

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	Louisa Harris
Contact phone number	██████████
Representing	Organisation
Organisation name	Fonix Mobile plc
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](#).

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?	Nothing
Your response: Please indicate how much of your response you want to keep confidential.	None
For confidential responses, can the PSA refer to the contents of your response in any statement or other publication? Your identity will remain confidential.	Yes

Your response

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 Yes. No additional comments
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 Yes. No additional comments
Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an	Confidential? No Yes. We would need to see the proposed Guidance documentation and would request the opportunity to input into any discussions around the practical implementation of such guidance.

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?	Confidential? No DDRAC should have minimum standards and requirements to remove any ambiguity around what is considered sufficient DDRAC and have a clear structure for everyone in the value chain.
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 Yes. Compliance support is important to new entrants into the market, however, timescales for responses at present are quite slow which impacts merchants in terms of provisioning and promoting services in a timely fashion.
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 Yes. We would need to see the proposed Best Practice documentation and would request the opportunity to input into any discussions around the practical implementation. It is also worth addressing there are already individual MNO codes of practice which at times are contradictory to each other, any best practice guidelines should be reviewed and agreed with the MNOs to ensure a consistent approach.
Q7 Are there any areas where you consider that Best Practice information would be helpful?	Confidential? No Yes as above.
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 Yes. No further comment
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 Yes. No further comment
Q10 Do you agree with our proposal to tailor our approach to regulation, including introducing Bespoke and	Confidential? No No additional comments

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?	Confidential? No No additional comments
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 Yes. No additional comments
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 Yes. No additional comments
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 Yes. No additional comments
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 No additional comments
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 Yes. Further clarification is required on the receipting for Premium SMS, MO initiated transactions. The PSA has confirmed to Fonix that the existing MT response including all the required information is still considered acceptable, however, this is not made clear in the code of practice and needs to be clarified for any avoidance of doubt.

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

Confidential? No

No.

The implementation of a re-opt in every 12 months for subscription services would be extremely detrimental to the market for existing services and for future growth and is not required.

All subscription services are currently operated behind a 2 factor authentication, with the majority being account based and behind username and password.

If a user is required to register an account with their name, email address, phone number (sometimes with more information such as address) plus authenticate a subscription with a pin verification, this is already a robust consent to charge.

Furthermore, due to the current billing requirements of phone-paid subscriptions services each billing period (usually weekly or monthly) accompanied with a receipt message where users are informed how to opt out with a very simply 'STOP' SMS request. Unlike many other contracted subscriptions or auto-renewal products, phone-paid services have fixed pricing and can be stopped at any time by the user. Providing a key differentiation and choice to the consumer as a payment mechanic.

It's also worth noting that whilst a consumer is opted in to a particular merchant's subscription service it's important to consider that the consumer also has a direct contractual relationship with the mobile operator, who they can contact to unsubscribe independently of contacting the merchant.

Asking consumers to positively opt back into a service rather than opt out is confusing to the consumer. With the concept of a consumer marketing requests to ask users to opt in for payment by merchants very much being considered as something merchants would not want to do as consumers are widely told that these sorts of requests maybe 'scams' and therefore should be ignored.

Fonix believes the mechanic should remain as an opt out, users receive weekly / monthly reminders. We believe an SMS / Email to advise people that

