, including having access to better and more targeted data, and be able to prevent harm occurring.

401. We recognise concerns relating to the potential for increased costs. However, we remain committed to keeping costs down and our proposed supervisory regime is intended to enable flexibility so we can target our supervisory role where it is most needed. We are proposing a light touch supervisory model compared to other models which we have considered, such as the FCA's supervision regime. We also note that other regulators who engage in supervisory activities (including the FCA) have identified supervision as a more cost-effective approach as issues are able to be dealt with informally rather than through formal enforcement. Formal enforcement action incurs costs for both the regulator and the party being investigated.

Consultation proposals

General approach to supervision

402. We are proposing to introduce a new broad power that enables us to undertake a range of supervisory activities for the purpose of monitoring compliance with Code 15.

403. In carrying out our supervisory activities, we will consider evidence, undertake analysis of information we receive and may use risk or other frameworks, to prioritise and support compliance with all of the obligations set out in the Code.

404. We propose that our supervisory model will include the following types of activity:

- **proactive** – pre-emptive identification of harm through a review and assessment of providers and the services they offer
- **reactive** – dealing with issues that are emerging or have happened to prevent harm growing
- **thematic** – wider diagnostic or remedy work where there is actual or potential harm arising in relation to a number of providers and/or services.

405. In performing our supervisory activities, we propose to have regard to the following principles:

- **evidence-based judgement** – making supervisory judgements based on evidence and analysis and considering the appropriate course of action based on a clear assessment of regulated services or service types, individuals, organisations or industry sectors, including any risk posed
- **forward-looking** - in assessing any risk, we will consider the likelihood of any potential future consumer harm and the need for any early intervention to prevent such harm occurring
- **focused on risk of consumer harm** – we will apply greater focus on issues and providers that pose a greater risk of harm to consumers. To this end, the extent and frequency of supervision applied by us may increase in line with the risk of consumer harm or detriment posed

- **co-operation** – we will work in an open and co-operative way when carrying out our supervisory activities. We will expect providers to co-operate and engage fully to enable effective supervision.

The purpose of supervision

406. We propose to supervise by monitoring compliance with the Code to:

- assess levels of compliance with the Code by phone-paid service providers and/or particular sectors of the phone-paid services market
- enable the prompt identification of any actual or potential non-compliance with the Code
- proactively address any actual or potential non-compliance with the Code
- prevent or reduce the risk of actual or potential harm to consumers from non-compliance with the Code, and/or
- ensure that the PSA has sufficient information to take informed decisions enabling it to carry out its regulatory functions effectively.

Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.

Compliance monitoring methods

407. We propose that monitoring compliance with Code 15 will include information-gathering activities that are reasonable and proportionate. The ways in which we may look to gather information includes:

- **assessing complaints and other intelligence** - we currently receive intelligence about compliance issues from various sources, including from consumers, industry, the PSA's own monitoring and other regulators or public bodies. We propose that this will continue to form a critical part of how we monitor compliance with the Code.
- **audits** - for the purposes of supervision, we also propose to require phone-paid service providers to submit an audit report annually or periodically as the PSA may specify. This may include the need for regulatory returns which may include workforce, staff employed, complaints and disputes, financial information, and the arrangements in place to ensure compliance.
- **the periodic reporting of data and information** – we want to be able to require information to be provided from a range of sources, to help us to understand the ongoing compliance of a regulated party, and any risks or issues and to be able to take a range of actions based on what that information is telling us. This relates to paragraph 4.5 of the draft Code in terms of reporting and notifications requirements.

- **targeted information-gathering** – we want to be able to have flexibility in terms of the information we require through careful targeting of particular information from individual providers, relating to compliance issues, including issuing directions for information in accordance with paragraph 6.1 of the draft Code. This is intended to support our compliance monitoring aims as set out in paragraph 4.2.4 of the draft Code.
- **thematic reviews** - if we suspect or become aware of an issue occurring in the market, we want to be able to obtain the information required to understand the issue and to enable us to take appropriate supervisory or regulatory action aimed at the relevant sector or part of the market.
- **skilled persons reports** - in certain defined circumstances, we may require a skilled persons report where providers may be required to undergo an independent review of their activities which are/or risk causing consumer detriment and agree to undertake any remedial actions that the report may require. This will be suitable for matters that require specific expertise, including (but not limited to) technical issues related to platform security and payment platforms.
- **engaging with PRS providers** - we may engage with providers where we consider it appropriate to do so to understand compliance issues and trends relating to phone-paid services, whether in relation to specific services or service types, or the market in general to inform decisions on appropriate action.
- **conducting pre-arranged visits (by consent) to the premises of PRS providers** - we do not propose to use this in a mandatory fashion but, rather, as a mutually beneficial process and an opportunity for us to give practical advice to providers on how to achieve compliance through an in-person review of a provider’s business and processes.

Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.

Reporting and notification requirements

408. To support our supervision function, we propose to require relevant providers to periodically report data and information. We propose to set out in our published procedures a non-exhaustive range of data and information that the PSA may require in such periodic reports and notifications. This may include the following types of information:

From network operators

- reports setting out PRS contacts and complaints from consumers, and the service and provider responsible to which the consumer was signposted in relation to that service.

- a notification when a new intermediary is onboarded to a new network operator
- a notification when a network operator has identified an issue and what steps they have taken to rectify this, e.g., where a service is terminated, a provider suspended, or there are security or data issues.

From intermediaries

- the number of contacts and complaints received monthly, by service and provider, and the outcome
- monthly reports setting out new services taken on and those which have ceased
- timely reporting of any platform, security or other DDRAC risks or issues and any steps taken to rectify them.

Q35 Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.

Assessment framework

409. We provisionally consider that our proposed new approach to supervision meets the tests which we set out in the discussion document, namely that these proposed changes are:

- **effective** as they are a key element of our proposed new preventative approach. We believe this is a necessary shift if our regulation is to remain fit for purpose and capable of effectively regulating today's market. Through these proposals, we will be able to engage more proactively with industry, including having greater insight and intelligence in relation to providers' compliance strategies, and this will help prevent harm occurring. This will ensure consumers are protected from harm, leading to improved consumer trust and confidence in the market and support the growth of phone-paid services.
- **balanced** as they will enable us to have a more comprehensive understanding of providers of phone-paid services and the services that are offered to consumers. This will help us better protect consumers as we will be better able to take proactive regulatory action that is proportionate, efficient, timely, targeted and effective. We consider that this will support ongoing compliance monitoring with Code 15 and enable us to prevent, reduce or otherwise effectively respond to actual or potential harm to consumers.

We also note that verification and supervision is something that larger firms who operate in other markets are used to, and that this approach is consistent with regulatory approaches adopted by other regulators, including [the FCA](#) and [the Pensions Regulator](#).

- **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular descriptions of persons. Specifically, we note that our proposed new supervision regime will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate sector, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
- **proportionate** as they will not disproportionately increase the burden on industry. Indeed, the majority of changes being proposed should positively impact on the regulatory burden as they are designed to deal with compliance concerns earlier and more speedily, and without moving to formal enforcement. This should, therefore, reduce the potential for costs and other resources for both industry and the PSA. In addition, the proposals include a number of safeguards for industry including advance written notification and provision of reasons and proportionality considerations where certain compliance methods are used.

- **transparent** as our expectations are clear in relation to the proposed new supervision function and the reasons for the proposals are clearly explained above. In addition, the effect of the changes are clear on the face of the provision set out in Section 4 of the draft Code 15. We consider therefore that the draft Code and this accompanying consultation document, clearly set out to industry the requirements that will apply to them, including proposed changes from the Code 14, and do so in a transparent manner.

Q36 Do you agree with our assessment of our proposed new supervisory function against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

7. Engagement and enforcement (including additional powers, responsibilities and obligations)

Background

410. In this section, we describe our proposed approach to engagement and enforcement (as set out in Part five of the draft Code) and additional powers, responsibilities, and obligations (as set out in Part six of the draft Code).

411. The central objective of the regulation of phone-paid services is to protect consumers from the harm that may arise from their use of such services. In pursuing this objective, our overarching principles with regards to enforcement are that:

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

412. Under Code 14, investigations, procedures and sanctions are dealt with in Part four. This part of the Code was the primary focus of our review of Code 13 in 2015, leading to [the introduction of Code 14](#). The key changes from this review were:

- bringing forward the consideration of interim measures, i.e., withholds and/or suspensions to an earlier stage in all Track 2 investigations. This removed the need for the emergency procedure, which existed under Code 12 and 13 but which was abolished by Code 14.
- replacement of the Code Compliance Panel (CCP) with a new body, the Code Adjudication Panel (CAP), which no longer contained members of the PSA Board. This provided a separation between those involved in making the Code, the PSA Board, and those who enforce it.
- an internal mechanism to review the recommendations of the Investigations team before breaches and sanctions are outlined to the provider in a warning notice
- enhanced potential for providers to settle cases once they have received the warning notice, and prior to a hearing
- a more flexible hearing, which allowed for different levels of oral and legal representation
- a more streamlined, simplified process which significantly reduced the complexity of the existing Part four by removing post adjudication reviews and the Independent Appeals Body (IAB) stage.

Early stakeholder engagement

Discussion document

What we said

413. We said we wanted to consider how best we can uphold the reputation of the market by intervening earlier and more robustly to prevent consumer detriment before it occurs, and to penalise and deter wrongdoing when it does occur. We identified the following early considerations:

Investigations

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

Sanctions

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

Stakeholder responses

Network operators

414. *BT* said it was supportive of streamlining the procedural elements of the investigation. However, it would welcome clarity on how the PSA intends to “hold the value chain to account” and extend liability to networks and Level 1 providers.

415. *Telecom 2* considered that the most important ways of improving the investigations and enforcement procedures would be to speed them up and communicate more, particularly where the perceived breaches are minor. It also argued that the PSA's proposal to act against the whole of the value chain would only be appropriate where there had been a clear significant failure within the chain. It argued that Level 1 providers performed due diligence prior to contracting with a provider and will normally include compliance with regulation in their contract but, other than this, they have no control over the actions of providers.

416. *Telefonica UK* did not feel that the case for further reaching information gathering powers and greater fines had been made. While it acknowledged that reliable and accurate data plays a vital role in the PSA's early investigation and enforcement activities, it did not feel that the PSA was using its existing information gathering powers to great effect. It argued that more detail about these powers would be helpful, and, in particular, how they will be used and why they would be proportionate. It also said that where the PSA intends to increase the number of information requests sent to industry, it should clearly set this out, giving an indication as to the type of information they are likely to require and in what timeframes. In terms of fines, it said that it would not support the notion of 'larger value' fines and that, rather than looking to impose larger fines, the PSA should focus on methods to collect fines more effectively. It considered there were more simple and pragmatic sanction options available to the PSA, such as through the registration scheme, where the PSA could look to revoke licences temporarily while an investigation was in progress.

417. *Vodafone* argued that the key is to recover fines from the bad actors in the value chain and not introduce fines on easier targets (Level 1 providers and networks). It said that regulation needs to demonstrate to Level 2 providers that malpractice is financially painful and fines are swiftly imposed. On the matter of reporting responsibilities, it said the function of the networks in the provision of information gathering should be to validate information provided by the value chain.

Level 1 providers

418. *Fonix* believed there needed to be clear reciprocal responsibilities for the PSA in terms of investigations and sanctions. It also noted that one of the PSA's major challenges was its ability to recoup fines from companies who dissolve the business and then pop up under a new entity. It argued that if the PSA can improve their investigation speed and deliver sanctions in a timelier manner, this would increase the success rate in terms of the settlement of fines. It also argued that repeat offenders need to be named and shamed and that the introduction of penalty notices to merchants for continued non-compliance could be a significant deterrent, particularly if the amount increased for each recurrence.

419. *Infomedia* believed that the current enforcement processes may not match a more robust supervisory regime going forward. It argued that the 'Informal' investigation is something of a misnomer and that an improved system may take the form of a 'advisory' stage. This could then identify an issue and an associated risk grading and provide the regulated party an opportunity to respond or request more time to respond. It argued that failure to respond at the advisory stage should result in suspension notices being issued, particularly where the issue or case is medium or high risk. It also argued that the current Track 1 and Track 2 processes take too long and permit harm to continue and that the above suspension would mitigate this, but that the PSA must also commit to firm timescales for managing those cases to conclusion.

Trade associations

420. *Action 4* was fully supportive of sanctions for network operators, Level 1 and Level 2 providers who breach the Code and noted that the process should be enforceable and realistic. It argued that there should be greater focus on earlier informal support for those who seek to work within boundaries. It also believed that making the Code easier to understand as well as point of entry obligations should have an effect on reducing investigations and sanctions. It also argued that once an issue has been identified, there should be quick processes to resolve it.

