

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	Iain Lill
Contact phone number	██████████
Representing	Organisation (delete as appropriate)
Organisation name	Infomedia
Email address	██████████

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



Infomedia

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: Nothing</p>
<p>Your response: Please indicate how much of your response you want to keep confidential.</p>	<p>Delete as appropriate: None</p>
<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

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

Consultation questions	Your response
Proposed regulatory approach	
<p>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.</p>	<p>Confidential? No</p> <p>We broadly agree with the approach bringing more certainty back into the regulatory systems with a particular focus on prevention. This is in alignment with financial regulatory approaches for other payment instruments and should enable swifter corrective action to be taken in the event standards are at risk of not being met. In principle it brings clarity to the expectations of the marketplace but will need to be backed with robust administrative processes to enable change to be made quickly and effectively to ensure that the detail of the standards can react to both positive and negative changes in</p>

	the marketplace, be that technology or sources of risk.
<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.</p>	<p>Confidential? No</p> <p>Whilst we have no specific experience with the services listed in this section, we welcome the change of language used to no longer describe these types of services as 'high-risk'. We also welcome to bringing of service requirements into the main body of the Code which makes it more straightforward to find and understand the regulatory regime for these.</p>
<p>Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No (delete as appropriate)</p> <p>We believe that it is proper that the PSA issue guidance on the basis that compliance with guidance provides a defence in the event of allegations of Code non-compliance.</p> <p><i>We are however concerned by the line 'We will also take into account... the extent to which providers have engaged with us as part of developing any such alternative methods.'</i></p> <p>This strongly implies that should a provider comply with the code in a manner not set out in the guidance it will be expected to seek prior consent or be subject to a requirement to inform.</p> <p>We note that this expectation is perceived not explicit, however by its inclusion the risk of not doing so becomes too great in most cases and is rendered by any reasonable company's risk assessment process a de facto requirement.</p> <p>This therefore subverts the principle of guidance being non-binding and blur the lines between this and the more formal process for seeking bespoke permissions (paragraph 154), as well as failing to resolve the existing uncertainty surrounding the distinction between the Code and guidance notes.</p>
<p>Q4 Are there any areas where you consider that Guidance would assist with compliance with the standards and requirements?</p>	<p>Confidential? No (delete as appropriate)</p> <p>No comment</p>

<p>Q5 Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No (delete as appropriate)</p> <p>In a similar vein to Q3 above, we feel that there is a risk with the wording of this statement that the PSA is both subverting the guidance purpose and potentially making a rod for its own back. If there is a risk of severe repercussions for not seeking advice for any deviation from guidance (as is strongly suggested in the statement at 138) a reasonable business will always seek such advice, increasing the PSA workload leading to delay and resource stretch.</p> <p>The impression is that this section is more ‘stick’ than ‘carrot’ and will lead to a confrontational rather than collaborative approach to the interpretation of guidance. What we would welcome, and we believe would be more effective in increasing proportionate and effective use of the compliance advice service, is to provide assurances and service level agreements around how compliance advice is given, how quickly it can be given, what the internal processes are for more complex queries, acknowledgement and update schedules.</p>
<p>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.</p>	<p>Confidential? Yes/No (delete as appropriate)</p> <p>Our only comment here is that it is a little unclear what the difference is between Guidance and Best Practice Standards. It would make sense to combine these two elements together under the Guidance category to reduce the challenge of having a multiplicity of different documents and sources of information to manage (both within the PSA and for service providers).</p> <p>Paragraph 140 is a little concerning; best practice guidance should be providing a defence that a provider can raise – if complied with it is unlikely that there will be a finding of code breach. However the language used is more suggestive of the approach that Best Practice Guidance is considered binary to compliance and any deviation would indicate a breach.</p>
<p>Q7 Are there any areas where you consider that Best Practice information would be helpful?</p>	<p>Confidential? No (delete as appropriate)</p>
<p>Q8 Do you agree with our proposed regulatory approach relating to supervision and verification? Please</p>	<p>Confidential? No (delete as appropriate)</p> <p>We fully support the approach in principle and believe that ‘front-loading’ verification in this manner, in a similar way to other financial services,</p>

