

Consultation response form

Consultation on draft Code 15

Please complete this form in full and return by email to consultations@psauthority.org.uk or by post to Barbara Limon, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.

Full name	Chris Newell
Contact phone number	██████████
Representing	Organisation
Organisation name	Donr Ltd
Email address	██████████

If you wish to send your response with your company logo, please paste it here:

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

Personal data, such as your name and contact details, that you give/have given to the PSA is used, stored and otherwise processed, so that the PSA can obtain opinions of members of the public and representatives of organisations or companies about the PSA's subscriptions review and publish the findings.

Further information about the personal data you give to the PSA, including who to complain to, can be found at psauthority.org.uk/privacy-policy.

Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how the PSA handles your personal information and your corresponding rights, please see our [privacy policy](#).

<p>Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?</p>	<p>Delete as appropriate:</p> <p>Nothing</p>
<p>Your response: Please indicate how much of your response you want to keep confidential.</p>	<p>Delete as appropriate:</p> <div></div>
<p>For confidential responses, can the PSA refer to the contents of your response in any statement or other publication? Your identity will remain confidential.</p>	<p>Yes</p>

Your response

About Donr

Donr is a charity donations platform, serving approximately 5,000 UK registered charities. We are directly connected with the UK mobile networks (EE, O2, Three and Vodafone) as an L1 provider. We have operated Premium Rate Services ("PRS") for over 10 years, through ImpulsePay and now Donr, which is our focus during the lifecycle of code 15.

Over the next 5 years, we are aiming to grow the Text Giving market ten-fold. Just 6 TV appeals accounted for nearly 80% of the total raised by Text Giving in 2020. Our goal with Donr is to make this simple yet effective fundraising mechanic a key tool for the other 200,000 UK registered charities.

Supporting Evidence

We have included in our email Annex A & B, which contains the raw data from our consumer survey. We would appreciate it if the data remains confidential, but we are happy for it to be quoted as required.

Please enter your response to each of the consultation questions in the appropriate box below.

Consultation questions	Your response
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.	Confidential? No
<p>Broadly, we agree with the need to move to a Standards-based approach for PRS services. These standards should be clearly defined and realistically attainable, for which we have highlighted our concerns within this response.</p>	
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.	Confidential? No
<p>We have reservations about moving away from 'high-risk' designation of services, if the outcome means lowering standards for bad services and raising standards for good services. The PSA has provided little evidence of harm from charity donations and society lotteries and we feel it would be unacceptable to burden these service types with additional regulation, should harm manifest elsewhere.</p> <p>This scenario happened with recurring charity donations during the subscriptions special condition consultation process, when the cost to the consumer of creating a subscription was doubled through a double opt in process, with no evidence of harm being provided to justify the extra cost to the consumer.</p>	
Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>We understand the intent of guidance but would caution that it appears that previous guidance has been difficult to interpret and/or apply in real-world scenarios*.</p> <p>We would suggest a consultation is held on the scope for compliance support (i.e. the compliance team helpdesk) before reviewing the guidance in Autumn 2021, so as to properly assess the entire chain around guidance.</p> <p>We do not believe the role of the compliance team has been discussed before, but a continuing grievance is advice issued by the PSA compliance team cannot be relied on in the event of an investigation. If the guidance, best practice and advice standards are raised to a level that can bring absolute certainty then it would provide reassurance to new entrants to the market that their service is fully compliant before they go live.</p> <p>A consultation on this will allow ideas to be suggested and processes analysed.</p>	

* An example is 11.1 of the Promoting Premium Rate Services guidance which states

“...the promotion can carry the message that 100% of donations are passed through to the beneficiary.”

This is not behaviour seen in the real world for other forms of donations, e.g. by card or PayPal, so it raises the question about the purpose this serves and if it is omitted, what are the repercussions to a charity? In our view, this is an entirely unnecessary level of detail that can simply be removed.

Q4 Are there any areas where you consider that Guidance would assist with compliance with the standards and requirements?

Confidential? No

Annex 3's range of guidance contains topics that have come from reacting to areas of harm. Whilst best intended, this is not a very proactive approach to helping the industry grow and innovate. It would be good to see more emphasis on enablement of services, for example giving concise regulatory wording for promoting a text giving service or society lottery, which can be followed by a typical charity with little to no familiarity of how PRS should work.

It is also worth noting that some guidance is several years old and out of step with standard practice now.

As an example, 11.1 of the promoting premium rate services guidance references messages around 100% of a donation going to a charity. This causes disagreements with charities about including this message when other donation methods like card payments, PayPal, Apple Pay etc do not need to carry similar messages as per the Fundraising Regulators code.

This clause originated from the early days of Text Giving to help re-enforce MNOs are not profiting from charity donations, but has been overlooked in the following years. A more rigorous review process would better manage guidance falling out of touch with consumer trends.

