

Cancer Research UK response to the Phone-paid Services Authority's Consultation on a new PSA Code of Practice (Code 15)

Cancer Research UK (CRUK)¹ is the world's largest cancer charity dedicated to saving lives through research. We support research into over 200 types of cancer, and our vision is to bring forward the day when all cancers are cured. Our long-term investment in state-of-the-art facilities has helped to create a thriving network of research at 90 laboratories and institutions in more than 40 towns and cities across the UK supporting the work of over 4,000 scientists, doctors and nurses. In 2019/20, we committed over £468 million towards life-saving research.

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

We would appreciate some clarification regarding the list at 3.13.2 detailing the information which a consumer must be clearly provided prior to entry.

Presently we adhere to CAP/BCAP Codes² in this area but the list at 3.13.2 appears to go beyond the requirements in these Codes. As CAP/BCAP already cover what needs to appear on marketing communications or other materials relating to promotions, might possible confusion be avoided if Code 15 only covers elements specific to PRS related points?

If the list at 3.13.2 remains unchanged, could clarification be provided as to the acceptable ways to provide these to the consumer i.e., save for those which must under the CAP/BCAP Codes appear on marketing, can consumers be provided with a link to terms and conditions which includes these things rather than all these elements appearing in a text?

Is it the intention of the PSA that promoters continue to follow the CAP/BCAP requirements?

Q7 Are there any areas where you consider that Best Practice information would be helpful?

As the Code is implemented and used operationally it will be useful to understand if the PSA is planning on gathering feedback relating to usage and any issues which may necessitate Code 15 amends and/or further guidance on good practice in addition to that detailed in Annex 3, to support providers to comply with the new Code.

¹ Cancer Research UK
<https://www.cancerresearchuk.org/play-your-part>

² Non-broadcast Code and Broadcast Code, Advertising Standards Authority
<https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>

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.

We welcome the PSA's intention to maintain and improve market health, integrity and reputation and consumer confidence through enhanced supervision and verification. We also welcome the the PSA's intended approach of being supportive to providers to enable Code compliance, evidence-based and focusing supervisory activities where there is risk of consumer harms, and proportionate in its compliance monitoring activities.

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?

We welcome this fairness standard as it is in line with our existing approach of being respectful, open and honest with our supporters in all our fundraising activities and following the Fundraising Regulator's Code of Fundraising Practice³. We would draw the PSA's attention to the following in relation to their rationale for changes to the treatment of charity recurring donation services and the possible impact as assessed by the PSA against their general principles.

We agree with the PSA's aim to improve overall consumer awareness when signing up to phone paid services but believe that the existing measures in place for charity recurring donation services – such as the explanation of terms and conditions and how the service works in marketing materials, and the double opt-in – are already effective in ensuring supporters give informed consent.

Control is already in the hands of the supporter. Supporters are also fully informed of the ongoing existence of the payment and empowered to easily decide to continue donating or not, through:

- Monthly messages reminding supporters of their donation and offering a clear opportunity to SKIP the payment
- The provision of guidance on how to STOP the payment
- The provision of a receipt after each donation is made.

³ Code of Fundraising Practice, *The Fundraising Regulator*
<https://www.fundraisingregulator.org.uk/code/all-fundraising/behaviour-when-fundraising>

In addition, in the Fundraising Regulator's Annual Complaints Report 2019-2020⁴ it was reported that the 35 large charities using text donation services received only 130 complaints in total from their supporters about this activity.

Specifically, we are concerned about possible adverse consequences for supporters, charities and the text donation service if the requirement in 3.3.11 *"For all subscription services, the consent required to be established through an authentication method set out under paragraphs 3.3.8 and 3.3.9 above must be obtained by the merchant provider every 12 months."* is applied to charity recurring donation services.

- We would suggest to the PSA that because auto renewal and price changes do not apply to recurring charity donations and unsolicited charging does not appear to be a risk or an issue for charity recurring donation services, the proposed changes in 3.3.11 should not be implemented for charity recurring donation services.

Supporters sign up to a regular donation to charity on the understanding that their commitment will be ongoing and at the same amount unless they choose to SKIP or STOP. Supporters are likely to be confused and possibly disgruntled if the donation they have actively chosen to continue is automatically cancelled at the end of 12 months and they then have to re-sign up.

- Other donation payment methods do not expire automatically. Charity recurring donations are not for fixed periods, can be varied only by supporter instruction and cancelled at any time, therefore we do not believe charity donations would be in scope of any changes from the Competition and Markets Authority's (CMA) ongoing work to encourage additional safeguards against so-called 'loyalty penalties' for consumers. But, if any changes were to apply to charity donations the PSA may wish to await the outcome to make any changes in line with the CMA.
- The change the PSA proposes in 3.3.11 does not appear to meet their balance test as the loss of functionality for supporters, and for charities, the likely substantial drop in income from donations and increase in costs due to obtaining the re-sign up of supporters seem to outweigh any perceived harms to consumers from charity recurring donation services. In addition rather than leading to innovation and increased consumer choice, this could have the unfortunate outcome of significantly shrinking the market as charities offer other forms of payment method instead. This would be disappointing to supporters who prefer this flexible and easy way to make donations.
- We are concerned that sending a message to supporters asking them to sign up again on expiration of their donation as proposed in 3.3.11 could be considered to constitute marketing (unlike the current monthly messages which are clearly operational). We would welcome views from the PSA on this point.

⁴ Annual Complaints Report 2019/20, *The Fundraising Regulator*
<https://www.fundraisingregulator.org.uk/sites/default/files/2020-12/Annual-Complaints-Report-2019-20.pdf>

In addition, we have a Data Protection related comment on the provisions of 3.3.10: *“For recurring donation services only, where the consumer has donated on a one-off basis and through a confirmation message is provided with the opportunity to convert their one-off donation to a recurring donation, the message must specifically seek the consumer’s consent to the recurring charge. Such consent must be given by way of an MO SMS as set out in paragraph 3.3.9(c) above.”* We believe it is unlikely that a single interaction of this type would allow for a charity to both capture marketing consent and an opportunity to convert. We would appreciate the PSA clarifying how the inclusion of the opportunity to convert to a recurring donation in the confirmation message to a one off donation would work in practice and providing further guidance if possible to avoid organisations inadvertently breaching Data Protection Laws by giving the impression that this would normally be ok.

Charities invest significant resource to market charity recurring donation services to supporters and the figures the PSA quotes for the size of the charity donation market is down in large part to the efforts of charities and quality of their campaigns. It is worth noting too that due to the pandemic related issues of the last 14months, charities are likely to have increased their use of remote donation mechanisms such as phone paid charity donation services which may also contribute to market growth. We believe that despite this growth in usage, charity donation services remain at very low risk of causing harm to consumers indicating this additional requirement in 3.3.11 may be unnecessary.

This is a critical source of income for many charities, including Cancer Research UK, and whilst we support the overarching aims of the PSA’s proposed Code 15 we look forward to the PSA giving consideration to the information we have provided – and ensure that any changes to regulations do not unduly impact responsible fundraising by charities to support their respective good causes.

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?

We welcome the PSA’s request for stakeholder views on the implementation period for any changes. Obviously this would be dependent on the finalised requirements of Code 15 but our preference would be for 12months to enable us to allocate the necessary resource, spread the costs and make changes to marketing materials in as cost effective way as possible within our standard annual updating process.