<p>provide an explanation as to why you agree or disagree.</p>	<p>is a robust way to seek to prevent market entry by unscrupulous actors who are not invested in the long term viability of the carrier billing industry. That said, we do wish to ensure that the approach is proportionate and not discouraging for new market entrants, particularly at the point of service delivery, with responsibility able to be adopted by other value chain partners.</p>
<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.</p>	<p>Confidential? No</p> <p>We agree subject to our comments on the questions below.</p>
<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.</p>	<p>Confidential? No (delete as appropriate)</p> <p>We agree with the bespoke permissions proposal.</p> <p>For a general permissions, our concern is that this creates a separate category of document, in addition to Guidance, Best Practice and the Code itself. If the PSA has considered that a matter is suitable for a general permission to be granted then this should be brought into the Code itself, being a set of specific rules. To us this introduces a wider point which has been raised previously; that the Code should not be such an immutable document and could behave more like the FCA handbook.</p>
<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?</p>	<p>None</p>
<p>Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? No</p> <p>We have no concerns with the existing prior permissions regime but would hope the new supervisory approach will be strongly considered as an accelerating factor in any requests for decisions.</p> <p>We welcome the proposal for a right of independent review of decisions as a good practice for any exercise of quasi-judicial rights.</p>
<p>Standards and requirements</p>	
<p>Q13 Do you agree with our proposed Integrity standard and requirements?</p>	<p>Confidential? Yes/No (delete as appropriate)</p>

<p>Please provide an explanation as to why you agree or disagree.</p>	<p>We agree with the concept of Integrity as a standard and the proposed Requirements under the standard however we are concerned with the use of the wording 'might bring' in the Standard itself. This introduces a significant degree of subjectivity into an already subjective concept of 'reputation'. Whilst it can be objectively observed whether an action or inaction has brought the market into disrepute (for example via press reports, NPS changes), it is lacking in certainty for providers how the concept of 'might bring' could be measured and consequently enforced. The Requirements are, properly in our view, phrased in such a way as to enable objective measurement of the standard, and therefore our concern is to clarify the Standard itself. Suggest that this wording could be made more certain such as '<u>is highly likely</u> to bring market into disrepute'. This sets a clearer test to meet in the event of enforcement whilst not discouraging innovation within the marketplace.</p>
<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?</p>	<p>Confidential? No</p> <p>We have no comments on the assessment framework for this standard set out in the consultation document.</p>
<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?</p>	<p>Confidential? No</p> <p>We have no comments on the drafting of the transparency standard (the 'Proposed Standard') however please see our response below with respect to concerns regarding the drafting of the Requirements and consequential impact on the Rationale.</p>
<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?</p>	<p>Confidential? No</p> <p>We remain concerned with the extension of the PSA's remit into the promotional aspects of service provision, as already outlined in our response to the original stakeholder engagement. To us we are concerned this is 'mission creep' and not aligned with how other payment instruments are regulated. Whilst we are supportive of the concept outlined in paragraph 198, that the purchase environment where a customer gives consent to be charged is clearly delimited from other aspects of the service, the attempted extension of the PSA's powers set out in paragraph 196 is (perhaps by virtue of drafting rather than intention) potentially harmful to DCB particularly becoming an increasingly reputable and mainstream payment instrument.</p>

	<p>Our particular concern is the scenario where DCB appears alongside a number of other payment methods from which a customer can choose their preference. The customer may have arrived at that checkout from a number of sources, including a promotional journey of many steps. Not all of those steps would it be reasonable for a merchant to make specific reference to DCB or PRS-related terms and conditions – for example if a user could choose a card-based CPA or direct debit via a bank, the bank would not support the ‘STOP’ SMS cancellation method (but would support the direct debit guarantee) and therefore it would be inappropriate to refer to that until the point at which the customer has been presented with DCB as a payment method (again, drawing a comparison with the way the direct debit guarantee operates).</p> <p>We do not believe this was the intention, and support the concept that a regulated party should be able to be held accountable for a customer’s journey and be required to provide redress for any problems in that journey. How that regulated party then seeks its own redress from its downstream business partners is its own concern, so long as the customer is not disadvantaged (again similar to the direct debit guarantee).</p> <p>Our recommendation is that the PSA consider reviewing the drafting, to make it clear the purpose is to ensure that a regulated party can be held responsible (both to the PSA and customers) for the actions of others in the value chain but without creating onerous requirements on the precise mechanism by which that aim is achieved. It would then be for the regulated party to demonstrate (in the event of an investigation) how it ensured compliance. Perhaps a contractual clause would be then considered a ‘Best Practice’</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 no comments on the drafting of the Proposed Standard and Rationale.</p>
<p>Q18 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have</p>	<p>Confidential? No</p> <p>As is identified in the consultation document there is considerable concern with the significant change to the regulation of subscription services that would require consent to be re-captured on an annual basis.</p>