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

Confidential? No

No. The PSA has the means through the 15th code to allow compliance support to give binding advice, which should be explored through our suggested consultation process. This is the same in our experience as the FCA's approach, whereby a definitive answer can be given for a question before a service is launched.

These answers can be supported by other considerations around launching a compliant service, but any caveats or conditions should not undermine the answer being a definitive and binding answer to a specific question.

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.



Confidential? No

The PSA has been unclear about the distinction between best practice and guidance. Given the additional cost to create **and maintain** a best practice repository of information, we feel it is unwarranted when guidance could be made fit for purpose.

Q7 Are there any areas where you consider that Best Practice information would be helpful?	Confidential? No
<p>Should you disagree with our statement in Q6 then we feel charities would benefit from real-world examples of how PSA Guidance can be followed.</p> <p>The PSA should work closely with leading providers to establish these examples and keep them regularly updated to reflect industry changes, as and when they occur – best practice should be a dynamic suite of documents that can keep pace with innovation, so that the PRS market is not left behind by other payment methods. Examples include Text Giving, society lotteries and regular giving for charities.</p> <p>An example of the tone and content of this type of communication can be found on the Fundraising Regulators website – this is an excellent example of guidance for Charity Bags.</p>	
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.	Confidential? No
<p>We are in support of this. Our preference would be for this new approach to have time to bed in then review after 6-12 months to suggest improvements and changes.</p>	
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.	Confidential? No
<p>We agree with the principle of this concept. We note the PSA has not provided any templates for proposed enquiry or warning letters, so it is not possible to comment on the detail of this.</p>	
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.	Confidential? No
<p>Whilst we agree with this in principle, there is no indication of the process to request bespoke permission or what would be considered a suitable request.</p> <p>At a minimum, the approval process should take no longer than 30 days, be fully published when granted and should be considered easily obtainable i.e. by following a simple application process. This would prevent competitive advantages being gained by service providers through exploiting a convoluted permissions process.</p>	

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?	Confidential? No
<p>We believe that all charities should be exempt from registering with the PSA, and should be granted an exemption under code 15, much like app store developers have an exemption with a particular App Store.</p> <p>As you may be aware, a charity is registered with the Charity Commission and regulated by the Fundraising Regulator. This should provide regulatory comfort they have been sufficiently verified.</p> <p>By removing the extra administrative work of registering with the PSA, we can make premium rate services more attractive to smaller charities and remove excessive paperwork for what is sometimes quite small sums raised (e.g. £50) by a charity.</p>	
Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>Through the use of special conditions, a society lottery has been classed as high risk and therefore requiring launch notification (SOL13). Whilst we're unable to find the proposed list of prior permissions to be retained, we consider this to be a form of prior permission and under scope for this question.</p> <p>Clearly society lotteries do not cause harm and should not be considered high risk. We therefore suggest this should be removed from any notification requirements or prior permission. As you are aware, the Gambling Commission is best placed to regulate such activities and we feel the PSA should not interfere with the processes the Gambling Commission have in place for society lotteries.</p>	
Standards and requirements	
Q13 Do you agree with our proposed Integrity standard and requirements? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>We have concerns that 3.1.1 of Code 15 is an open ended statement, with key phrases undefined. For instance, acting "honestly" can mean a page contained all necessary information is shown but key terms are obscured. Furthermore, "interactions" is undefined and the meaning could be skewed by bad actors.</p>	
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?	Confidential? No
<p>We agree with the PSA's assessment against the general principles and do not have any further information or evidence to add in terms of the Integrity Standard and Requirements.</p>	

Q15 Do you agree with our proposal to introduce a new transparency standard? Please provide an explanation as to why you agree or disagree?	Confidential? No
<p><u>Draft code 15 – Clause 3.2.2</u> In relation to 3.2.2, whilst this makes sense we have concerns around the practical implementation. Currently, if a charity fundraiser wants to advertise a Text Giving code they will promote it with a message like:</p> <p>“Text CHRIS to 70085 to give £5. Messages cost £5 plus a standard network rate message”</p> <p>This has been well established in the eyes of a charity supporter. Changing this model to one that includes a description (3.2.2.a), charges added to a consumers’ phone account (3.2.2.c), contact details (3.2.2.f) and service name (3.2.2.e) adds significantly to the call to action.</p> <p>When this is used by fundraisers to solicit donations for running a marathon, for example, it would be impossible to include this volume of information on a running vest as 10,000s of people do (pre-covid), effectively meaning we are not allowing supporters to raise money by Text Giving for these types of activities. We do not support the effective ending of this type of fundraising.</p> <p>Assuming a charity is happy with meeting the standard of providing clear information, we suggest Text Giving services should continue to use a simplified call to action, as the service is simplistic, and misleading charity fundraising is governed by the Fundraising Regulator’s extensive code of practice.</p> <p><u>Draft code 15 – clause 3.2.16</u> In relation to 3.2.16, we note in the consultation preamble for this point (paragraph 192) it states that exiting a service should be as easy as signing up to a service. This suggests a lack of a detailed understanding of the current requirements, which we would like to clarify.</p> <p>As you are aware, it is a double opt in process to create a recurring donation or join a society lottery. To opt out, it requires a solitary word sent by SMS, meaning it is therefore significantly easier to opt out of a service than to join it, or twice as hard to join as it is to leave.</p> <p>We believe a more accurate understanding of current market conditions by the PSA consumer panel would yield a more informed opinion about the consumer mind set for services not generating consumer harm.</p>	
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?	Confidential? No
<p>For the reasons outlined against 3.2.2, we do not feel this proposal meets the proportionate test. This is because charity donations have shown zero complaints over many years, however we are effectively removing the ability for the general public to use Text Giving for fundraising activities, by adding a requirement(s) which are not practical for charities to monitor, whilst they remain liable for non-compliance.</p>	