421. *aimm* made a number of observations relating to investigations, including:

- that some of its members would welcome a more streamlined process with better communication channels
- that the PSA should give particular attention to its research on enforcement processes used in Sweden and The Netherlands, where the process is run swiftly and decisions are made in weeks
- that some of its members were not convinced by the "building a case" argument. It noted that the PSA had stated in the past that a breach can be formally alleged in the absence of complaints and that, therefore, "closing" a specific consumer complaint does not impede the PSA's ability to regulate, whereas it can give valuable closure to the consumer and to the merchant
- that its members wanted more transparency in general around the request for information (RFI) process, including what triggers an RFI
- concern about proposals relating to "holding the whole value chain to account". It did not feel that the value chain should be responsible for elements which are outside of their remit and reach.

422. *aimm* also made a number of comments relating to sanctions, including:

- consumer education would enhance the reputation of the market

- stopping rogue businesses being able to register would help achieve better outcomes for consumers and uphold the reputation of the market. It noted this works well in The Netherlands as shown in its research.
- its research into other countries had shown that outcomes for consumers can be improved by helping them to self-serve in a more efficient way, removing the requirement for regulatory intervention.
- members wanted to understand more detail about possible changes to sanctions
- how universal refunds would work in practice, including when appropriate, how they would operate and the role of the value chain in making payments
- while it is important to hold businesses to account for wrongdoing, details of cases should not be publicised until it is proved.

423. *Mobile UK* considered that a £250,000 fining power was adequate and that the issue was not the level of the fine but that companies are able to easily evade fines by liquidating their companies without paying. It also indicated that the industry would like to discuss further whether a more sophisticated variant of the 30-day rule could be developed for 'probationary' companies. It argued that the PSA should focus on ways of improving the collection rates for fines. It also expressed concern about "more flexible information gathering" and requested clarification as to what was intended here.

Consumers and consumer advocates

424. *One individual respondent* said that the PSA must set out its supervisory and enforcement priorities. They argued it was imperative that investigations are conducted correctly to ensure that if criminal proceedings result, evidence is admissible. They advocated that consumers should be kept up to date on investigations. They also argued that the PSA must consider all the methods at its disposal similar to other regulatory authorities. This includes supervision warnings, action including redress schemes, early settlement discounts, monetary penalties, suspension, and revocation of licenses.

425. *Both PSCG and another individual respondent* made a number of similar points to those detailed above. They argued that the publication of Tribunal judgements can be useful as this would help consumers, particularly in those cases where an investigation makes a breach finding and there is agreement that affected consumers should be refunded. They argued that close monitoring of services and consumer complaints is essential. They argued that the speed of investigations is important. They also wanted the PSA to be able to suspend services generating a disproportionate number of complaints, pending investigation. They believed the outcome of investigations should be communicated to consumers who make a complaint. They wanted directors of companies to be held personally liable.

Webinars

426. The importance of clarity and simplicity was a major theme during our webinars. Stakeholders encouraged us to look at opportunities to streamline enforcement through Code 15, and to be clearer about the process and timeframes.

PSA's assessment of inputs received

427. We welcome comments received on the issue of our investigations and sanctions processes and procedures. We note that responses were largely mixed in terms of the issues raised in the discussion document. The responses broadly fall into the following categories:

Streamlining our enforcement activity

428. There was strong support for streamlining the procedural elements of investigations and, in particular, speeding them up and communicating more, particularly where the perceived breaches are minor. We welcome these comments. As we set out in the discussion document, we are keen to consider decision-making models which allow fast-tracked, more streamlined processes for breaches which are more administrative in nature. We set out below proposals which we consider will enable us to do this under the draft Code. We also consider that our proposed new approach to engagement and enforcement, including a new framework for informal resolution and an enhanced settlement process, will enable better communications throughout.

Concern about proposals relating to “holding the whole value chain to account”

429. We note that there was a mixed response to our early consideration of extending liability to other parties in the value chain, with the majority of respondents arguing that providers should not be responsible for elements which are outside of their remit and reach. On balance, we agree with these comments. Our proposals focus on those areas where we consider providers do have control on the action of others, such as DDRAC, where we would expect that providers should, as a matter of good business practice, require compliance with our rules within their contractual agreements with third parties.

Information gathering

430. While there was broad acknowledgment of the importance of reliable and accurate data in the context of investigations, some respondents welcomed further clarity regarding proposals to strengthen our information gathering powers. Other respondents questioned whether this was necessary.

431. We note that while we can collect a range of different information under Code 14, our experience to date has been that:

- while some providers are willing to share information with us, this is on an ‘as requested’ basis and we do not receive regular information from providers about their activities, performance, complaints or issues
- we have difficulty obtaining information from some providers on a voluntary basis, or securing adequate engagement, including at all levels of the value chain

- even when requesting information under formal direction (as part of enforcement action), some providers supply partial information or supply it in an unacceptable format.

432. This leads to inefficient outcomes as it means we are potentially opening investigations on the basis of limited or unreliable information. So, our provisional view is that is a clear need for us to strengthen our information gathering powers.

Penalty powers

433. We note that some respondents were not supportive of the possibility of 'larger value' fines and extending our penalty powers beyond our current maximum of £250,000 per breach. It was argued that the focus should be on methods to collect fines more effectively and, in particular, from companies who evade fines by liquidating. Having considered responses, we are not proposing to consult on strengthening our penalty powers as part of this consultation. The proposals which we set out in this document, and which are described in earlier sections and below, are focussed on ensuring the integrity of providers in the market and improving the scope and effectiveness of our enforcement powers and procedures, which we consider will help in terms of fine collection rates.

Publicity

434. We received a number of suggestions with regards to publicity. Some respondents said that there should be greater 'naming and shaming', particularly for repeat offenders. Other respondents did not think it was appropriate to publish details of cases before they were proven. We have considered these responses. As set out below, our provisional view is that we should move to a more flexible engagement and enforcement framework, including setting out a more explicit position on publication of warning letters (including action plans).

Revoking licences

435. We also note some respondents suggested that one option could include revoking licences on a temporary basis, such as during investigations. While we sympathise with the views expressed, this would effectively amount to a licensing regime. This is not something which is legally possible under the current statutory framework and, therefore, not something which we are able to consult on.

Other considerations

436. We have also considered the research provided to us by aimm and, in particular, its conclusions that this research had identified that outcomes for consumers can be improved by helping consumers to self-serve in a more efficient way, removing the need for regulatory intervention. As we discuss in detail in paragraph 124, while the research is an interesting look into other regulatory models, we question its relevance to the UK market. We note, for example, that aimm refers to the Swedish and Dutch enforcement models where decisions are made in weeks. This is likely to contravene public law principles that apply to public authorities in the UK context, particularly in terms of

fairness requirements for relevant parties under investigation. Nevertheless, and as set out above, we consider that both our proposed informal engagement processes (which will enable swifter resolution of issues) and our formal enforcement tools (including use of an enhanced settlement process) should lead to more efficient and streamlined outcomes.

Consultation proposals

437. We are proposing the following key changes to our enforcement powers and procedures:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

438. The main changes we are proposing to consult on under Code 15 to achieve this include the following:

Engagement and enforcement

New approach to engagement and enforcement

439. Under Code 15, we propose to move away from the current model of Track 1 and Track 2 procedures to a new structure which is based on enquiry letters, warning letters and formal notification and enforcement notices. Our provisional view is that this will provide a much clearer overall structure of the engagement and enforcement routes open to us and provide both us and industry with a clearer framework around informal resolution which currently sits outside Code 14.

440. The key changes we are proposing here are:

A clearer framework around informal resolution

Background

441. Under Code 14, where we identify matters of concern in respect of services, we send an enquiry to the relevant provider, to notify them. Engagement with the enquiry by the provider is voluntary and information cannot be directed at this stage. If we do get a response, we review it, and make an assessment as to whether the matter should proceed to the next stage - a decision as to whether or not to formally investigate. Relevant matters which we take into account at this stage, include how serious the harm is, whether it is ongoing and whether the provider has taken any steps to address the issues identified. The overall purpose of the enquiry stage is to give providers an opportunity to respond to our concerns and to make changes at an early stage.

Issues identified

442. In terms of our current approach to informal resolution under Code 14 there is:

- no formal framework in place to require that providers take corrective steps, what those corrective steps should be and by when they should be taken
- no formal requirement that providers should report back to us in respect of any steps they have taken and when they were taken
- no clear framework for communicating to a provider the consequences of failing to find solutions/take corrective steps
- not always good visibility of precisely what steps a provider has taken and when, nor is there a clear consequence formally communicated for failing to remedy issues.

443. What this means in practice is that there is an undue reliance on issues being escalated to formal investigations rather than being resolved informally.

Proposed changes

444. Under our proposed new enforcement structure, we want to bring our informal resolution framework within scope of Code 15, through the use of enquiry letters and warning letters.

445. Although it is currently open to us to engage with industry informally, we consider that it will be beneficial to have clarity within the draft Code and/or any published procedures regarding the use of informal engagement/resolution tools to help ensure that such communications are given due consideration and weight by the industry.

446. We consider that this will provide us with more flexibility in how we deal with any compliance concerns and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action. This will work as follows:

- **enquiry letters** – these will enable us to engage with phone-paid service providers to better understand Code-compliance issues and trends. This engagement will support and inform our decisions on appropriate regulatory priorities and action. Failure to respond to an enquiry letter without good reason and/or repeated failures to respond will be a relevant factor which we will take into account as part of our proposed new co-operation Requirements (see paragraph 405 above).
- **warning letters** – where it appears to us 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, we may issue a warning letter to the relevant phone-paid services provider. In a warning letter, we will set out our concerns 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 (at which point sanctions can be applied).

A more flexible engagement and enforcement framework

Background

447. Under Code 14, our regulatory framework is focussed on two options – informal resolution or formal investigation/enforcement. While action can be taken which effectively sits between these two options, it is not well-defined as a tool.

Issues identified

448. We have identified the following issues in terms of our current enforcement structure under Code 14:

- informal engagement and formal investigation may not always be the most appropriate tools – sometimes greater flexibility may be beneficial, particularly where available evidence shows very clear breaches of the Code (without the need for further investigation) and where we may wish for specified corrective action to be taken. Examples are registration breaches or where comprehensive monitoring has captured clear breaches. In these circumstances, we may want to rely on a tool which is more definitive than informal dialogue, but where we may not necessarily want to proceed via formal investigation/enforcement or to impose broader sanctions.
- Track 1 action plans currently offer the ability to agree corrective action to be taken with a provider, including the provision of refunds, but these are only available after a decision to investigate has been taken.
- Track 1 action plans are dependent upon provider agreement.

Proposed changes

449. We are proposing that, where corrective action is required, through a warning letter, and before issues go to the formal notification stage, we may specify the action to be taken in the form of an action plan to be agreed with the provider. An action plan will specify a set of actions which we consider are necessary to remedy the breach and prevent any repetition, together with a deadline for implementation. We are also proposing that we may publish warning letters (including action plans) where we consider it would be necessary and proportionate to do so to prevent or reduce potential or actual harm to consumers.

450. Our provisional view is that the proposed action plans have the following benefits:

- they can be used more flexibly, including where clear evidence of breaches exists without the need for further investigation
- they can be proposed/agreed at an earlier stage than is currently the case – including agreement as to issuing refunds

- we are able to be much clearer upfront in terms of the consequences of non-compliance with action plans (i.e. proceeding to enforcement)
- the more flexible use of action plans could be effective with a cooperative provider and where swiftly agreeing remedial steps and obtaining refunds for consumers is a priority (rather than the imposition of a broader suite of available sanctions).

451. The increased flexibility in agreeing action plans would be a particularly effective tool in supporting our proposed new supervision regime under Code 15. For example, in those cases where matters emerge as a result of supervision, but we do not think formal investigation is necessary.

Broadening the circumstances under which a formal notification can be issued

Background

452. Under Code 14, once an investigation has been concluded, we will provide the relevant party with a formal notification of our conclusions and all necessary information and evidence concerning the alleged breach(es) of the Code. This is in the form of a warning notice which includes the specific breach(es) we are alleging, the relevant case evidence, and any proposed sanctions which we will be recommending to the CAP. The relevant party is then given a reasonable period of time in which to respond before the case is placed in front of a Tribunal for determination.