any further information or evidence which would inform our view?

We refer to the CMA findings in relation to its investigation into auto-renewal of anti-virus services here: <https://www.gov.uk/cma-cases/anti-virus-software> and note that re-capturing consent does not feature as one of the outcomes. The quotation included in the consultation document at 233 (third bullet point) and again at 234 (third bullet point under 'effective') is out of context in both places and, with respect, does not support the proposal. The quote refers to a consumer opting into auto renewal at the point of purchase, not a system of repeating purchase on an annual basis.

The magnitude of the change is significant and will be impactful in the marketplace. It is noted in the consultation document that these changes typically only lead to bad faith players moving to a different exploit, the logical extension of this is that such changes will disproportionately harm good faith market players.

In our observations of the market, the majority of the harm occurs within the first 3-6 months of a non-compliant or fraudulent service entering the market. We would welcome an analysis of PSA complaints regarding subscription services and the age of the complainants' subscriptions to identify the proportion of complaints that could be resolved (or would not have arisen) with the proposed annual renewals change in place.

Furthermore, it seems alternative measures have been dismissed somewhat out of hand in paragraph 233. Alternative measures such as moving away from SMS as the primary cancellation mechanism (which modern handsets and OS's dissuade customers from using), better bill descriptions and a limited refund policy (more in line with the CMA findings referred to above).

In the event that these concerns, and others we expect our marketplace colleagues to raise, are dismissed and the PSA push ahead with this requirement, then a more proportionate approach would be to phase in this change, with objective testing and monitoring of the impact before a further consultation on the outcome leading to an informed decision on whether to make the change permanent.

<p>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?</p>	<p>Confidential? No</p> <p>We do not agree with the drafting of the last sentence of the Rationale which pre-supposes an entitled to refund, the drafting must be tempered to include wording to recognise that there is no automatic entitlement to a refund, and the positive experience should be subject to that entitlement being established in a fair and reasonable investigation of a customer’s concerns. This drafting is potentially unhelpful by supporting the widely shared but erroneous view that ‘the PSA will get you a refund’. We recognise this is a drafting matter, not the intention as set out more clearly in the Requirements.</p>
<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</p>	<p>Confidential? No (delete as appropriate)</p> <p>We have no comments on the assessment framework for this standard set out in the consultation document.</p>
<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?</p>	<p>Confidential? No (delete as appropriate)</p> <p>It is challenging to identify vulnerable customers as an aggregator or merchant, the information we have about any individual customer is limited at the point of sale. Therefore it is after-sales support that this matter really touches companies such as ourselves.</p> <p>We do note and support the statement made in paragraph 276, particularly where the MNO value chain partners are the most likely to have pre-existing knowledge of a customers vulnerable status, at least to a greater extent than the remainder of the value chain.</p> <p>It is not in the interest of any party in the value chain to provide potentially inappropriate services to vulnerable customers. We would therefore welcome a more robust approach taken in respect of MNOs sharing with the value chain flags for users they already are aware may be vulnerable or otherwise not be able to give properly informed consent.</p>
<p>Q22 Do you agree with our assessment of the proposed new vulnerable consumers standard against the general principles which</p>	<p>Confidential? No</p> <p>We have no comments on the assessment framework for this standard set out in the consultation document.</p>