<p>Q17 Do you agree with our proposal to introduce a new fairness standard? Please provide an explanation as to why you agree or disagree?</p>	<p>Confidential? No</p> 
<p>We have several issues with this standard, which means we disagree as it currently stands.</p> <p><u>Clause 3.3.8</u></p> <p>This clause refers to “verified email address” which remains undefined in the code. We believe this should state an “email address” as references to mobile phone numbers and names do, or that the expectations of verifying an email address be better defined. Our expectation is that a verified email address is one that has been checked at the point of entry to confirm it contains valid syntax such as an “@” sign, domain and TLD (e.g. .com).</p> <p><u>Skip Command</u></p> <p>We note that this standard has incorporated much of the subscriptions special conditions but appears to drop the SKIP command options for charities. Whilst we are in favour of its removal, we believe this should be explicitly confirmed to manage charity expectations.</p> <p><u>Clause 3.3.11</u></p> <p>We recognise this clause is the most contentious of the proposals of Code 15. We note the PSA consumer panel suggested a six month re-opt window for subscriptions (paragraph 230), which we considered to be the polar opposite of the real-world insight we receive from people making charity donations through our platform.</p> <p>Whilst staggered that such a suggestion could be made and recognising the severity of the PSA getting this wrong, we commissioned a body of market research  This researched asked a panel of 1,000 unbiased consumers about their experiences, with the expectation that this would provide a meaningful insight into the world of users with a passive happiness for the service they receive. In layman’s terms, these are people who donate to a charity happily, or subscribe to Spotify and Netflix without issue.</p> <p><u>Subscriptions have become normalised Annex A, Q1</u></p> <p>We found that subscriptions have become normalised, with 75% of people now subscribed to Netflix. This compares to 15% of people subscribed to a magazine and 10% of people for a newspaper. Even Spotify in the complex world of music subscriptions garnered a 33% subscription rate whilst competing with the likes of Apple Music, YouTube, Tidal, Amazon, Deezer etc.</p> <p>This suggests subscriptions have become normalised and people consider it a fact of life now. This is an interesting point of note, as the PSA attempt to combine all forms of subscriptions into a single entity of regulation, rather than view it as the multifaceted mechanic it is.</p> <p>By way of example, a one-off payment has many different regulatory stances, such as voice short-code dialling, 0900 number charges, competition entries, TV voting, charity donations, parking payments, ticket purchases etc, whilst all forms of subscriptions are shoehorned into a single regulatory box.</p>	

Subscriptions are long-term Annex A, Q2

Our next insight is that subscriptions are viewed as long term. 70% of respondents have subscribed to Netflix for greater than 12 months, 52% for Spotify and a staggering 75% for charity donations.

This suggests the PSA should qualify its thinking around subscriptions as a multi-year product and regulate it as such. Obvious examples include issues around monthly spend reminders (covered later) or retention of consent to charge records only lasting 2-3 years. Whilst we acknowledge that some consumers may choose to end a subscription after a relatively short period of time, we believe the PSA should consider multi-year (5+ years) subscriptions as the normal expectation of consumers.

People are **not** subscribed to services they do not want Annex A, Q3

When considering the premise to this clause in code 15, we considered the notation that a large number of people may be subscribed to a service or charity donation which they no longer want. Reasons for not cancelling could include subscription inertia (e.g. not getting around to it yet) or not being sure how to do so.

Our survey found only 1.5% of people are subscribed to a service they do not want. This clearly renders the arguments around subscription inertia irrelevant and would actually suggest the PSA have done a great job in recent times to ensure consumers no longer engage with services they do not want.

Furthermore, should an issue arise then data from Q19 of our consultation response shows consumers clearly understand a call to their MNO can clarify any concerns.

We understand the PSA has voiced concerns around a particular issue affecting subscriptions created prior to the introduction of the special conditions, which we will address later.

People are **not** misled into subscribing to a service Annex A, Q4

We also considered the notion that people could be confused into signing up for a charity donation or Netflix subscription. This would naturally lead to people unsubscribing from a service once it became clear what they had signed up for.