Issues identified

453. Under Code 14, an enforcement notice can be only issued once a case has been allocated to a Track 2 procedure, and upon conclusion of the investigation. Our experience is that this is relatively late in the process and has resulted in the following issues:

- providers have, on occasion provided additional evidence only on receipt of the warning notice. This means the executive may have spent time and resource investigating and building a case on incomplete information. While the party under investigation could have provided this information sooner, it would have been in both parties' interests for this disclosure and representations to have been made earlier in the process to enable a more informed decision to be made about the progression of the case and the potential breach(es)
- it may be beneficial for parties under investigation to be made aware of the alleged breaches formally earlier in the process so formal settlement and adjudication by consent discussions can be considered earlier in the process. For example, we have a number of ongoing investigations which we consider would have been concluded far earlier if we were able to communicate our concerns much earlier in the process. This is likely to become a more significant issue given some of the changes in the market and, in particular, an increasing number of large blue-chip companies entering the market.

- some remedial actions may take time and resource to implement – if a provider is keen and willing to remediate potential harm it would be in consumers' interest and fairest to the providers that they are informed of these as early as possible so mitigation can be adequately shown if needed
- potentially we could make more informed decisions on the most appropriate course of action with enhanced engagement (or lack thereof) earlier in the process – e.g., which cases may be suited for no further action (NFA) etc.

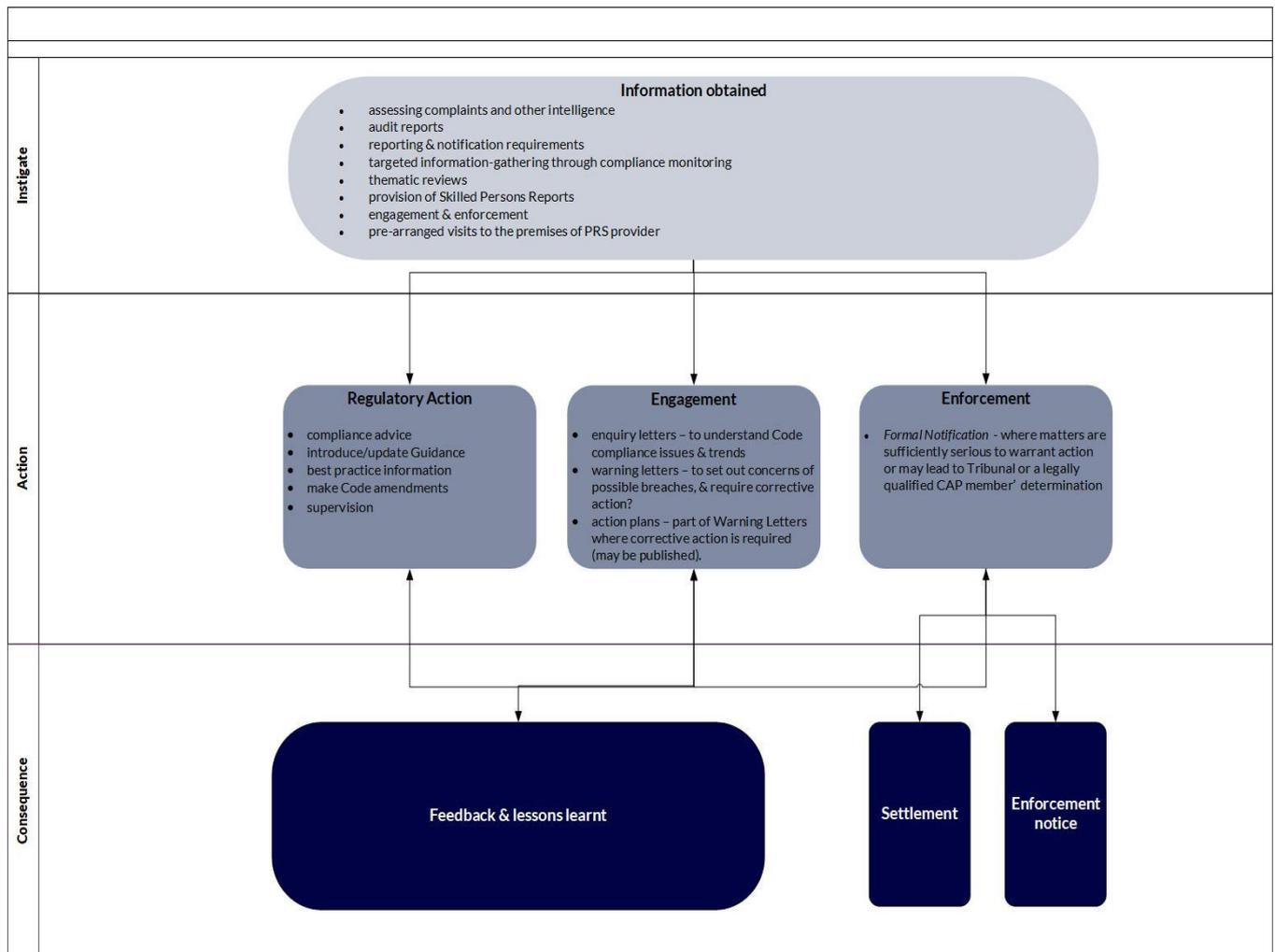
Proposed changes

454. Under Code 15, we are proposing to notify relevant parties in writing (through formal notification) much earlier in the process that a case or matter is now at a point which could lead to an enforcement notice and determination by a Tribunal or a legally qualified CAP member. In particular, we propose that formal notifications could be issued following either engagement with the provider, for example where the recommended corrective action has not been taken, or without the need for prior engagement. In either case this would be where an issue is sufficiently serious to warrant enforcement action.

455. Following receipt of a formal notification, the relevant party will then have an opportunity to provide us with any information it considers relevant to the case or matter. Once we have concluded our further enquiries and investigations, we will then notify the relevant party of our conclusions in writing in the form of an enforcement notice where we still consider that a Tribunal or a legally qualified CAP member determination is necessary. The proposed enforcement notice will be broadly similar to the warning notice under Code 14 and will contain similar information. The relevant party will then have an opportunity to respond to the enforcement notice before the case or matter is placed before a Tribunal to determine.

456. Figure 1 highlights our proposed new approach to engagement and enforcement.

Figure 1: Engagement & enforcement – flow diagram



Q37 Do you agree with our proposed approach on engagement and enforcement? Please provide an explanation as to why you agree or disagree.

Enhanced settlement process

Background

457. Currently, settlement is an option within the context of an investigation, but only after the service of the warning notice. There is no option for settlement discussions to be entered into in advance of a warning notice being served. Once a warning notice has been received by a provider, it has the option to accept the breaches and/or the recommended sanctions in whole or in part.

458. The current settlement process through the paper-based route is largely untested as it has been very infrequently utilised.

Issues identified

459. We have identified the following issues relating to the current settlement process:

- while it has the benefit of being broad and flexible, it arguably lacks clarity/certainty in terms of the potential benefits to providers of settlement
- it does not provide a clear enough financial incentive to settle as no specific discount for early settlement is specified. The only quantifiable benefit to providers is a saving on the Executive's administrative and legal costs of a contested paper-based hearing
- it is also arguably too restrictive, as it comes late in the investigative process, when any administrative/resource savings may be limited.

Proposed changes

460. Under Code 15, we want to create an enhanced settlement process for the paper-based route that provides much clearer and more quantifiable incentives for early settlement. In particular, we are proposing the following:

- to allow settlement as a potential option earlier in the lifecycle of the investigation (once the case has reached the enforcement notice stage)
- once an investigation is sufficiently advanced, the ability to communicate preliminary findings and preliminary sanctions recommendations to providers and to invite settlement discussions on that basis
- to provide a defined system of settlement discounts, namely a percentage discount for fines in the event of settlement.

461. We consider that these proposals would provide enhanced clarity and visibility regarding the benefits of settlement. It is also anticipated that moving to a defined percentage discount may serve as a greater incentive to settlement through the paper-based route. We envisage that any discount would need to be applied after the removal of the financial benefit (to ensure that providers are unable to profit from any non-compliant actions).

462. We also anticipate that any discount would be on a sliding scale from 30% to 10%. The earlier the settlement, the greater the discount available, as the resource savings we could achieve would be greater. This approach is consistent with other regulators' approaches to settlement, including Ofcom.

Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.

Strengthening the existing interim measures regime

Background

463. Interim measures enable us to direct network operators or Level 1 providers to withhold revenue outpayments where we anticipate a provider may be unable to pay a fine or costs. Interim measures can be applied for at any stage of an investigation where the Code criteria are met. Interim measures applications are made to the Tribunal who can accordingly direct that a service be suspended and/or that service revenues be withheld, pending the outcome of the investigation. Generally, applications for interim measures are made on notice and there is also a mechanism for review of any interim measures imposed, where certain Code criteria are met.

464. Under Code 14, funds which are withheld following an interim measures direction are held by either the network operator or Level 1 provider, as directed, pending the conclusion of the case, at which stage we can direct that monies are paid over to satisfy any fine imposed.

Issues identified

465. Under Code 14, we have identified a number of issues relating to non-compliance with sanctions, including a failure to pay fines imposed. From 2017/18 to 2020/21 to date, we have adjudicated against 41 providers, of which 38 have failed to comply with the sanctions imposed. Most have sought to avoid the financial sanctions imposed through going into liquidation.

466. The main issues we have identified are as follows:

Limited range of circumstances under which we put interim measures in place

467. Under Code 14, there is no power for interim measures to be imposed before a service is allocated for investigation. We can only put interim measures in place once case has been allocated to a Track 2 investigation. This is often too late in the process to ensure that funds are available for the payment of fines and costs.

Notification of outpayment dates

468. When the interim measures regime was first devised and implemented, the established model for paying out revenues was on a set date, usually on a monthly basis. This enabled us to request contractual payment out dates for the service at initial enquiry stage and gave us a clear date to work to at an early stage for any interim measures withhold application. Since the introduction of the interim measures regime, contractual arrangements for payment-out dates have been altered in respect of some non-compliant providers, resulting in sporadic payment-out dates and alterations at short notice.

469. In response to this development, we introduced a process of writing to the Level 1 provider and asking them to notify us on a voluntary basis of any invoices received and any changes to expected payment-out dates. Most of the time this request was complied with, but not always, and there was no positive obligation on the Level 1 provider to do so.

Difficulties obtaining withheld funds where providers have entered voluntary liquidation

470. Our experience under Code 14 has been that some providers enter voluntary liquidation before cases have been concluded. A recent example of this was [Webdata Ltd](#) and [IT Zone Ltd](#), who when investigated by the PSA in 2019 both voluntarily liquidated which resulted in our inability to enforce any subsequent fines imposed. Where this happens, there are no funds available for the payment of fines and costs. This trend has been compounded by the combination of the interim measures withhold limitations with the imposition of much higher fines following the sanctions review. This seriously undermines the effectiveness of the withhold provisions and their designed purpose. In essence, the effectiveness of the withhold provisions, which exist to ensure that funds are available in the event of financial penalties being imposed, are dependent upon there being a solvent company in existence at the point of final adjudication.

Proposed changes

471. Under Code 15 we are proposing the following:

Broadening the circumstances in which we can put interim measures in place

472. We are proposing to widen the circumstances in which we can put interim measures in place. We propose to be able to require this at any stage during enquiries or engagement with a relevant party (which includes prior to formal notification) where it appears to us that a breach of the Code has taken place and we consider that:

- the apparent breach is either causing or presents a serious risk of harm to consumers or the general public and requires urgent corrective action; and/or
- the relevant party cannot or will not comply with any sanction that may be imposed by a Tribunal, or an administrative charge imposed by the PSA.

A requirement on relevant parties to notify the PSA of all future outpayment dates promptly

473. We are proposing to introduce a new Code provision that enables us to direct a relevant party to notify us of all future outpayment dates, where we intend to seek a withhold direction. This will help ensure that we can adequately assess the urgency of any withhold application and plan resources accordingly to maximise our ability to put any withhold direction into effect before the next payment out date.

A requirement on relevant parties to pay over to the PSA any monies subject to a withhold direction

474. We are also proposing to introduce a new Code provision that enables us to require a relevant party to pay over monies subject to a withhold direction to us as security against a fine or administrative charge that may be imposed for the relevant case, rather than being held by the network operator or intermediary. We consider this will improve the efficacy of the interim measures regime as it will enable us to secure withheld revenues whether or not a provider enters liquidation. We consider that this will have a positive impact on our ability to recover costs and fines. This would increase the effectiveness of the withhold provisions and would introduce a considerable practical disincentive to use of the insolvency rules to avoid sanctions.