<p>we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	
<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?</p>	<p>Confidential? No</p> <p>The purpose of this Standard is unclear and not well explained. Services provided to consumers in the UK are covered by the Data Protection Act (and, to a greater or lesser extent as Brexit continues, the GDPR) with well-established and well understood rules and requirements set out by the ICO.</p> <p>It seems to us that a general statement that providers must comply with applicable data protection law could easily sit beneath the 'Transparency' standard, reducing the overall weight of regulation, whilst still being enforceable by the PSA in the event it wishes to take action against a provider who has breached data protection law.</p>
<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?</p>	<p>Confidential? Yes/No (delete as appropriate)</p> <p>We have no further comment beyond our answer to Q23 above.</p>
<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?</p>	<p>Confidential? No</p> <p>As an effective restatement of existing standards we have no concerns with this Standard.</p>
<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?</p>	<p>Confidential? No</p> <p>We have no further comment beyond our answer to Q25 above.</p>
<p>Q27 Do you agree with our proposal to introduce a new organisation and service information standard? Please</p>	<p>Confidential? Yes/No (delete as appropriate)</p> <p>We agree with the introduction of the service information standard as it is drafted it seems like a relatively minor extension of the existing information requirements.</p>

<p>provide an explanation as to why you agree or disagree?</p>	<p>As a party interested in preserving the marketplace we would welcome further information regarding how the PSA intends to use the information it gathers, otherwise it has the appearance of a paperwork exercise only.</p> <p>One concern is that the personal contact details of individuals under the proposed paragraph 3.8.3 should not be published. If it were so it is readily apparent that consumers with queries would use those contact details rather than following the customer support routes which providers will have designed and built to provide an optimum customer experience. We would like the PSA's assurance that the individual details provided to it under 3.8.3 will not be published as a matter of course.</p>
<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?</p>	<p>Confidential? Yes/No (delete as appropriate)</p> <p>We have no further comment beyond our answer to Q27 above.</p>
<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?</p>	<p>Confidential? Yes/No (delete as appropriate)</p> <p>Paragraph 3.9.4 of the Draft Code 15 is unfortunately unacceptable in its current drafting; it is not within the PSA's powers to determine who a private organisation does or does not enter into a contract with. We believe this paragraph is lacking context around the purpose and the intention is that this only relates to the supply of PRS services within the UK. We suggest that this paragraph is unnecessary given that all PRS providers are required to be registered with the PSA generally, however a possible alternative would be "<i>PRS providers should, as part of their DDRAC, ensure that other PRA providers with whom they contract to supply PRS services [regulated by the PSA] within the UK are properly registered with the PSA unless exempt under paragraph 3.8.9</i>"</p> <p>Other than the concern set out above we agree with the DDRAC standard.</p>
<p>Q30 Do you agree with our assessment of the proposed new DDRAC standard against the general principles which we set out in the</p>	<p>Confidential? No</p> <p>In general we agree with the assessment, however we do have a concern with the requirement of 2.3(n)</p>

<p>discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>in Annex 2 to the Draft Code. This paragraph places a substantially more onerous burden of investigation than any of the other requirements given that it is drafted so broadly. In our view it would require a more highly forensic investigation of affairs than is proportionate. As a measure of standards in this area we would consider the types of data provided by Due Diligence providers to the financial services industry, examples such as Lexis Nexis, ComplyAdvantage or Navex Global. Between the services provided by those organisations and a relatively standard exchange of information all the DD information under 2.3 could be collected relatively effectively. (n) stands out in this respect. Involvement with other companies as directors, or appearing in adverse media (should they be named in regulator enforcement publications) is standard DD practice, however it is in our view unreasonable for us to be expected to identify where those individuals did not fall into either of those two categories, the “involved or connected with”, and that not all regulatory action is published. Furthermore, this challenge is amplified in non-UK and non-EU jurisdictions. We would suggest tempering this requirement accordingly to include a reasonableness or best endeavours statement, and (as it is acceptable to do in paragraph (m)) seek undertakings or warranties regarding unpublished or non-directorship involvements with other companies.</p>
<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>We agree with the systems standard; it appears to have deviated little from the current approach.</p> <p>We would comment that with respect to the concept of a vulnerability disclosure scheme (379(ii)), whilst we already subscribe to more wide-ranging international disclosure schemes if the intention of this paragraph is to set up a scheme specifically for PRS we would suggest that the PSA is the most logical party to operate that scheme. This avoids any difficulties around anti-competitive practices between the network operators and other industry players and we believe would not be onerous to administer – perhaps a single reporting inbox from which the report can be anonymised (in terms of recipient email details) and then distributed to a distribution list (or published to an area in the User Accounts on the PSA website). It would be up to the reporting party to ensure they</p>