We found that just 7% of people did not consider the subscription authorisation process to be clear and transparent. This again points to the PSA achieving the right balance with the special conditions subscriptions, although we do have concerns around the increased cost for consumers donating to charity through the MFA process.

Move to Fixed term subscriptions is unpopular Annex A, Q5

Recognising the PSA is taking into account the [cross market principles of good business practice](#) we considered the underlying intent of switching from a continuous payment authority to a fixed-term subscription model.

In layman's terms, a fixed-term subscription is one that automatically cancels after a fixed period of time (the PSA has suggested 12 months in code 15). At this point, the consumer will lose all built up entitlements unless they renew on generally worse terms. We recognise these types of marketing practices are highly attractive to services like insurance companies, mortgages and broadband providers, however we are not aware of these characteristics applying to services using PRS, such as to charity donations.

In our research, we found just 22% of people supported fixed-term subscriptions. This raises the question that if the evidence has shown the PSA has now got subscription services under control, why move to a new model with arguably more deceptive practices that few consumers actually support.

Who should cancel a subscription Annex A, Q6

We explored the idea of a third party automatically cancelling a subscription on behalf of a consumer. Whilst this in theory sounds like good regulation, in practice for services with passive happiness, we wanted to understand the dynamics of ending a charity donation on behalf of a supporter or Spotify ceasing to work due to non-payment.

A resounding 90% of people felt that ending a subscription should be their decision. When asked if it is good practice for the subscription provider to automatically cancel a subscription after 12 months, 74% felt it was not, or that it only applied to some scenarios.

This clearly shows that regulation should guide consumer behaviour, but not impose it on them. As subscription acceptance becomes further normalised, we consider this to be an important balance for the PSA to get right.

When should reminders be sent? Annex A, Q7

Building on the theme of guiding consumer behaviour to make an informed choice, we considered the role of receipts and reminder messages. Historically, these messages (referred to now as "reminders") have needed to contain words such as "FreeMSG" which consumers are told to ignore. Reminders can be sent weekly, monthly or after £20 is spent, depending on the subscription configuration.

When asked, only 14% of consumers wanted to get monthly reminders, with 57% wanting to be told at some stage between quarterly and annually.

When asked about the default position of Code 15 for a charity donation, i.e. a monthly reminder followed by an annual re-opt in, only 3.7% of people agreed with automatically cancelling the donation after 12 months.

What is clear from the survey is just how complex a simple subscription service will become. When making a monthly donation to a charity, a supporter is effectively being trained to ignore a monthly reminder message due to the frequency of messages being sent and the messages being informational only, then being required to take action every 12 message otherwise their long-term donation plans will be stopped by a third party.

This stance is already difficult to explain to a charity, and we would imagine it would be many significantly harder to explain to a charity supporter, a Spotify subscriber or Netflix user who often become very irate when a payment does not go through.

Annual service reminder - Annex A, Q8

Continuing the theme of an informed choice, we asked about the impact of an annual message about a subscription. This would be akin to an annual summary of the service and could be sent on the 12-month anniversary of creating a charity donation or subscribing to a service like Spotify.

44% of consumers felt this was a good idea, with another 38% considering it a good prompt to consider their on-going subscription with an overall 97% considering it beneficial in some way.

Alternative proposal

Recognising the ability for consumers to be trained to ignore reminder messages, we suggest the frequency of reminders are lowered and the importance is increased.

For a monthly service like a charity donation or Spotify subscription, we would suggest a reminder message is sent each month for the first 3 months (quarter), then once a quarter after that with an annual service summary message sent every 12 months.

These messages should be sufficiently worded to relay their importance, whilst sent at a lesser frequency to ensure they are not ignored.

Legacy services

We note from the PSA forums and webinars that the PSA has considered there is a problem with subscriptions that originated before the subscriptions special conditions came into force. We would suggest this needs to be considered separately to the fairness standard as they may not meet the MFA standards now in place.

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?

Confidential? No

Due to the risk of training users to ignore subscription reminder messages, we do not consider the proposal for clause 3.3.11 to be effective. Furthermore, we do not believe the proposal to automatically opt people out of a service to be balanced due to the very low levels of support in the survey.

Because of these points, we also cannot support the view it is proportionate as an overwhelming majority of consumers enjoying passive happiness with a service will be affected by the actions of a few bad actors. As it stands, these consumers will need to take additional action and incur real costs and spend time to maintain a service they are happy with. We believe that the PSA should be able to prevent bad actors creating unwarranted subscriptions through the use of their supervisory powers, rather than penalising all subscription participants.