Q39 Do you agree with our proposals to strengthen the existing interim measures regime? Please provide an explanation as to why you agree or disagree.

Proceedings before the CAP and Tribunals

Introducing a new single legally qualified decision maker (from the Code Adjudication Panel) as an alternative to the full Tribunal for more straightforward cases

Background

475. Currently matters can only be adjudicated by a Code Adjudication Tribunal consisting of three CAP members, following a formal investigation and the issuing of a warning notice.

Issues identified

476. While there are no concerns about the efficiency, timeliness or quality of the Tribunal's decision making, we consider that using a single CAP member decision-maker model for some cases would enable greater efficiencies and speed in resolving such cases, without comprising on the quality and independence of decision making.

Proposed changes

477. Under Code 15, we are proposing to make use of single legally qualified decision-makers in less serious cases. So, instead of requiring a full Tribunal (of three CAP members) to sit to consider a case brought by the PSA, the case would be heard by one legally qualified CAP member. The types of breaches we would use this new approach for include those that are more administrative in nature, such as a failure to keep registration information up to date, or a failure to comply with a sanction.

478. As part of this change, we will look to design a streamlined process for placing cases before the single decision-maker, so that we can pursue these without creating a burden on our already limited resource and strike a balance between proactive supervisory

work and casework that will enable us to have the most significant impact in the consumer interest.

Q40 Do you agree with our proposals to introducing a new “single decision maker” as an alternative to the full Tribunal for more straightforward cases? Please provide an explanation as to why you agree or disagree.

Introducing a threshold for oral hearings

Background

479. Under Code 14, a provider has a right to an oral hearing – this was implemented in previous codes and enables providers to have a full hearing with the provision of oral witness evidence and legal submissions. In practice, we receive relatively few requests for oral hearings but each one that is pursued requires significant PSA resource to resolve.

Issues identified

480. Our experience is that while there are providers who choose the oral hearing route in order to more effectively argue their case and present their evidence, others choose it primarily with a view to securing more favourable terms of settlement prior to the hearing than would have been achieved through the paper-based route. In such cases, we believe that providers are taking advantage of the unfettered ability to request an oral hearing.

481. If industry were to choose to routinely (or more frequently) request oral hearings in the future in order to leverage better settlement terms, we could experience very significant operational and budgetary difficulties due to the increased number of oral hearings pursued for such reasons.

Proposed changes

482. Under Code 15, we are proposing to reduce the range of circumstances in which a provider can request an oral hearing through introducing thresholds for requesting one. We propose that oral hearings can be requested where there are serious and complex issues to be determined in a case and a fair hearing would not be possible without such a hearing. In addition, we propose that the request for an oral hearing should be considered by the Chair of the constituted Tribunal or CAP who will then determine whether or not to grant an oral hearing.

483. Our provisional assessment is that it is appropriate for us to introduce a threshold to restrict the circumstances in which oral hearings may be requested while ensuring that fair determination of cases is always achieved. We consider that our proposal strikes the right balance between reducing abuse of the oral hearing process and ensuring that

the Requirement for fairness is met. We also consider that this position is strengthened by our proposal to include a general ability for the relevant party or the PSA to request oral representations “to clarify any matter for the Tribunal” where the case is to be determined on the papers.

Q41 Do you agree with our proposal to limit the circumstances in which a provider can request an oral hearing? Please provide an explanation as to why you agree or disagree.

Strengthening the test for prohibiting individuals

Background

484. Under Code 14, the only sanctions which may currently be applied against individuals are to:

- “prohibit 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 from providing, or having any involvement in, specified types of service or promotion for a defined period”; (para 4.8.3(f))
- “prohibit 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 from providing, or having any involvement in, any PRS or promotion for a defined period”; (para 4.8.3 (g))

Issues identified

485. Under Code 14, a prohibition is dependent upon us being able to prove that the individual has been “knowingly involved” in a serious breach or series of breach(es) of the Code. This is a high evidential bar. Where an individual is a sole director of a small company, it would be possible to prove knowing involvement in breaches relatively easily. However, we encounter more difficulty where there are more individuals that occupy senior roles within a company and it is not clear which of them has direct knowledge of breaches that may be occurring as a result of the company’s activities or practices.

486. The evidential bar is even harder to reach where an individual is a director or other senior officer or employee of a much larger organisation in respect of which they may, by the nature of their positions, have little or no direct involvement in service operation and/or compliance matters. An example of this was the [Veoo Ltd DDRAC case](#) in which the company directors were able to successfully deny any “knowing involvement” in the breaches on the basis that they did not have personal knowledge of the compliance activities of the company. This case was demonstrative of a worrying general lack of emphasis within the industry on management accountability, internal governance and

oversight.

Proposed changes

487. Under Code 15, we are proposing to expand the test for prohibiting a relevant individual so that they can be prohibited either from involvement in the industry as a whole or from involvement in specified types of services, where it is demonstrated that they were either “knowingly involved” in serious breach(es) and/or “failed to take reasonable steps to prevent such breaches”. We consider that good management accountability and strong internal governance and oversight are crucial to enabling effective regulatory compliance, which in turn works in the best interests of consumers and thereby the industry as a whole.

488. This is consistent with powers other regulators have including, for example, the Information Commissioner’s Office (ICO). From spring 2017 and following [amendments to the Privacy and Electronic Communications Regulations legislation](#), it is now possible for the ICO to hold directors personally liable for data protection breaches.

489. We also consider that this proposal would dovetail with other provisions relating to verification/supervision and our proposed new registrations, DDRAC and Systems Standards (to the extent that it sets expectations around the need for senior oversight).

490. We will provide further detail as to how this would work within our published procedures, including providing greater clarity and certainty on the following:

- identification of the functions/roles that we would consider to be ‘senior managers’
- obtaining from providers at the outset a clear definition of their roles and areas of responsibility/accountability
- what “reasonable steps” to prevent breaches might consist of, so that there are clear expectations for industry and against which sanctions can be imposed where appropriate and proportionate.

Q42 Do you agree with our proposal to expand the test for prohibiting a relevant individual from the industry or specified services? Please provide an explanation as to why you agree or disagree.

Additional powers, responsibilities and obligations

Strengthening and expanding our information gathering powers (including for the purpose of supervision/engagement and enforcement)

Background

491. Under Code 14, we do not currently have any powers that allow us to formally request information prior to a case being formally investigated. Any engagement with us or provision of information prior to a case being formally allocated is voluntary.

Issues identified

492. Our experience, as detailed in paragraphs 430 to 432, has been that providers do not always give us the information we request. This is because we cannot direct information outside of a formal investigation.

493. Our powers for directing information are also limited to the parties who fall within the scope of the Communications Act, PRS condition and the Code and the consequences for non-compliance are limited to raising a breach of the Code.

494. This has contributed to us being reactive and limited in our ability to take swift and proactive steps to prevent, stop, or reduce harm. It has also prevented us from directing information for the purpose of market or thematic reviews that would allow us to examine potential market issues or understand compliance levels more generally.

495. It is not uncommon for providers to claim that they no longer hold certain information which could be relevant to an ongoing investigation. Our enforcement options for dealing with this scenario are currently limited, as we cannot raise a breach against a provider for failing to provide information where it was not required to hold that information and/or directed to provide it to us.

Proposed changes

496. Under Code 15, we are proposing the following:

Information gathering directions outside formal investigations

497. We want to broaden the range of information that we can require of providers, to enable us to develop a full picture more quickly, target our resources and require providers to take swift corrective action, whether or not we choose to formally investigate. This will enable us to formally request information from providers about any aspect of a service or value chain, through the sending of a formal direction, including for the purpose of market reviews, and irrespective of whether or not a formal notification of an investigation has been given.

498. This proposal will also be critical in supporting our proposed new supervisory function under Code 15 as this will require early and effective engagement with industry and the gathering of information outside the context of a formal investigation. For example, thematic market reviews would require the ability to obtain detailed and accurate information relating to industry-wide issues about the phone-paid services market.

Request information held by parties who are not in the value chain

499. We want to be able to ensure that we can request information which is held by third parties who potentially sit outside the value chain but who may hold information which would assist our engagement and enforcement activities. We propose to do this by including new obligations in the DDRAC Standard which requires that network operators and intermediary providers ensure that any persons with whom they contract enable information gathered in the course of conducting DDRAC to be shared with the PSA upon request.

Codify data retention requirements

500. In 2018, we published [guidance](#) setting out our expectations to industry in respect of data retention, both in terms of personal data (to assist industry in setting its own data retention policies to comply with GDPR) and in terms of the information we would expect to be retained and available in the event of an investigation.

501. Under Code 15, we propose to make it mandatory that providers retain all information that is potentially relevant to an investigation by bringing this within the scope of Code 15. This would give us the ability to impose a penalty if a provider fails to retain any relevant data as required. Codifying the guidance would also provide clarity in relation to our expectations in respect of the retention of personal data, while enabling providers to comply with their own personal data retention obligations under the UK GDPR.

502. The current guidance contains a non-exhaustive list of relevant data that should be retained. As the market evolves, we expect the types of data that should be retained will also evolve. To futureproof any new Code Requirement and to maintain flexibility, we propose that this new obligation would require the retention of the data listed in a separate data retention notice.

Q43 Do you agree with our proposal to strengthen and expand our information gathering powers (including for the purpose of supervision/engagement and enforcement)? Please provide an explanation as to why you agree or disagree.

We highlight the key differences between the existing Code 14 procedures and our proposed Code 15 procedures in Figure 2 below:

Figure 2: Key differences between the existing Code 14 procedures and our proposed Code 15 procedures

Enforcement approach	Code 14	Code 15
Information gathering powers	<p>While an investigation is ongoing, we have a power to direct all PRS providers to disclose relevant information or copies of documents (paragraph 4.2.1). Where a party fails to provide the information requested, we can raise a further breach (paragraph 4.2.3). If a party provides false or misleading information, either deliberately or recklessly, this can also lead to a further breach being raised (paragraph 4.2.2)</p>	<p>We will direct PRS providers to disclose information or documents for the purposes of enabling us to supervise by monitoring compliance with the Code (paragraph 4.2.4) or for the purpose of our engagement and enforcement activities (section 5). If a party provides false or misleading information, either knowingly or recklessly, this will be a breach of the Code</p>
Engagement	<p>Informal resolution is not currently codified within Code 14</p>	<p>We are introducing a new informal resolution framework, through the use of enquiry letters and warning letters. This is to help ensure that such communications are given due consideration and weight by the industry (paragraph 5.1)</p> <p>This will work as follows:</p> <ul style="list-style-type: none"> - <i>enquiry letters</i> will enable us to engage with PRS providers to better understand Code-compliance issues and trends. This engagement will support and inform our decisions on appropriate regulatory priorities and action (paragraph 5.2) - <i>warning letters</i> will be used where it appears to us 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, we may issue a warning letter. In a warning letter, we will set out our concerns 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 (at which point sanctions can be applied) (paragraph 5.3)
Enforcement	<p>Cases are allocated to an enforcement “track” (either Track 1 or Track 2) in light of relevant factors:</p> <ul style="list-style-type: none"> - <i>Track 1 procedure</i> is an investigation of potential breaches where there is an apparent breach but this has caused little or no consumer harm or offence, and may be resolved between the PSA and the relevant PRS provider via an agreed action plan. The Track 1 procedure does not require an adjudication by the CAP (paragraph 4.4). 	<p>We will notify relevant parties in writing (through formal notification) following engagement with the provider where the recommended corrective action has not been taken, or without the need for prior engagement, where an issue is sufficiently serious to take to a Tribunal or single legally qualified CAP member (paragraph 5.4).</p> <p>Following receipt of a formal notification, the relevant party will then have an opportunity to provide us with any information it considers relevant to the case or matter. Once we have concluded our further enquiries and</p>