	<p>they are subscribed, and no further action is required unless they want to opt out is the correct course of action.</p> <p>No other payment mechanic is required to send receipts for each billing charge, as well as the subsequent opt out messaging on such a regular basis. Merchants utilising mobile payments are already required to adhere to regulatory constraints which are not required for other payment mechanics. Further regulation around these services will simply result in merchants removing mobile payments as an option.</p> <p>With regards to charity regular giving, supporters receive an SMS the day before their donation is due giving them the option to SKIP their donation or get in touch to stop it. We know that they read this message, since around 1-2% of supporters choose to skip their donation.</p> <p>If the bulk SMS is not successfully delivered to the handset, such that supporters have not been given the option to SKIP, then no donation is taken the following day.</p> <p>The following day the supporter then receives an additional receipt confirming their donation. We see approximately the same number of STOPS as SKIPS each month, so the existing messaging is effective, supporters are aware that they are making a regular donation and are able to manage their donation (which was the point of introducing the SKIP control initially).</p> <p>Supporters are used to taking action only to skip or stop a donation, so asking them to re opt-in would introduce the opposite behaviour to continue their donation.</p> <p>Supporters expect to give a charitable donation on an ongoing basis, rather than just for a 12 month period. There is no loyalty trap since the amount of their donation is fixed and never increases without their consent.</p> <p>There is no consumer harm being caused by regular charity donations, so there is no problem which needs to be fixed. The PSMS mechanic would no longer work for charities if a yearly re opt-in were introduced and a successful and popular part of the</p>
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	<p>PSMS industry would be severely adversely affected.</p> <p>Fonix have recorded no consumer complaints on regular giving donation services in the last 6 months.</p> <p>Fonix believes the inclusion of this rule within Code 15 will deter new entrants to the market and significantly impact buoyant sectors such as charity and streaming services.</p> <p>Confidential evidence has been submitted to the PSA directly, demonstrating the detrimental effect a re-opt in strategy has had on services with no consumer harm.</p>
<p>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?</p>	<p>Confidential? No</p> <p>No</p> <p>As per the above the proposed re-authentication of subscriptions every 12 months is not required.</p> <p>There have been fundamental changes to how subscription services operate, including pin verification, receipt messages after every charge, reminder messages and robust consent to charge via L1 hosted screens.</p> <p>There has been a significant decline in “rogue” subscription services being allowed within the market. Complaints are almost non-existent with the PSA confirming that complaints are at an all time low. There is a concern that the PSA is trying to regulate an issue that has already been mitigated by the above standards.</p> <p>There needs to be a clear distinction between renewal products and subscription services, whereby a user can opt out at any time and is given an opportunity to do so within every billing period.</p> <p>Mobile payments are already heavily disadvantaged in comparison to other payment mechanics in terms of providing opt out information at every transaction as well as reminder messages and no minimum terms - to implement a re-opt in every 12 months would mean a number of the high value branded digital subscription services would remove</p>

	phone paid services and ensure new entrants to the market will not offer mobile payments as an option.
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 No additional comments
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 No additional comments
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 Yes. It is important to note that the identification of vulnerable consumers is usually only possible after the point of interaction with a service. Any standards should include guidance on settling disputes with users identified as vulnerable.
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 Yes. No additional comments
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 No. Privacy standards are already covered extensively under GDPR requirements. There seems no reasonable need for this to also be included within the PSA code.
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	Confidential? No No additional comments

evidence which would inform our view?	
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 Yes. No additional comments
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 Yes. No additional comments
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 Yes. No additional comments
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 Yes. No additional comments
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 Yes. DDRAC should have minimum standards and requirements to remove any ambiguity around what is considered sufficient DDRAC and have a clear structure for everyone in the value chain.
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 Yes. No additional comments

<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?</p>	<p>Confidential? No</p> <p>Yes. There is already a requirement for Fonix to be security tested by an independent auditor and to submit a declaration to the MNOs based on our technical infrastructure and security. We would not expect to have to do a subsequent audit with another independent supplier.</p>
<p>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?</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>
<p>Supervision</p>	
<p>Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>
<p>Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>
<p>Q35 Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>
<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?</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>
<p>Engagement and enforcement</p>	
<p>Q37 Do you agree with our proposed approach on engagement and enforcement? Please provide an</p>	<p>Confidential? No</p> <p>Yes. No additional comments</p>

explanation as to why you agree or disagree.	
Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.	Confidential? No Yes. No additional comments
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 Yes. No additional comments.
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 Yes. Fonix agree in principle, however, it is important that the “single decision maker” has relevant experience of the phone paid services market and understands the different models in place across all billing mechanics to ensure a fair and unbiased review of services.
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 No additional comments.
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 Yes. In principle Fonix agree but would need to see the detailed criteria within the PSA published procedures in order to pass full comment.
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 Clause 501: This needs further clarification in terms of the data required. Providers have varied data retention policy in respect of GDPR and what is considered a reasonable period of time. Any requirement within code to hold all data for longer than this period will need to be clearly defined and acknowledgement that past data may not be available when Code 15 comes into affect. The PSA need to be explicit in terms of what time frame they require data retention.
Q44 Do you agree with our provisional assessment of our	Confidential? No

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?	Yes. No additional comments
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 Yes. Fonix is in agreement that the Levy model is a recognised method of funding regulation. However, we do not believe enough has been done to review PSA budgets in light of complaints declining and would support the PSA reviewing their associated costs.
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 Yes. No additional comments
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 Yes. No additional comments
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 Yes. No additional comments
Impact assessment	
Q49 Are there other impacts which we have not considered in relation to our proposal to move from a	Confidential? No No additional comments

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.	Confidential? No No additional comments
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 No additional comments
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 No additional comments
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 No additional comments
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 No additional comments

Submit your response

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