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?	Confidential? No
<p><u>Clause 3.4.1 of Code 15</u> Whilst supportive of this standard, clause 3.4.1 of Code 15 states enquires and complaints are responded to at no cost to the consumer, whilst Code 14 states “free or low-cost”. At face value, this would appear to suggest all helplines are moved to an entirely free to call number, rather than a number range that comes out of any inclusive minutes.</p> <p>In the guidance, the PSA should make clear the intended helpline number ranges that can be used. Looking at the latest government guidance (https://www.gov.uk/call-charges), to meet the literal meaning of this clause charities would need to solely use 0800/0808 numbers rather than the 01/02/03 number ranges currently in operation. This extra cost to charities should be justified, given the negligible level of calls received but extra costs involved.</p> <p><u>Our research – Annex B</u> In our research to 1,000 consumers we asked a series of questions around customer care. Of the people who reported disputing a charge on their phone bill, 68% of respondents contacted their MNO as this is the company they are familiar with (44%) or hold responsible (49%). This would indicate that after many years of effort by the MNOs and the PSA to educate consumers, only 7% of people with a dispute would not consider calling their MNO provider in the first instance.</p> <p>The prevailing sentiment of the customer care standard is to place the intermediary and merchant at the heart of the customer care process, which clearly goes against the expectations of consumers. We would query this logic and suggest more support is needed to change the consumer mind-set. We also note that consumers in the panel had a high-level awareness of the PSA – 15% - which we felt fairly reflected the general public awareness expectations of a regulator of a niche area.</p> <p><u>Refunds</u> We have no views on refunds as this is a non-issue for charity donations.</p>	
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	Confidential? No
<p>We do not believe that clause 3.4.1 as currently stands meets the balanced view. If the clause was to include low-cost then we believe it would be adequate.</p>	

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?	Confidential? No
<p>We are supportive of this requirement.</p> <p>On a point of detail, for charity donations and lotteries, the mobile networks are best placed to provide a universal approach to vulnerable people by placing a bar on their phone account, especially if the data from Q19 would suggest that 93% of consumer would hold their MNO to account if this was not the case. The PSA should consider if it is effective to direct this standard to intermediary and merchant providers or contain it to the mobile network operators, who we feel are able to provide a consistent experience across all charities by placing a bar at the phone-account level.</p> <p>With regards to clause 3.5.8 of code 15, society lotteries and raffles can be used by people above 16 whilst still covered by the Gambling Act 2005. Code 15, clause 3.5.9(a) references 18+, which should be amended to reflect the Gambling Acts requirements (16+).</p> <p>For the avoidance of doubt, we consider 3.5.11 to meet the requirements to self-verify and refund in the event of non-compliance under the Gambling Act and Licence Conditions and Codes of Practice (LCCP).</p>	
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?	Confidential? No
<p>We agree that the Vulnerable Consumers Standard has been correctly assessed against the general principles.</p>	
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?	Confidential? No
<p>At face value, Code 15 clause 3.6.2 appears to overlap with the ICO remit and would be difficult to take through a tribunal process if the ICO (or similar) has not proved a service broke the law first. If this had been proven, then separate PSA sanctions seems highly improbable.</p> <p>Recognising the PSA is unlikely to drop this standard, we would suggest guidance is used to clearly state what is considered in scope. For example, it should not be expected that withdrawing communication consent would mean subscription reminders can't be sent; or one-off messages like pin codes and donation receipts would need to include a mechanism to withdraw consent.</p>	
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?	Confidential? No
<p>Given the ICO are better equipped to govern data protection laws, we suggest this clause fails the effective, balanced and proportionate assessments, as the PSA does not have an appropriate legal remit to adjudicate on data protection issues under the Communications Act 2003.</p>	

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?	Confidential? No
<p>Whilst supportive of this standard, we would like to highlight an unintended consequence of pressure groups targeting compliance services.</p> <p>A UK registered charity, Interpal (https://en.wikipedia.org/wiki/Interpal) supports the people of Palestine and has done so for many years. In 2003, the US designated them as a terrorist organisation (during the war on terror), but several investigation by the UK Charity Commission has not flagged any concerns around their current activities (to the point of the Daily Mail paying damages for false reporting).</p> <p>A separate UK charity, UK Lawyers for Israel (https://www.uklfi.com/) has made a point of targeting companies with US links to Interpal to shut down any services that are legitimately provided under UK law. In this case, it was targeting the Mobile networks (Three, EE & Vodafone) with threats about their US subsidiaries to game the system and close the service.</p> <p>In this example, are the legitimate UK supporters of a compliant UK service fundraising for Interpal likely to feel aggrieved by the actions of UK Lawyers for Israel, which is based on actions against a group of identifiable people?</p> <p>In our view, guidance could make clear that pressure tactics and the systematic targeting of groups to remove service accessibility is unacceptable, if the group meets the requirements of UK law.</p>	
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?	Confidential? No
<p>We agree that the Prevention of harm and offence Standard has been correctly assessed against the general principles. We do not have anything further to add, at this time.</p>	
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?	Confidential? No
<p>As an intermediary, we are happy with the proposals around this. However, for charities we feel registration is an unnecessary step for them to take.</p> <p>Charities are regulated by the Charities Commission(s), the Fundraising Regulator, HMRC for GiftAid claims and in the case of a lottery, the Gambling Commission. A regular service like Spotify is not subject to the same levels of oversight and we agree, would require registration. Whilst we accept that registration with the PSA is free for a charity, we feel the process of registering is unnecessary and provides little additional benefit to the value chain.</p> <p>We would suggest that a registered charity number is sufficient identification with the PSA, with the L1/ intermediary providing core service details like escalation points and service details. By removing this extra step for charities, we can streamline the adoption of PRS based charity donations for the UKs 200k+ registered charities and bring this into line with how card payments operate for a charity.</p>	