	<p>- <i>Track 2 procedure</i> is an investigation into potential breaches of the Code that appear to have caused more significant harm, which may require more extensive efforts to gather information and evidence relating to the potential breaches of the Code (paragraph 4.5).</p> <p>Once an investigation has been concluded, we will provide the relevant party with a formal notification of our conclusions and all necessary information and evidence concerning the alleged breach(es) of the Code. This is in the form of a warning notice which includes the specific breach(es) we are alleging, the relevant case evidence, and any proposed sanctions which we will be recommending to the CAP. The relevant party is then given a reasonable period of time in which to respond before the case is placed in front of a Tribunal for determination</p>	<p>investigations, we will then notify the relevant party of our conclusions in writing in the form of an enforcement notice where we still consider that a determination is necessary. The relevant party will then have an opportunity to respond to the enforcement notice before the case or matter is placed before a Tribunal or single legally qualified CAP member to determine the case.</p>
Settlement	<p>Available from the point at which a provider receives formal notification of alleged breaches and sanctions in a Warning Notice</p>	<p>Available once the case has reached the enforcement notice stage (paragraph 5.5). -we will communicate preliminary findings and preliminary sanctions recommendations to providers and engage in settlement discussions on that basis -we will codify a defined system of settlement discounts, namely a percentage discount for fines in the event of settlement.</p>
Interim measures	<p>Interim measures can be applied at any point during the course of a 'Track 2' procedure where the PSA is satisfied that a breach of the Code has taken place and that: -the apparent breach is causing serious harm and requires urgent corrective action; and/or -a relevant party cannot or will not comply with any sanction that may be imposed by a Tribunal</p> <p>When directed to do so, the relevant party must retain any outstanding payments or proportion of payment relating to the service in question which is subject to the Withhold Direction.</p>	<p>Interim measures can be applied at any time during our enquiries or engagement with relevant PRS providers when it appears to us that a breach of the Code has taken place and that: -the apparent breach is causing serious harm and requires urgent corrective action; and/or -a relevant party cannot or will not comply with any sanction that may be imposed by a Tribunal</p> <p>When directed to do so, the relevant party must withhold the specified amount of money and pay over to us any amounts of money which are subject to the Withhold Direction. (paragraph 5.6)</p>
Adjudications	<p>A Tribunal consists of three members comprising: -the Chair of the CAP or such of the two legally qualified CAP members Two persons drawn from a pool comprising legal and lay members.</p>	<p>Where a referral or notification is made by us, a Tribunal of three members including at least one legally qualified member, or a single legally qualified CAP member, will be appointed from the CAP to consider the matter. The legally qualified Tribunal member will be appointed as the Chair of the Tribunal (paragraph 5.7)</p>
Oral hearings	<p>The relevant party or the PSA can require that matters are dealt with through an oral hearing where:</p>	<p>The relevant party or the PSA may, by notice in writing:</p>

	<p>-a warning notice has been issued by the PSA and a decision has not yet been made by a Tribunal; and/or</p> <p>-the party wishes to seek a review of a Tribunal decision and a review has not previously been carried out.</p>	<p>-request an oral hearing in cases where there are serious or complex issues to be determined and a fair determination would not be possible without an oral hearing; and/or</p> <p>-require an oral hearing where the Tribunal intends to impose a sanction, including the prohibition of an associated individual from involvement in or promotion of any or all PRS for a defined period.</p> <p>The Chair of the Tribunal will determine whether or not to grant the requested oral hearing in accordance with the criteria outlined in paragraph 5.7.6.</p>
Sanctions	<p>The Tribunal can apply a range of sanctions depending upon the seriousness with which it regards the breaches(es) upheld. This includes prohibiting a relevant party or associated individual found to have been knowingly involved in serious breach(es) of the Code from providing, or having any involvement in, specified types of service or promotion (including any PRS or promotion) for a defined period</p>	<p>If a Tribunal or single legally qualified CAP member concludes that the Code has been breached, it will determine the appropriate sanctions, taking account of relevant factors. This includes prohibiting a relevant party or associated individual found to have been knowingly involved in serious breach(es) of the Code, or failing to take reasonable steps to prevent such breaches, from providing, or having any involvement in, specified types of service or promotion (including any PRS or promotion) for a defined period (paragraph 5.8.5)</p>
Publication	<p>All Tribunal decisions will be published by us and may identify any party. Tribunal decisions will be published on our website and in any other way that we determine.</p>	<p>We may publish warning letters (including action plans) where we consider it is necessary and proportionate to do so to prevent or reduce potential or actual harm to consumers (paragraph 5.3.5). We will also publish all Tribunal decisions whether reached on the papers or through an oral hearing, and whether it is an interim or final decision. The decisions will be published on our website and in any other way that we consider appropriate and proportionate.</p>

Assessment framework

503. We consider that our proposals relating to engagement and enforcement meet the tests which we set out in the discussion document, namely that these proposed changes are:

- **effective** as they are designed to address issues we have encountered under Code 14 which we consider have adversely impacted on the effectiveness of our current approach to engagement and enforcement. These challenges, in particular, as already identified, are as follows:
 - the speed of investigations
 - no clear framework around informal resolution
 - a lack of flexibility for dealing with potential breaches of the Code outside of formal action (and, in particular, where we may wish for specified corrective action to be taken without proceeding to formal investigation/enforcement or imposing broader sanctions)

- limited circumstances under which we can issue enforcement notices
 - a lack of clarity and visibility regarding the benefits of settlement
 - the effectiveness of our interim measures regime and, in particular, our ability to recover costs and fines
 - our ability to prohibit individuals due to difficulties in proving under Code 14 that they have been “knowingly involved” in a serious breach(es) of the Code
 - a lack of powers to formally request information prior to a case being formally investigated.
- **balanced** as they are designed to ensure that our approach to enforcement is effective, efficient and acts as a credible deterrent to providers. In terms of our proposal to provide an enhanced settlement process, we consider that this will provide greater certainty, and has the potential to reduce costs and other resources for both industry and us.
 - **fair and non-discriminatory** as they do not discriminate unduly against particular persons or against a particular description of persons. Specifically, we note that our proposed new enforcement powers and procedures will be applied uniformly to all relevant parties engaged in the provision of controlled premium rate services, as defined in the premium rate services condition set by Ofcom under section 120 of the Act. The draft Code does not propose to make any changes which will lead to some parties, who are not currently subject to any obligations under Code 14, now being subject to obligations set out in the new Code.
 - **proportionate** as they are rational and will not disproportionately increase the burden on industry. Indeed, the majority of changes being proposed should impact positively on the regulatory burden as they are designed to deal with compliance concerns earlier and quicker, and without moving to formal enforcement. This should reduce the potential for costs and other resources for both industry and us. In particular, our provisional assessment is that the following measures, in particular, are proportionate to the issues we want to address through Code 15:
 - deficiencies in our existing information gathering powers meaning we are unable to obtain information relevant to an investigation in an effective and timely manner, including outside of formal investigations
 - deficiencies in our existing interim measures regime, meaning that any monies 'withheld' at interim stage are unlikely to be recoverable by us in the event that the provider enters liquidation before the final hearing
 - reduced effectiveness and deterrent effect of sanctions that are meant to adequately address consumer harm and serve as a credible deterrent to non-compliant providers and the broader industry
 - a potential inefficient adjudicative regime, meaning that there is no streamlining of decision-making in respect of more straightforward, administrative type breaches, such as registration breaches and that, consequently, more minor but potentially widespread market non-

compliance cannot be dealt with in a swift and less resource intensive manner.

- **transparent** as they clearly set out our expectations relating to and the reasons for the proposals are clearly explained above. In addition, the effects of the changes are clear on the face of the relevant provisions of Code 15. Therefore, we consider that the draft Code and this accompanying consultation document, clearly set out to industry the Requirements that will apply to them, including proposed changes from the Code 14, and do so in a transparent manner.

Q44 Do you agree with our assessment of our proposals relating to: (i) engagement and enforcement; and (ii) additional powers, responsibilities and obligations – against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

8. Other general Code considerations

General funding Requirements

Introduction

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

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

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

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

Early stakeholder engagement

What we said

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

- fair apportionment of the levy
- ease of levy calculation and collection
- transparency of the levy across the value chain.

508. We asked the following question:

“Q18 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?”

Stakeholder responses

Network operators

509. *BT* expressed support for the existing funding model. It also stated it would welcome engagement to discuss benefits relative to risk of malfeasance should PSA consider an alternative approach that would create a more direct relationship with merchants. It gave the example of a registration fee that is proportionate to turnover.
510. *Telecom 2* commented that the PSA should look at other regulators and overseas funding models which they consider to be much lower. It considered that the levy is already high, and increases are a great cause for concern as some services do not generate sufficient revenue to absorb additional increases. It also suggested that levy increases have a detrimental impact on consumers as prices would have to increase and this would result in some services no longer being viable.
511. *Telefonica UK* expressed concern that the existing PSA funding model is increasing the levy on providers to offset failure to collect fines. It also commented that the PSA is significantly increasing the levy on providers, targeting mostly the larger network providers. It argued this approach as effectively penalising compliant operators.

Level 1 providers

512. *Fonix* disagreed with the proposed increase in the levy. It also commented that regulatory changes have reduced consumer complaints and an increase in levy will have a commercial impact on the industry. It noted that the discussion document revolves wholly around improving regulatory Standards, and that a review of the PSA budget should be included to enable proactive discussion with industry to identify an approach to reduce costs.
513. *Donr* also commented that the current levy is sustainable. It suggested that if Code 15 results in a lower budget, there would need to be a discussion about lowering the levy or how best to use surplus funds. It also said that if Code 15 results in an increased levy then a revised approach might be necessary with a substantial justification of the benefits.
514. *Infomedia* said that it considered that the current funding model appears to work well. It requested more detail on current challenges with the existing model.

Trade associations

515. *Action 4* commented that the current funding model appears to work. However, it was happy to hear alternative funding models.
516. *aimm* suggested that PSA should look at other regulatory funding models, or overseas funding models, which it argued were much lower. It also expressed concerns with the funding proposal and asserted that the 'polluter pays' approach is not working.

Consumers and consumer advocates

517. *An individual respondent* saw no issues with the current funding model. It argued increased sanctions and early settlement is an alternative way of ensuring sufficient funding.

518. *PSCG and another individual respondent* commented that a 'polluter pays' model would be best. They argued that those who cause more complaints and harm should pay more.

PSA's assessment of inputs received

519. We welcome comments received in relation to our general funding Requirements. We note that there was a mixed response, with some providers supporting our existing funding model as one which works well but others arguing that we should consider alternative funding models (particularly overseas funding models) which result in much lower levies on providers. We also note there were some mixed views in relation to the efficacy of the 'polluter pays' as a principle.

520. We also note a number of responses commented on potential levy increases in terms of the proposed PSA budget for 2021/22. This is, however, not an issue which is within scope of the Code 15 review as this review is focussed on more general funding arrangements. The specific issues relating to the proposed PSA budget and business plan for 2021/22 have been fully addressed separately as part of our statement on our [Business Plan and Budget](#) for 2021/2.

Consultation proposals

521. Having considered responses received, we are currently minded to retain the existing levy model. This model is fundamentally based on an unadjusted levy, where our budget is recovered in full through a levy on outpayments. However, under our existing model, we also use collected fines and admin charges to adjust this levy downwards.

522. Our reasons for this position are as follows:

- we are aware that any change in where the levy is collected from (e.g., from Level 1 providers) will impact on commercial arrangements within the value chain. At the same time, it will also undermine our administrative effectiveness and efficiency in terms of levy collection.
- we are concerned that moving to an alternative funding model, such as one that looks to move away from the current levy model, may result in less certainty of funding for the PSA. This may leave us vulnerable to changes in the market and/or the number of providers.
- we believe significant changes to our registration scheme fees may have an adverse effect on companies entering or remaining in the phone-paid services market, at a time when we are actively pursuing a regulatory approach that supports growth, stimulates competition and encourages market entry

- alongside this, more work would have had to be done to identify and agree how collected fines and administrative charges would be disbursed, if not part of our funding model.

Q45 Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our assessment of our proposals on general funding arrangements?

Definitions

Introduction

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

- network operators
- Level 1 providers
- Level 2 providers

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

Early stakeholder engagement

What we said

525. In our discussion document, we said that as we move to Code 15, we think it is appropriate to review the current categories of defined providers of phone-paid services and whether the current definitions capture all relevant parties involved in the provision of phone-paid services and appropriately spread regulatory responsibility throughout the value chain.

526. We asked the following question:

“Q19 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spreads regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.”

Stakeholder responses

Network operators

527. *BT* advised that they have no issues with the current provider definitions and would also be happy for them to be reviewed as the market changes.

528. *Telecom 2* commented that the current definitions need to be expanded to cover all roles in the value chain including affiliates and other platform providers as issues often lie with these parties that in their view sit outside of Level 1 and Level 2 providers' control.

529. *Vodafone* was concerned that some actors directly involved in the value chain are overlooked, such as third-party verifiers, ELMs and sub Level 1 providers. It argued that these roles need to be accounted for fairly.

Level 1 providers

530. *Fonix* stated that third-party PIN verification providers should be defined and included within the value chain.