	are comfortable with what is being reported in terms of confidentiality of the content of the report.
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 We have no further comment beyond our answer to Q31 above.
Supervision	
Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.	Confidential? Yes/No (delete as appropriate)
Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.	Confidential? No See Q35 below
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 There are two areas with which we have concerns: Intermediary Complaint Reporting The level of detail set out for intermediaries reporting complaints is in our view disproportionate. As an intermediary we do not manage or provide customer support services, this is the responsibility of service providers. Whilst we can, and are happy to, provide the numbers of contacts per service we do not retain the details of those contacts or the outcomes (indeed, this would be potentially an unnecessary and disproportionate storage and processing of data under the DPA). To require intermediaries to do so is an unreasonable burden on the smallest part of the value chain (not meeting the requirements for fairness/non-discriminatory). Skilled Persons Report The Skilled Person report section raises some concern as it does not appear to be linked to any particular matter of reasonable concern or risk, especially where the PSA is seeking a power to appoint any person they wish to do anything they like within a PRS Providers' sensitive and

	<p>confidential data, and then require providers to pay the costs of such reports.</p> <p>In our view this section must at least be predicated on:</p> <ol style="list-style-type: none"> 1. there being reasonable belief in wrongdoing or non-compliance for the PSA to be able to unilaterally appoint 2. there must be actual wrongdoing or non-compliance found for the PSA to be able to charge the costs of the report to the provider, and those costs must be capped in some way – it would be unreasonable and disproportionate to, for example, employ a top partner at KPMG to review in and outpayments of a small service provider, then charge them the thousands of pounds that partner would cost. 3. The PSA must warrant the integrity of the report provider – if this person is to be rummaging through highly confidential and sensitive data, given the requirements placed on PRS providers elsewhere in the code, that this one provision rides roughshod over the entire Code and should therefore be backed by warranty against a breach of the Code caused by the report provider plus indemnity for any associated data breach or breach of other law or regulation, loss of commercial confidentiality (especially where skilled persons may well have interests in PRS competitors). <p>These points above are based on the standard terms found in most business contracts where the parties give each other rights to audit each other.</p> <p>Where there is no belief in non-compliance, or simply information gathering or part of a thematic review the skilled person should be mutually agreed between the PSA and the Provider.</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>Agreed save for the items set out in Q35 above.</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

We are supportive of the Enquiry Letter approach as described, both as being a more proportionate response to minor risks such as misplaced advertising or minor errors in PRS terms statements, as well as effective in identifying non-respondents as potential major risks. We feel this is preferable to starting the engagement process with a request for information which, in our albeit limited experiences, has often felt disproportionate to the concerns raised. The opportunity for respondents to make their own responses and provide the information and explain why the issue is not a risk, or how the risk has been resolved, should help streamline the engagement process and prevent what could be minor, easily resolvable risks growing.

It is slightly unclear how the warning letter process will operate with the action plan process – whilst both are welcome it would be good to understand which would come first – would there be an invitation to agree an action plan before this is finalised in a warning letter, or will the warning letter set out required actions with an option to discuss and agree potential changes after the warning has been issued?

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

Confidential? No

We have no comment on the settlement changes.