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?	Confidential? No
<p>We do not feel this is proportionate for charities, as there is an extra burden on them to register and renew annually, which is in addition to Charity Commission filings. For the sake of clarity, an annual return to the Charity Commission is a significant undertaking and is not comparable to an annual return to Companies House, which a regular service like Spotify undertakes.</p> <p>A proportionate burden would be to forgo a detailed registration and simply have either the charity or more practically, the intermediary enter the charity number into the PSA's registration scheme, given they are completing more detailed filings with their relevant Charity Commission.</p>	
Q29 Do you agree with our proposal to introduce a new DDRAC standard? Please provide an explanation as to why you agree or disagree?	Confidential? No
<p>Clearly extensive guidance needs to be given in this area, especially due to how little consideration has been given to registered charities in Annex 2 of Code 15. Many of the points requested (e.g. G – I) are already required by the Charity Commission or overlaps this, so creating an unnecessary duplication of effort for charities.</p> <p>Whilst we recognise the DDRAC could have been a contributory factor in preventing Veoo type issues, we don't feel charities should face additional burdens without actual evidence of harm being provided by the PSA.</p>	
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?	Confidential? No
<p>We do not feel this is a proportionate response for charities as they do not face many of the issues being raised. Whilst other users of PRS would benefit from this approach, given the multiple regulators overseeing registered charities we would suggest a light touch approach for charities to reduce the administrative costs and time on the sector, to allow donations to be spent on a charity's primary aims and goals.</p>	
Q31 Do you agree with our proposal to introduce a new systems standard? Please provide an explanation as to why you agree or disagree?	Confidential? No
<p>We are satisfied with the intentions of this clause. We would suggest that as written, there is a lot of emphasis on the intermediary and lack of a full 360-degree approach to security.</p> <p>In our view, MMO systems are generally below expectations and would benefit from a far more rigorous process of review and improvement.</p> <p>We also note the PSA systems are open for abuse with a lack of secure transfer protocols for protected and personal data (we do not consider email attachments to be secure).</p> <p>This also needs to be considered further down the value chain, with a suitable balance between access to data and securing this data through a process of risk assessments.</p>	

Over the lifespan of Code 15, we would question if this isolated view of the intermediary platform is correct. We believe the PSA should look to improve security across the whole ecosystem (including itself) and work towards that goal.	
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?	Confidential? No
Donr agrees that the Systems Standard has been correctly assessed against the general principles. We do not have anything further to add, at this time.	
Supervision	
Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>We agree with the need to supervise PRS providers to ensure they are acting with integrity and not causing consumer harm and, by extension, damage to the industry's reputation.</p> <p>However, a clear distinction must be drawn between 'supervision' and 'investigation' – Supervision should be cooperative between the PSA and each individual provider, with agreed achievable timescales for providing information, agreeing to site visits etc.</p> <p>Certain times of the year are busier than others, certainly within the charity sector, and so an out-of-the-blue request for information whilst dealing with a pre-Christmas donation rush would potentially be unmanageable – this inability to comply straight away with a request should not be seen as a breach of the Code, if the request is simply made as part of routine supervisory checks and effectively co-ordinated.</p> <p>As long as requests are reasonable, however, we support the PSA in supervising PRS providers so that bad actors can be identified and prevented from causing consumer harm.</p>	
Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>These monitoring activities would appear to be adequate. We would also suggest long term relationships with a single point of contact would be beneficial, to give a clear picture of how the business is being operated and identify any changes.</p> <p>As an example, banks use relationship managers to build up a picture of accounts over many years. This is then helpful to pick up on changes to a business quickly (e.g. thinking of selling, or employee turnover) which then allows them to review their exposure to any business changes in a timely manner. This would also be similar to the Gambling Commission, who appoint an account manager for a regulated party who stays with them over a long period of time.</p>	