531. *Donr* commented that the roles of Level 1 and Level 2 providers are clear. However, it noted that the concept of a 'Sub Level 1' provider seems to have been created to bypass full Level 1 status and Requirements. It argued that the role of 'Sub Level 1' provider is not required as these were largely fully-fledged Level 1 providers along with all the safeguarding Requirements, security, compliance and capital spending that entails.

532. *Infomedia* commented that current categorisation may not capture all parties. It also commented that current definitions could potentially capture merchants too widely where they are not involved directly in purchase flows or billing.

Trade associations

533. *aimm* commented that ad placement networks, affiliates, ADR providers, call-handling companies, compliance houses, sub Level 1s, technical suppliers, third-party verifiers and monitoring businesses should all be defined. It suggested that registration could be tailored based on these categories.

534. *Mobile UK* expressed concern over the language used in the discussion document such as "exploring more effective ways of holding the whole value chain to account and extending liability". It argued it was not appropriate for the PSA to consult on shared responsibility/liability across the value chain for non-compliant services.

Others

535. *Evina* commented that the current definitions are clear, however, responsibilities need to be clarified.

536. *One industry respondent* advised that it was happy with the current provider definitions but that it would also be happy for them to be reviewed as a move into a more dynamic market.

PSA's assessment of inputs received

537. We received a wide range of comments relating to the current definitions of providers under Code 14. The majority of these responses were concerned that the current definitions used may not capture all parties within the value chain. We acknowledge these responses and agree that the current definitions need to be reviewed.

538. Over recent years, we have identified increasing challenges in terms of our current definitions and what appears to be deliberate attempts to blur the boundaries of responsibility between different parties. For example, we have had numerous enforcement cases where there is a dispute as to which company is performing which role in the service provision and whether providers are a 'sub Level 1' provider as opposed to a 'Level 1' provider. We do not agree with this distinction which is wholly irrelevant from a regulatory position. Under Code 15, we are proposing to move away from the current Level 1 and Level 2 terminology to new terminology of intermediary providers and merchant providers which we consider would provide a better description of the part they play in the value chain in support of the codified definitions.

Consultation proposals

539. Having considered responses received, we are proposing to amend the current terminology used for the two categories of providers to better reflect their roles in the provision of phone-paid services. We propose to do this through introducing new terminology of intermediary providers and merchant providers.

Q46 Do you agree with our proposals on amending our current terminology to better reflect the current phone-paid services value chain? Please provide an explanation as to why you agree or disagree.

Specified service charges and call durations

540. We are also proposing to retain the rules of the [current notice of specific service charges and durations of calls](#) within Annex 1 of draft Code 15. Our assessment is that these rules remain fit for purpose and effective in preventing consumer harm particularly relating to 'bill shock' as they enable consumer spend control.

541. We propose one minor change regarding the cost point at which spend reminders are required to be sent to consumers using 'virtual chat' services. In the current notice, it is a Requirement that spend reminders must be sent as soon as is reasonably possible after the user has spent £10.22 inclusive of VAT. For the sake of consistency with the other specified charges in the annex which are not described in pounds and pence, we are proposing that spend reminds are sent as soon as is reasonably possible after the consumer has spent £10 inclusive of VAT. We believe that this proposal should have little to no impact on providers operating virtual chat services as they should already have the necessary infrastructure in place to comply with the Requirement.

Q47 Do you agree with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within Annex 1 of Code 15? Please provide an explanation as to why you agree or disagree.

Amendment of Code provisions

542. Under Code 15, to facilitate more efficient amendments to specific Code provisions, we are proposing to include an amendment power to enable the PSA to consult on amendments to a single or small number of provisions of the Code without the need for a consultation on the full Code.

543. This represents a shift from Code 14, and one that would enable PSA to propose amendments to discreet provisions of the Code more efficiently and enable stakeholders to respond to such consultations more speedily and effectively. We would still seek Ofcom's comment and approval on any proposed changes (similar to the process for Ofcom approving the PSA budget and business plan under Code 14).

Q48 Do you agree with our proposal to include an amendment power in Code 15 to facilitate more efficient amendments to single or small numbers of specific Code provisions? Please provide an explanation as to why you agree or disagree.

9. Impact assessment

Introduction

544. In this section, we set out our provisional assessment of the impact of the changes which we have proposed in this document. In doing so, we have sought to assess costs and benefits from the following perspectives:

- the impact on industry and the wider market
- the impact on consumers
- the impact on the PSA.

545. Given that a number of the proposals we are consulting on have not been tested, we consider it is more appropriate to provide a qualitative assessment of the potential costs and savings at this stage. We have sought to identify the key impacts (both costs and benefits) in this section. We would welcome comments from stakeholders on our assessment and, in particular, any additional information from them in relation to possible impacts. This is so we can take account of any feedback received to inform our final decisions on Code 15. We want to ensure that our final decision is based on a sound understanding and accurate assessment of all available information and evidence and informed by stakeholder input.

546. We also include an Equality Impact Assessment (EIA) to assist us in making sure that we are meeting our responsibilities in fully taking account of the interests of consumers regardless of their background or identity. We also welcome any stakeholder comments and input on this.

Proposed main changes

547. The main changes we are consulting as part of our proposed development of the new draft Code is that we want to deliver a Code that:

- introduces Standards in place of outcomes
- focuses on the prevention of harm rather than cure
- is simpler and easier to comply with
- enables smarter enforcement

548. We discuss these further below:

Introduces Standards in place of outcomes

549. Code 15 will set minimum consumer-facing and organisational Standards for providers operating in the market to meet.

Benefits

550. We believe Standards should be clearer and easier for industry to implement and set minimum Requirements for providers to adhere to that meet consumer expectations, while retaining the space for innovation in the interests of consumers.

551. Our assessment of the key benefits is that Standards will provide:

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

552. Our assessment, therefore, is that Standards will benefit industry, consumers and the PSA, as follows:

- industry will benefit from more clarity and certainty about what they need to do as the regulatory system will become more predictable. A stable regulatory environment should enable cost savings in terms of time and effort in product and/or service design. A common criticism of the current regulatory model is that it has tended to be largely reactive and responsive when things go wrong, either through policy or enforcement-based interventions. The concern is that this has led to unnecessary cost and uncertainty, and a relatively complex regulatory system, which has built up over time.
- consumers will benefit from the fact that there will be greater clarity in terms of our Requirements and expectations of industry, which should lead to better consumer outcomes and this should potentially lead to a reduction in harmful practices. This will mean consumers are spending less time and effort in having to raise complaints and seeking redress and should lead to greater trust and confidence in phone-paid services.
- the PSA will benefit from the fact that there will be greater clarity in terms of our Requirements and expectations of industry, as there will be less opportunity for significantly different interpretations by organisations as to how best to achieve the desired outcomes. A key benefit of this is that we will be less reactive going forward and can focus our time and effort into stopping harm from occurring in the first place.

Costs

553. We do not expect this proposed change to have significant cost impacts. We have identified the following in terms of key potential likely areas of costs to industry:

- **Extending MFA to all services which are accessed fully or in part via an online gateway.** We currently require MFA for subscription services, online competition services, online adult services, society lotteries and recurring donations through special conditions. We are proposing that it should be extended to all services which are accessed fully or in part via an online gateway. This may require additional systems costs for those providers who do not currently provide MFA as part of their sign-up process. That said, our view is that this will yield significant benefits through a more reputable marketplace and increased consumer trust and confidence in that market. We have seen that MFA has greatly reduced complaints to us and to industry for subscription services. It will also lead to enhanced consumer protection as there should be less opportunities for consumers to be victim of 'bill shock'. It will also provide a level playing field for online-based services, including more strongly aligning the consumer purchasing experience of phone-paid services with other digital payment mechanics, such as PayPal, Apple and Google Pay where MFA is widely used.
- **Requirement for re opt in to services every 12 months.** We are aware that some industry stakeholders may be concerned that our proposed Requirement for providers to obtain consumer consent every 12 months for subscription services may impact on their business. While we accept that a proportion of consumers may choose not to positively renew subscriptions for various reasons, our view is that this will yield significant benefits through a more reputable market and increased consumer trust and confidence in services. We do not consider the Requirement for re opt-in on an annual basis to be overly onerous for willing consumers who will continue to opt in for content and services which they enjoy and want to continue subscribing to. Therefore, consumers who want to continue to enjoy these services will be able to do so, while there should be less opportunities for other consumers to be victims of 'bill shock'. In this way, there will be a direct benefit to industry in reducing complaint levels and the costs associated with them.
- **Consumer vulnerability.** We are proposing to introduce a new vulnerable consumers Standard which builds on existing Requirements, including appropriate age verification and children's services and, therefore, do not consider this an additional cost to industry. While we are proposing a number of new Requirements, as set out in this document. These are, however, measures which, in our view, should form part of providers' policies and procedures which they already have in place to take account of the needs of vulnerable consumers in order to reduce the risk to them and ensure their fair treatment. Our view, therefore, is any additional costs should be limited. We also note that our proposals also follow a similar approach to that of other regulators which should mean there are cost savings and efficiencies to be achieved for industry. This is also an area where we consider there may be value

in us working directly with industry to help them put good policies and procedures in place, and to ensure that ongoing costs are kept to the minimum necessary.

- **Customer care (including complaints handling and refunds).** These Requirements are broadly adapted from Code 14, including our updated refunds guidance. Given this, we would expect any additional costs arising from our proposals to be limited. A key change relates to the need to ensure that customer care facilities must be made available to consumers during business hours. This may incur additional costs for those providers who do not currently provide customer care facilities for these hours. These costs may be increased where customer care facilities are currently provided by overseas providers in different time zones and with different public holidays. That said, it is our view that establishing more effective and timely (including transparent and accessible) customer care procedures that meet consumers expectations should have the benefit of reducing complaints, including complaints to us, about industry complaint handling. This should drive additional cost savings and efficiencies.
- **Systems.** These Requirements have been largely adapted from current published guidance under Code 14. We therefore provisionally consider that providers will be familiar with the concepts and expectations regarding consent to charge and payment platform security and, therefore, we do not consider that these proposals should result in significant additional costs to providers. In particular, we note that the MNOs have already updated their accreditation Standards to include most of the recommendations made by Copper Horse. The two new Requirements which we are proposing, on ensuring platform security test results are assessed by suitably qualified or experienced staff, and implementing a co-ordinated vulnerability disclosure scheme, were both recommendations from the Copper Horse report. These proposals may incur costs as providers would need to have suitably qualified or experienced staff in place to do this, but we would expect that many should already have qualified and experienced staff in place to undertake this type of activity, meaning any potential costs would be minimised. In our view, however, this is a prerequisite for the provision of payment platform services to consumers and is, therefore, a legitimate and necessary cost of business in providing this type of service.

Q49 Are there other impacts which we have not considered in relation to our proposal to move from a regulatory approach based on outcomes to one based on Standards? If so, please provide appropriate evidence of the likely impact of the change.

Focuses on the prevention of harm rather than cure

554. We want to be a more proactive regulator that seeks to address potential harm before it emerges.

Benefits

555. We believe that an increased focus on prevention of harm rather than cure will enable us to work with providers to build in best practice and compliance in the first place to avoid harm, where possible, and deliver services that consumers trust and enjoy. Our current approach to regulation allocates significant resources to addressing harm once it has occurred. We believe this approach benefits neither consumers, industry nor the PSA.

556. Our assessment, therefore, is that moving to a more preventative approach will benefit industry, consumers and the PSA, as follows:

- industry will benefit as this will lead to enhanced consumer trust and confidence in services which helps drive market growth opportunities. Industry will also benefit from spending less time and effort in having to deal with complaints and redress claims which will drive cost savings and efficiencies. It should also reduce the need for enforcement action where issues are picked up much earlier and resolved.
- consumers will benefit from increased protection, as an emphasis on the prevention of harm and ongoing supervision, should limit the opportunity for consumer harm to occur. This will mean consumers are spending less time and effort in having to raise complaints and seeking redress and should lead to greater trust and confidence in phone-paid services. This should provide benefits to market health, integrity and reputation and consumer confidence.
- the PSA will benefit from having a more comprehensive understanding of phone-paid service providers and the services that are offered to consumers. This will help us better protect consumers by taking proactive regulatory action that is proportionate, efficient, timely, targeted and effective. It will also mean we can target our time and effort into stopping harm from occurring in the first place rather than dealing with issues reactively after the harm has occurred.