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? Yes

[Redacted content]

Q40 Do you agree with our proposals to introduce a new “single decision maker” as an alternative to the full Tribunal for more straightforward

Confidential? No

We have no concerns with the principle, however we feel that the qualification criteria for single vs full Panel are not well defined (paragraph 5.4.2 of the Draft Code and 4777 of the Consultation

<p>cases? Please provide an explanation as to why you agree or disagree.</p>	<p>Document). This should be better set out both for the industry generally but also to protect the PSA against accusations of unfairness and judicial review proceedings with all the delay and resource that entails.</p> <p>Additionally, 'legally qualified' should also be better defined as this is a spectrum starting at law graduate. We suggest the person should at least be a registered legal practitioner with the Law Society or Bar Council. This will provide the assurance that that person has both a full and proper understanding of how to run tribunal proceedings alone and subject to appropriate legal practice regulation.</p>
<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.</p>	<p>Confidential? No</p> <p>We agree with the proposal in principle however would like to be assured that the PSA has taken appropriate legal advice on the threshold change to avoid the risk of costly and delays should the refusal of oral hearing become a matter for judicial review.</p>
<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</p>	<p>Confidential? No</p> <p>WE agree with this proposal and agree that it aligns well with other regulatory regimes, the ICO proposals as noted but also the existing Senior Managers Regime within the FCA's regulatory programme.</p> <p>The note of caution we wish to sound is in relation to the potential wide scope especially given the personal impact of these measures. Individuals may see little to lose in challenging decisions about whether reasonable steps have been taken as these will almost always be very specific to the individual.</p>
<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.</p>	<p>Confidential? No</p> <p>We have no concerns with the principle of making the 2018 data retention guidance a requirement, in our experience this has been adopted as a matter of course, however we would expect that, in conjunction with the value chain liability proposals, it is made clear that only one party in the value chain can be held accountable for storage. There may be default assumptions on that responsibility however it should be both possible and available as a defence for the parties in the value chain to determine between each other who is actually responsible, subject to reasonable DDRAC. Without these provisions the situation is created where each value chain partner will need to hold copies of all</p>

	<p>data which is excessive, disproportionate and contrary to the principles of data protection regulation. We do not accept the argument that the PSA can, simply by virtue of its regulatory status, disregard the principle of data minimisation.</p> <p>Similar to the point we make in Q29 above, we feel the broad phrasing of ‘any person with whom they contract’ in paragraph 499 of the Consultation Document is excessive and disproportionate – it captures too wide a field (such as ISPs, landlords, PRS providers not providing services in the UK) and should be tempered with wording to the effect that it is limited to contracted parties involved in the provision of PRS or any part of PRS delivery which is a regulatory requirement (so as to capture third party CTC providers not PSA regulated for example).</p> <p>We would encourage a clear line to be drawn between information required for regular supervisory purposes, which should be defined, and that required for investigations (formal or informal). This is important because regular supervision data we would suggest most PRS providers can build a technological solution to output that data regularly and automatically. This is of course highly desirable for all parties; for PRS providers it means no resource is taken producing this data to schedule, for the PSA it means the data is always received in the correct format, at the correct time and is less likely to have been manipulated.</p>
<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?</p>	<p>Confidential? No</p> <p>We are comfortable to agree to the provisional assessment subject to our comments above insofar as they touch the assessment principles.</p>
<p>Other general Code considerations</p>	
<p>Q45 Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our</p>	<p>Confidential? No</p> <p>We agree with the proposal.</p>

assessment of our proposals on general funding arrangements?	
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 We agree with the proposal.
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 We agree with the proposal, these rules are well understood in the industry but, with the processes in place to manage amendment below, can be amended over time as required in response to changes in the marketplace/technology.
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 We strongly agree with this proposal, it will greatly simplify compliance and delivery effective outcomes whilst reducing administrative burden, enabling the Code to remain relevant and effective. We would like to see that the medium in which the Code is published is optimised for managing and presenting these changes to enable viewers to see which sections of the Code were in force on which date, when changes were implemented and so forth. This has been one of our key challenges with Code 14 and its associated guidance notes and other ancillary documents, it was hard to see (particularly in the context of managing historic compliance risks) when certain sections were introduced or amended. We would recommend the PSA looks at the presentation of content of legislation.gov.uk and the FCA Handbooks in this respect.
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 We have no further comments beyond our answers to questions above.

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 We have no further comments beyond our answers to questions above.
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 We have no further comments beyond our answers to questions above.
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 comments beyond our answers to questions above.
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 agree with the assessment.
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?	The only comment we would make here is that it would be helpful to understand the mapping of old to new procedures, particularly at the 'informal' stage not allocated to track – how informal enquiry or request for information would be mapped to enquiry/warning letters.

Submit your response

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