Q35 Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>We are happy with the reporting requirements for intermediaries. We would suggest this is reported quarterly rather than monthly and note that other regulators (FCA, Gambling Commission and the Charity Commission) require annual reports. Four quarterly reports a year is a significant improvement on current reporting threshold and would not be considered to be a burden.</p>	
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?	Confidential? No
<p>We are satisfied this meets the required criteria.</p>	
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.	Confidential? No
<p>The key with this is for cases and actions to be brought quickly and in a cost-effective manner. The PSA should leave the days of large, £250k fines behind in Code 14 and move to more effective deterrents like prevention of harm through active relationships. It is clearly much more amiable to a charity to know what they have done wrong, review and correct, than to operate in good faith and receive a £250k fine for non-compliance, especially when this comes from supporters' donations.</p> <p>Whilst figure 1 (Engagement and Enforcement – flow diagram) looks adequate, we note there are no timescales attached, which should be published. We also note there are no risk reviews, e.g. if enforcement is understaffed, could a backlog build, causing harm to the industry reputation? This is a recurring theme from Code 14, with investigations taking many years to complete due to chronic underfunding.</p>	
Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.	Confidential? No
<p>We're in agreement with this proposal, although we remain unsure how it will work for charities.</p> <p>As you are aware, the Fundraising Regulator has broader oversight of charity fundraising, so it is unclear if a PSA investigation would take priority over actions from the Fundraising Regulator.</p> <p>Additionally, as charities are funded predominantly through donations, it is unclear how the PSA would sanction a charity. Clearly the negative views of a financial penalty for breaches such as those described in Q15 around clause 3.2.2 would not be in the wider interests of the PRS industry, yet would appear to be the only recourse available to the PSA.</p> <p>For context, the Fundraising Regulator is able to request the Charity Commission to de-register a charity, which prevents harmful activities whilst not impeding legitimate charity donations.</p>	

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.	Confidential? No
<p>Whilst this makes sense and is unlikely to be a concern for charities, we do suggest the PSA also review the approach of safeguarding funds as per the FCA requirements around e-money services.</p> <p>Under an e-money registration with the FCA, funds need to be held separate to any operational expenditure in a ring-fenced account with rights to that account relinquished by the banks. This is very similar to a client funds account, used by solicitors etc. As we understand it, this would then prevent insolvency affecting funds as operational money and client funds are separated.</p> <p>Whilst this may not be practical at the L2 level, we believe MNOs and L1s should be subjected to this requirement and feel that the PSA is currently out of step with other regulators in this area.</p>	
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.	Confidential? No
<p>We are supportive of this proposal.</p> <p>We would welcome the CAP having more experience of using PRS services, especially in the charity sector where there is a wealth of fundraising knowledge that can be tapped into. This, we feel, would allow a more informed single decision maker to take a look at the realistic issues surrounding a case, rather than focusing solely on the technical merits of a case against the Code.</p>	
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.	Confidential? No
<p>Whilst supportive of this, the cases we are aware of that abused the oral hearing process were serious and complex. We would suggest a more specific threshold definition is needed, as this proposal would only seem to prevent legitimate requests to the oral hearing process but retains access for people looking to abuse the process.</p>	
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	Confidential? No
<p>We disagree with this point, as it appears to be based solely on the case of Veoo Ltd DDRAC case. We would challenge the notion that the case demonstrated “a worrying general lack of emphasis within the industry on management accountability, internal governance and oversight”. The PSA was fully aware of the activities of Veoo for a number of years but chose to prioritise resources elsewhere instead of investigating the service in a timely manner.</p> <p>Putting aside the Veoo case, this raises the question that if the PSA was found to have barred an individual from the industry wrongly, there is likely to be significant resource spent defending such a decision (for example, the judicial review against the PSA in 2014).</p> <p>We would be supportive of this measure if it was better qualified as a tool of last resort, with an appropriate appeal process.</p>	

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.	Confidential? No
<p>Whilst this is a necessary requirement, we would like to raise conflicting requirements with charities that use Text Giving for telephone based recurring donation fundraising.</p> <p>In this scenario, a charity or their contracted call centre will call a supporter about making a regular donation to the charity. On the call (assuming the supporter agrees), they will take a first opt in verbally, over a recorded call. The second opt in by text is then made, after which a recurring donation is set up successfully.</p> <p>Charities have assessed these call recordings under their data protection requirements and would generally keep them for a period of 3 months, which is sufficient for card or direct debit based regular donations. If the supporter elects to donate by mobile, guidance and in turn Code 15, requires this call to be retained for 2 years. This creates an unnecessary burden on a charity to store this data long term.</p> <p>In our view, if a 3-month call retention period is good enough for card and direct debit donations, then this should be sufficient for mobile donations.</p>	
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?	Confidential? No
<p>Aside from the points raised in Q41/42/43, we are broadly supportive of this. We note in general feedback that the PSA has battle tested this approach and feel it is sufficient to resolve cases within a quick timescale.</p> <p>We also note the PSA has not published case resolution KPIs or data around backlogs previously. If these were to be published, then we would have better evidence to feedback support of proposed budget increases to reduce case backlogs.</p>	
Other general Code considerations	
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?	Confidential? No
<p>We are satisfied with the current approach to funding the PSA and the levy. We believe that at present charity donations are exempt from the levy. We would like to see this fully documented in the code to avoid future management teams inside the PSA moving to include charity donations in the levy calculations.</p> <p>Additionally, we suggest society lotteries should also be exempt as the end benefactor is also a charity. This would keep all charitable services exempt from the levy and ensure fair treatment for charities.</p>	