Costs

557. We do not expect this proposed change to have significant cost impacts. We have identified the following in terms of key potential likely areas of costs to industry:

- **Enhanced notification through the registration scheme.** We are proposing to carry out checks on PRS providers through an enhanced registration system. This will enable us to collect and verify essential information about phone-paid service providers and their services. This largely builds on existing Code 14 Requirements albeit with some new Requirements, including information relating to relevant contact details of individuals in the organisation, relevant numbers and access or other codes as well as the identity of other providers involved in the provision of the service. We expect there will be some additional costs for industry in terms of time and effort in collecting and reporting information, including potentially having to recruit new staff where these new Requirements cannot be fulfilled with existing

staff. However, in the main, we would expect that this type of information will be readily available so any associated direct costs of putting in place systems or spending money to be able to collect the information, should be limited. In addition, as we do currently, we will continue to work with industry in supporting them in meeting these new Requirements which should minimise costs to them.

- **Strengthened DDRAC Requirements.** We are proposing to put in place more stringent DDRAC Requirements for phone-paid service providers to ensure that all such providers undertake thorough DDRAC. While a lot of these Requirements build on existing DDRAC Requirements from Code 14 (including published guidance), we are proposing to introduce some new Requirements, including the need to have senior level sign-off for DDRAC, ensuring that providers are able to terminate contracts with third parties in defined circumstances, ensuring DDRAC responsibilities flow down the value chain and making available to us, on request, information relating to DDRAC. These are new Requirements and are likely to result in some additional costs to providers. For example, as above, the Requirement for senior-level sign off may lead to potential extra cost if the role cannot be fulfilled with existing staff. This may include training costs. However, our view is that any such costs are likely to be minimised as many providers should already have effective DDRAC processes in place (including many of these proposed new Requirements) and, in these cases, we would expect any additional costs to be limited and that, to the extent there are additional costs, this would fall on those providers who currently follow poor DDRAC.
- **New supervision powers.** We are proposing to carry out ongoing oversight of phone-paid service providers and services to achieve and maintain compliance with the new draft Code to prevent, or reduce, actual and potential harm to consumers and the market. This should enable us to engage more proactively with industry. As we have already set out, we are looking to minimise the potential for additional costs by ensuring that our proposed supervisory regime is designed to enable flexibility so we can target our supervisory role where it is most needed. We propose to monitor compliance through various information-gathering activities, including consumer complaints, audits, data reporting and skilled persons reports. We intend to apply these new powers in a targeted fashion to ensure that costs, to both us and the industry, are minimised to the greatest extent possible.

However, we recognise that there are likely to be costs arising from our proposed new supervision function including, for example, where we require audit reports to be submitted, either annually or periodically, periodic reporting of data and skilled persons reports. Our view is that these costs should be largely offset as we have designed these new powers to enable us to deal with compliance concerns earlier and more speedily, and without moving to formal enforcement. A key benefit of this to both us and industry, in particular, is that we will be less reactive going forward, and can focus our time and effort into stopping harm from occurring in the first place.

Q50 Are there other impacts which we have not considered in relation to our proposal to focus on prevention of harm rather than cure? If so, please provide appropriate evidence of the likely impact of the change.

Is simpler and easier to comply with

558. We want regulation to be as simple and easy to implement as possible, therefore enabling legitimate services to flourish in the consumer interest.

Benefits

559. We believe a new draft Code that is simpler and clearer for industry to comply with will drive benefits, including enabling legitimate services to flourish in the consumer interest. This is because a simplified regulatory system will be clearer and easier for industry to implement, while retaining the space for innovation in the interests of consumers.

560. Our assessment of the key benefits is this will provide:

- increased certainty to industry stakeholders in terms of our Requirements and expectations through the establishment of regulatory Standards
- making it easier to update certain Standards in response to market developments and changes in best practice
- the potential for more flexible regulation, including the ability for regulated parties to achieve the regulatory Standards through alternative means, where regulated parties commit to meeting the agreed Standards.

561. Our assessment, therefore, is that making regulation simpler and easier to comply with will benefit industry, consumers and the PSA, as follows:

- industry will benefit from a simpler and clearer regulatory regime to comply with, including increased certainty in terms of our Requirements and expectations. This is because a simpler structure reduces the time and effort needed to understand the Requirements of the Code. Also, we would expect that it reduces the need for ongoing changes to policies and procedures such as having to meet the Requirements of new special conditions. This should reduce the amount of new costs associated with these types of fixes.
- consumers will benefit from increased protection, as ensuring regulation is simpler and clearer should limit the opportunity for consumer harm to occur. This should provide benefits to market health, integrity and reputation and consumer confidence.

- the PSA will benefit from increased compliance levels from industry, meaning there will be fewer cases where formal enforcement action is needed, which incurs costs for both the PSA and industry. This will enable the PSA to target time and efforts more effectively, including being more focussed on stopping harm from occurring in the first place.

Costs

562. We do not expect this proposed change to have significant cost impacts. We recognise there will be one-off familiarisation and implementation costs associated with transition from one Code to another. In the main, however, and given that an objective of our Code 15 review is to provide a simpler Code and make compliance easier, we would expect any costs to be off-set in the future, and lead to reduced costs for industry and more effective deployment of staff and resources for the PSA, leading to a more effective (and value-for-money) regulatory model.

Q51 Are there other impacts which we have not considered in relation to our proposal to move to a new Code which is simpler and easier to comply with? If so, please provide appropriate evidence of the likely impact of the change.

Enables smarter enforcement

563. We are proposing to introduce a number of changes to address various issues which we have identified that undermine the effectiveness of our investigations and sanctions processes and procedures.

Benefits

564. The main changes we are proposing to consult under Code 15 to achieve this include the following:

- a new approach to engagement and enforcement
- an enhanced settlement process
- strengthening the existing interim measures regime
- a more efficient adjudicative regime
- strengthening the test for prohibiting individuals
- strengthening and expanding our information gathering powers.

565. Our assessment is that our proposed new engagement and enforcement approach will provide the following benefits:

- a clearer framework around informal resolution which will provide more flexibility for us in terms of how we deal with any compliance concerns, and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action

- earlier publication of cases, including publication of warning letters and action plans
- widening the circumstances under which we can issue enforcement notices, including without the need for prior engagement, where an issue is sufficiently serious to warrant enforcement action
- creating an enhanced settlement process that provides much clearer and more quantifiable incentives for early settlement
- broadening the circumstances in which we can put interim measures in place, to include during our enquiries or engagement with providers
- requiring monies which are subject to a withhold direction to be paid over to us as a security against a fine or administrative charge that may be imposed
- introducing a new single decision maker as an alternative to the full Tribunal for more straightforward cases, meaning cases can be dealt with more efficiently
- strengthening the test for prohibiting individuals, including expanding the test for prohibiting relevant individuals where they have failed to take reasonable steps to prevent breaches
- strengthening and expanding our information gathering powers (including for the purpose of supervision/engagement & enforcement)

566. Our assessment, therefore, is that this will benefit industry, consumers and the PSA, as follow:

- industry will benefit from the fact that our proposed new approach is intended to deal with compliance concerns earlier and quicker, and without moving to formal enforcement. This should, therefore, reduce the potential for costs for industry which are associated with investigations. This includes the proposal to introduce an enhanced settlement, which should also lead to additional cost savings and efficiencies for industry who may be subject to formal enforcement action.
- consumers will benefit from increased protection, as our proposed new approach should limit the opportunity for consumer harm to occur as well as stopping consumer harm more quickly, where it happens. This should provide benefits in terms of market health, integrity and reputation and consumer confidence.
- the PSA will benefit from increased compliance levels from industry, meaning there will be fewer cases where we have to move to formal enforcement action, which incurs costs for both us and industry. This will enable us to target our time and efforts more effectively, including being more focussed on stopping harm from occurring in the first place. We will also benefit from an enhanced settlement process as this should mean we will be able to close investigations more quickly than is currently the case.

Costs

567. We do not expect this proposed change to have significant cost impacts. In particular, we note that a primary objective of what we are proposing is to provide a clearer

framework around informal resolution which currently sits outside Code 14. This should benefit industry, consumers and us, including the fact that we will be able to be more responsive to addressing issues, so that consumer harm can be identified, and stopped, much more quickly.

568. We would also expect that some of other proposals, including enhanced settlement and a more efficient adjudication model, such as having single legally qualified decision makers, should drive cost savings rather than additional costs. There may be some additional costs associated with our proposals to strengthen our information gathering powers. But again, we would expect these to be largely limited as these are more to do with our ability to rely on information requested by being able to request information through formal powers rather than looking to issue more requests for information.

Q52 Are there other impacts which we have not considered in relation to our proposed changes to our investigations and sanctions policies and procedures? If so, please provide appropriate evidence of the likely impact of the change.

Equality impact assessment

569. This section provides our assessment of our proposals set out in this document in the context of an EIA. EIAs assist us in making sure that we are meeting our responsibilities in fully taking account of the interests of consumers regardless of their background or identity.

570. In this section, we are, therefore, considering the impact of our proposals in relation to people with the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation²¹.

571. Overall, our assessment is that the changes which we are proposing in the new draft Code should have a positive impact on people with protected characteristics. We would expect that consumers with protected characteristics will benefit to the same extent that consumers in general will benefit. We do not believe that our proposals would have any detrimental impact on people with protected characteristics. In particular, we note:

- the proposed change in regulatory approach to one which focuses on the prevention of harm before it occurs will have a positive impact on all consumers, including those with protected characteristics, since it should raise industry Standards and reduce levels of consumer detriment. This includes detriment suffered by consumers with protected characteristics. For example, we are proposing to strengthen the Requirements around registration as well as DDRAC to deter illegitimate providers intent on causing harm from entering the market. Our proposed new supervisory

²¹ As defined by the Equality Act 2010

approach will also enable us to be more proactive and identify harm pre-emptively, which could include harm specifically related to protected characteristics.

- many of our proposals should improve the overall reputation of the industry. Improving the reputation of the industry should attract more reputable players who seek to innovate in the interests of all consumers into the market. This will increase the availability of good products and services to consumers, including those consumers with protected characteristics.
- we are proposing to include a vulnerable consumers Standard which will bring together all the Requirements in relation to consumer vulnerability into one place. We consider this will provide greater simplification, clarity and consistency in relation to all vulnerable consumers, including those with protected characteristics. This Standard will help to ensure that providers are taking the necessary steps to protect vulnerable consumers, including those with protected characteristics.

Q53 Do you agree with our assessment on the impact of our proposals in relation to equality? Do you have any further information or evidence which would inform our view?

10. Next steps

Responding to this consultation

572. We would welcome feedback on the matters raised in this consultation document up until **5 July 2021**. We believe that a consultation of this length provides sufficient time for respondents to come back to us on the matters raised in this document.
573. Where possible, we would encourage respondents to frame their responses through specifically responding to the questions asked in this document. We welcome responses to the questions set out below, along with any other information, evidence, or views that respondents have in relation to this consultation document.
574. We plan to make available all responses received. If you want all, or part, of your submission to remain confidential and/or anonymous, please clearly identify where this applies along with your reasons for doing so.
575. Personal data, such as your name and contact details, that you give or have given to the Phone-paid Services Authority is used, stored and otherwise processed, so that the PSA can obtain your views, and publish them along with other views.
576. Further information about the personal data you give to the PSA can be found at <https://psauthority.org.uk/privacy-policy>.
577. Comments should be submitted in writing using [this response form](#) and sent by email to consultations@psauthority.org.uk. If you have any queries about this consultation, please email the consultations inbox using the email address set out above.
578. This document is only one element of our stakeholder engagement relating to this consultation. During the 12-week consultation period we will be carrying out extensive stakeholder engagement, through a series of webinars, stakeholder forums and bi-lateral meetings with interested stakeholders.

The Statement

579. Once the consultation is complete and following consideration of all stakeholder responses, we will publish our final Statement and revised Code 15 later in the year.

Implementation period

580. As above, we invite stakeholders to respond to this consultation by **5 July 2021**. We are planning to publish our final Statement which will accompany Code 15 later in the year. We recognise that industry may require an implementation period to bring their policies, procedures and practices into line with any changes set out in our final Statement in order to meet revised regulatory Requirements. At this stage, our view is that an implementation period of between 3 to 6 months ought to be sufficient to allow industry to make all the necessary changes to their processes and procedures to ensure compliance with Code 15.

581. We would welcome stakeholder views on the proposed implementation period. If stakeholders disagree and think they will need a longer period to implement any of the specific changes that we are proposing to make, we invite them to let us know in responding to this consultation, specifying the particular proposed changes which they think require a longer period.

582. During this implementation period, we will be consulting on further guidance to help support compliance with the new Code and we will continue our programme of stakeholder engagement to support providers to implement any necessary changes. This will include various activities, including developing an accessible digital Code and hosting implementation workshops, as necessary. We encourage providers to comply with the new Code before that date if possible.