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?	Confidential? No
<p>We have reservations about this.</p> <p>We are happy for a level 1 provider to become an intermediary, but there appears to be a lowering of requirements to become an intermediary. To become a true L1 (and not a sub-L1) requires significant investment and operational knowledge. By weakening the position of an intermediary, we create a risk of allowing other parties to become de-facto L1s and undermine the work done in recent years to strengthen the L1 role in the value chain. Our view is that an Intermediary role should have a qualifying threshold, at least to the standard of current L1s such as ourselves, Fonix, Boku, DMB and Openmarket.</p> <p>We also note in the Code 15 definitions, D.1.7 that an entity that is not a network operator can be both an intermediary <i>and</i> merchant provider. We strongly support this remaining the case, as it significantly simplifies the regulatory process for charities.</p>	
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.	Confidential? No
<p>We have no comment on this question.</p>	
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.	Confidential? No
<p>Whilst we see merit in this proposal, we have repeatedly called for a review point in the consultation process. Currently, when a change is proposed, the PSA will consult, obtain significant and varying feedback then publish the results for implementation.</p> <p>This creates a challenge when the feedback changes the scope of the consultation or brings in unintended consequences. We would like to see a review step included after the consultation closes and ahead of the final publication that gives parties the opportunity to highlight unintended consequences for resolution, ahead of final publication.</p> <p>This would also avoid issues such as those highlighted during the recurring donations consultation where the proposed final document missed key points and due to an oversight around how charities create marketing collateral, needed an extended implementation period.</p> <p>With respect to the powers suggested to amend the code, if a review point was included in this process then we believe a more robust process would be created.</p>	

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.	Confidential? No
<p>Whilst happy with the move to a Standards-based code and recognising that charity donations and lotteries are of a high standard and not an area for concern, we feel clause 6.2.7 of code 15 is unfair for charities.</p> <p>Clause 6.2.7 requires a network operator to withhold charity donations for 30 days, before payment can be made to an intermediary and in turn the charity. Given charities can be fundraising for time-sensitive appeals and to bring PRS payments in line with other mechanics such as card payments or direct debit, we would like charity donations and society lotteries to be exempt from this requirement.</p> <p>Through the extensive forms of monitoring that will go into place, we do not feel this is an area of concern. Additionally, it remains unclear if the PSA would actually financially penalise a charity through withholding of donations, so a 30-day revenue withhold period serves no purpose.</p> <p>By relinquishing the 30-day rule for charities, a charity would then be able to submit a GiftAid claim quicker. As you may know, a GiftAid claim to HMRC can only be made when the charity receives cleared funds for the donation. By removing this requirement, a charity can then be paid quicker and go on to receive the money from a GiftAid declaration substantially quicker than they currently do.</p>	
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.	Confidential? No
<p>As previously suggested, we strongly suggest the PSA review the flow of funds to ensure all parties of the value chain keep funds ring fenced from operational expenditure. In the case of a charity, this would prevent charity donations being lost in the event of an MNO or intermediary insolvency. We accept that such an issue is rare, but there have been scenarios such as this during the lifecycle of Code 14.</p>	
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.	Confidential? No
<p>On a technical point, the definition for a charity is incorrect in D.2.58 (and elsewhere that makes the same references). This references charities as being organisations registered with the Charities Commission in England and Wales, Northern Ireland and Scotland (OSCR). Whilst correct, a charity can also be formed by an Act of Parliament or is an Excepted Charity or Exempted Charity under the legislation that creates a charitable organisation.</p> <p>By defining this correctly in Code 15, we can bring certainty to organisations such as National Gallery, Church of England and the various Scouts and Guides groups across the country who all sit within the full definition of a charity.</p>	

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.	Confidential? No
We have no further comment on this point.	
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?	Confidential? No
We have no further comment on this point.	
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?	Confidential? No
<p>In terms of timescales, the PSA should recognise there are three levels to the value chain in Code 15, the network operators, the intermediaries and the merchant. A transition period of 3-6 months may appear adequate, however in practice each part of the value chain needs to be operational before the next, so the timings appear challenging.</p> <p>We would suggest a top-down approach to code 15 transition. In this scenario, each stage would be 3 months with the network operators going first, then the intermediaries, then the merchants (charities). This would ensure internal processes are in place before moving down the value chain allowing, for example, a network operator to get its new processes devised and operational, then scaling to include the appropriate steps for intermediaries once its house is in order. This is then repeated once the intermediaries are up and running.</p> <p>We appreciate this will take marginally longer, but believe it would bring about a much more streamlined and robust approach to the start of Code 15.</p>	

Submit your response

To send your responses to the PSA please email this completed form to consultations@psauthority.org.uk or by post to Barbara Limon, Phone-paid Services Authority, 40 Bank Street, London, E14 5NR.