Commencement and transitional arrangements

583. Whenever we introduce a new edition of the Code, it is necessary to set out the date on which the new Code will commence. It is also important to be clear about the transitional arrangements which will exist where an investigation commences while one Code is in force but does not finish until after the new Code has superseded the previous one.

584. For the purpose of Code 15, and following a similar approach to Code 14, we propose to include our proposed commencement and transitional arrangements in the Code. These are set out at paragraphs 1.8.1 and 1.8.2 of Code 15. From the commencement date for Code 15, we propose that section five of Code 15 and any published procedures would automatically apply to all existing complaints and investigations. This would include all breaches raised under Code 14. In practice this would mean that any complaints or monitoring which was being considered before Code 15 takes effect would, from the date that Code 15 commences, be dealt with using the processes within Code 15. In the same way any investigations which are already underway or breaches raised at the time Code 15 takes effect would, from that point onwards, be dealt with using Code 15 processes.

Q54. Do you agree with our proposal to set out transitional arrangements that allow the new Code procedures to apply from the commencement date to all investigations and/or complaints or monitoring which commenced under Code 14?

Annex 1: List of published respondents to the discussion document

Action 4

Aimm

anonymous 1

anonymous 2

BT

Communications Consumer Panel

Donr

Evina

Fonix

Infomedia

Mobile UK

Phone-paid Services Consumer Group

Telefonica

Telecom 2

UKCTA

Vodafone

Annex 2: Consultation questions

Proposed regulatory approach

Q1 Do you agree with our proposed regulatory approach relating to regulatory Standards and Requirements? Please provide an explanation as to why you agree or disagree.

Q2 Do you agree with our proposed regulatory approach relating to service-specific Requirements? Please provide an explanation as to why you agree or disagree.

Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.

Q4 Are there any areas where you consider that Guidance would assist with compliance with the Standards and Requirements?

Q5 Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.

Q6 Do you agree with our proposed regulatory approach relating to Best Practice information? Please provide an explanation as to why you agree or disagree.

Q7 Are there any areas where you consider that Best Practice information would be helpful?

Q8 Do you agree with our proposed regulatory approach relating to supervision and verification? Please provide an explanation as to why you agree or disagree.

Q9 Do you agree with our proposed regulatory approach relating to Code compliance: engagement and enforcement? Please provide an explanation as to why you agree or disagree.

Q10 Do you agree with our proposal to tailor our approach to regulation, including introducing Bespoke and General permissions as part of the draft Code? Please provide an explanation as to why you agree or disagree.

Q11 Do you have any comments about the existing permissions and exemptions under Code 14 and/or our proposed approach to ensuring certainty and clarity on their status under Code 15?

Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.

Standards and Requirements

Integrity

Q13 Do you agree with our proposed Integrity Standard and Requirements? Please provide an explanation as to why you agree or disagree.

Q14 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Transparency

Q15 Do you agree with our proposal to introduce a new Transparency Standard? Please provide an explanation as to why you agree or disagree.

Q16 Do you agree with our assessment of the Transparency Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Fairness

Q17 Do you agree with our proposal to introduce a new Fairness Standard? Please provide an explanation as to why you agree or disagree.

Q18 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Customer care

Q19 Do you agree with our proposal to introduce a new Customer care Standard? Please provide an explanation as to why you agree or disagree.

Q20 Do you agree with our assessment of the proposed new Customer care Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Vulnerable consumers

Q21 Do you agree with our proposal to introduce a new Vulnerable consumers Standard? Please provide an explanation as to why you agree or disagree.

Q22 Do you agree with our assessment of the proposed new Vulnerable consumers Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Consumer privacy

Q23 Do you agree with our proposal to introduce a new Consumer privacy Standard? Please provide an explanation as to why you agree or disagree.

Q24 Do you agree with our assessment of the proposed new Consumer privacy Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Prevention of harm and offence

Q25 Do you agree with our proposal to introduce a new Prevention of harm and offence Standard? Please provide an explanation as to why you agree or disagree.

Q26 Do you agree with our assessment of the proposed new Prevention of harm and offence Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Organisation and service information

Q27 Do you agree with our proposal to introduce a new Organisation and service information Standard? Please provide an explanation as to why you agree or disagree.

Q28 Do you agree with our assessment of the proposed new Organisation and service information Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Due diligence, risk assessment and control

Q29 Do you agree with our proposal to introduce a new DDRAC Standard? Please provide an explanation as to why you agree or disagree.

Q30 Do you agree with our assessment of the proposed new DDRAC Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Systems

Q31 Do you agree with our proposal to introduce a new Systems Standard? Please provide an explanation as to why you agree or disagree.

Q32 Do you agree with our assessment of the proposed new Systems Standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Supervision

General approach to supervision

Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.

Compliance monitoring methods

Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.

Reporting and notification Requirements

Q35 Do you agree with our proposals on reporting and notification Requirements? Please provide an explanation as to why you agree or disagree.

Assessment framework

Q36 Do you agree with our assessment of our proposed new supervisory function against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Engagement and enforcement

Q37 Do you agree with our proposed approach on engagement and enforcement? Please provide an explanation as to why you agree or disagree.

Enhanced settlement

Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.

Strengthening the existing interim measures regime

Q39 Do you agree with our proposals to strengthen the existing interim measures regime? Please provide an explanation as to why you agree or disagree.

Proceedings before the CAP and Tribunals

Q40 Do you agree with our proposals to introduce a new “single decision maker” as an alternative to the full Tribunal for more straightforward cases? Please provide an explanation as to why you agree or disagree.

Q41 Do you agree with our proposal to reduce the range of circumstances in which a provider can request an oral hearing? Please provide an explanation as to why you agree or disagree.

Q42 Do you agree with our proposal to expand the test for prohibiting a relevant individual from the industry? Please provide an explanation as to why you agree or disagree.

Additional powers, responsibilities and obligations

Q43 Do you agree with our proposal to strengthen and expand our information gathering powers (including for the purpose of supervision/engagement and enforcement)? Please provide an explanation as to why you agree or disagree.

Assessment framework

Q44 Do you agree with our provisional assessment of our proposals relating to: (i) engagement and enforcement proposals; and (ii) additional powers, responsibilities and obligations – against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

Other general Code considerations

General funding arrangements

Q45 Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our assessment of our proposals on general funding arrangements?

Definitions

Q46 Do you agree with our proposals on amending our current terminology to better reflect the current phone-paid services value chain? Please provide an explanation as to why you agree or disagree.

Specified service charges and call durations

Q47 Do you agree with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within Annex 1 of Code 15? Please provide an explanation as to why you agree or disagree.

Amendment of Code provisions

Q48 Do you agree with our proposal to include a broad amendment power in Code 15 to facilitate more efficient amendments to single or small numbers of specific Code provisions? Please provide an explanation as to why you agree or disagree.

Impact assessment

Q49 Are there other impacts which we have not considered in relation to our proposal to move from a regulatory approach based on outcomes to one based on Standards? If so, please provide appropriate evidence of the likely impact of the change.

Q50 Are there other impacts which we have not considered in relation to our proposal to focus on prevention of harm rather than cure? If so, please provide appropriate evidence of the likely impact of the change.

Q51 Are there other impacts which we have not considered in relation to our proposal to move to a new Code which is simpler and easier to comply with? If so, please provide appropriate evidence of the likely impact of the change.

Q52 Are there other impacts which we have not considered in relation to our proposed changes to our investigations and sanctions policies and procedures? If so, please provide appropriate evidence of the likely impact of the change.

Equality impact assessment

Q53 Do you agree with our provisional assessment on the impact of our proposals in relation to equality? Do you have any further information or evidence which would inform our view?

Next Steps

Q54 Do you agree with our proposal to set out transitional arrangements that allow the new Code procedures to apply from the commencement date to all investigations and/or complaints or monitoring which commenced under Code 14?

Annex 3: Proposed Guidance and additional information

As noted in paragraphs 136 to 138, we are proposing to retain guidance in a number of areas, to aid compliance with Code 15. The areas which we have identified to date where it is likely that we will either revise existing guidance or produce new guidance are:

- Advice Services
- Consent to charge and Payment Platform Security
- Due Diligence, Risk Assessment and Control on clients
- Enabling consumer spend control
- Guidance on the Retention of Data
- ICSS
- Promoting premium rate services
- Refunds & Customer care
- Registration help notes
- Vulnerability

This is by no means an exhaustive list but simply an early indication of our thinking in this area. We will be developing our plans for guidance further during the consultation period, with a view to consulting formally on Code 15 guidance either at the same time as, or shortly after publishing our Statement and Code 15 in Autumn 2021.

We would welcome views from stakeholders as to what other guidance material may be needed.

It is also our intention, following publication of the Statement and Code 15, to support providers and to inform consumers as to what they can expect from our new regulatory approach under Code 15 by:

- publishing our procedures in relation to Supervision, Engagement and Enforcement
- producing summaries of the published Code for consumers
- developing PSA website content, and other targeted communications outlining what providers and consumers can expect.

Annex 4: Glossary

Affiliate - a person or organisation officially attached or connected to a larger body for example, providers of phone-paid services may wish to contract their digital marketing to partners or affiliate marketers. Typically, affiliates do not form part of the value chain.

Alternative dispute resolution (ADR) - ways of resolving disputes between consumers and traders that do not involve going to court.

Blue-chip – a company or investment which can be trusted and is not likely to fail.

Clickjacking – where consumers are induced into clicking on something that is different to what they perceive they are clicking on. By clicking on a disguised link on a web display the consumer triggers other internet functions. The consumer is unaware of what they are instigating and where such clickjacking is relied upon for consent, this is invalidated by the consumer's user experience and knowledge.

Coordinated Vulnerability Disclosure Scheme - 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 minimising any risks from any identified vulnerabilities; and providing users with sufficient information to evaluate any risks arising from vulnerabilities to their systems.

Direct carrier billing (DCB) - online payment method that allows users to make purchases by charging payments directly to their mobile phone bill, sometimes also referred to as operator billing.

External Lottery Managers (ELM) – a person who makes arrangements for a lottery on behalf of a society or local authority but is not a member, officer or employee of the society or local authority.

iFraming - for example, a video website that has a play button on it which says, 'click to play a free video', but an invisible frame or layer (iFrame) has been placed on top of the page and lined up exactly with the play button. The consumer tries to click on the play button but instead has actually clicked on the invisible iFrame and is directed to another site. In essence, the consumer's click has been "hijacked".

Information, Connection and/or Signposting Services (ICSS) - premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.

Interactive Voice Response (IVR) - automated telephony system that interacts with callers, gathers information and routes calls to the appropriate recipients.

Level 1 or intermediary provider - the 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.

Level 2 or merchant provider - 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.

Mobile Network Operator (MNO) - a provider that operates a cellular mobile network.

Mobile Station International Subscriber Directory Number (MSISDN) - the telephone number assigned to the SIM card in a mobile phone.

Multi-factor authentication (MFA) is an authentication method that requires two or more verification factors to establish consent.

NCSC Approved List – the National Cyber Security Centre (NCSC) website has a list of products and services that have been independently assessed against NCSC Standards.

Net promotor score - an index ranging from -100 to 100 that measures the willingness of customers to recommend a company's products or services to others.

Open banking - a banking practice that provides third-party financial service providers open access to consumer banking, transaction, and other financial data from banks and non-bank financial institutions through the use of application programming interfaces (APIs).

Over the top (OTT) - a service that provides a product over the internet and bypasses traditional distribution.

PayForIt - this was a mobile payment scheme which was originally set up by EE, O2, Three and Vodafone, and which ended in 2019. The scheme included a **120-day rule** under which subscription services should be automatically cancelled after a 120-day period of inactivity.

PSD2/Revised Payment Services Directive - the EU legislation which sets regulatory Requirements for firms that provide payment services.

Rich Communication Services (RCS) - a communication protocol between mobile telephone carriers and between phone and carrier, aiming at replacing SMS messages with a text-message system that is richer, and can transmit in-call multimedia.

Sandbox (FCA) – a regulatory sandbox which allows businesses to test innovative propositions in the market, with real consumers.

SME – a small to medium-sized enterprise, typically a company with no more than 500 employees

Third-party verifiers – external organisations used to review and confirm customer information and interactions to ensure accuracy.

Trustpilot – website platform which shares consumer reviews of goods and services

Two-factor authentication is an authentication method that requires two verification factors to establish consent.

Vulnerable consumer - 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.

Annex 5 - The PSA Code of Practice (15th Edition) [draft]

The draft Code of Practice can be found on the PSA website [here](#).