

# Consultation response form

## Consultation on draft Code 15

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

Full name	██████████
Contact phone number	N/A
Representing	Organisation
Organisation name	Macmillan Cancer Support
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](https://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?	Delete as appropriate:  your name
Your response: Please indicate how much of your response you want to keep confidential.	Delete as appropriate:  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
<b>Proposed regulatory approach</b>	
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.	<i>Confidential? No (delete as appropriate)</i>  We are pleased that the PSA is placing a greater emphasis on the prevention of harm versus rectifying issues that have already gone wrong. We also like the emphasis that the PSA has placed on the importance of adhering to robust consumer-focused standards. We agree that a principle-based

	<p>approach to regulation is more flexible and allows for greater innovation than a rules-based approach. This change of approach is welcomed and in line with other Regulatory Codes.</p>
<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><i>Confidential? No (delete as appropriate)</i></p> <p>Yes, we believe it's useful to have service-specific requirements for separate services particularly where vulnerability issues may arise.</p> <p>We do have concerns however that such an approach could end up unintentionally reverting back to a rules-based approach particularly as the PSA has said it will not be setting any new service-specific requirements based on 'high-risk'.</p> <p>We nonetheless note that the PSA will consult on any additional service-specific requirements it wishes to include and give the industry an opportunity to comment on whether these are necessary (or covered adequately by the Standards).</p> <p>We note that Code 15 states "3.11.1 Society Lottery Services must not be used by anyone under the age of 16 years." Please note the DCMS raised a Review of the Gambling Act 2005 TOR and <a href="#">Call for Evidence</a> (closing date 31 Mar 2021) reviewing the minimum age for society lotteries and whether this should be raised to 18.</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><i>Confidential? No</i></p> <p>We recognise the importance of having supplementary guidance to compliment the code. However, we would welcome some further clarification as to whether providers would need to consult the PSA if and when compliant alternatives to the guidance are identified.</p>
<p>Q4 Are there any areas where you consider that Guidance would assist with compliance with the standards and requirements?</p>	<p><i>No (delete as appropriate)</i></p> <p>N/A</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><i>No (delete as appropriate)</i></p> <p>We are concerned that the PSA is saying that 'not' seeking compliance advice could be seen as a contributing factor in any enforcement case and we question this logic.</p> <p>If a provider considers the steps they are putting in place are robust and will deliver compliance then why would they seek compliance support?</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><i>Confidential? No</i></p> <p>We have concerns about blue chip companies, with significant resources, being able to implement costly state of the art systems and processes which are then deemed by the PSA to be 'best practice'.</p> <p>It's important for consideration to be given to SMEs and charities who may not have such resources at their disposal; particularly, as the PSA says it proposes to take compliance with best practice into account when considering any alleged breach of the Code and/or imposing sanctions.</p>
<p>Q7 Are there any areas where you consider that Best Practice information would be helpful?</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</p>
<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.</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>We understand the reasoning behind the PSA enhancing its current approach to supervision and verification but, again, it felt like the consultation document needs to provide more detail on what an "enhanced registration system" might look like and how organisations can comply.</p> <p>Specifically, in relation to the PSA "assessing a PRS provider's level of compliance with the Code", what might trigger this? E.g. Number of complaints or would it form part of a more proactive audit programme? How frequently would the assessments take place?</p> <p>Please also see our response to Q34.</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><i>Confidential? No (delete as appropriate)</i></p> <p>On the whole yes because we recognise the value of having more a proactive regulatory system in place for the industry.</p> <p>However, with regard to the Warning Letters, it is not clear whether a breach of the <i>guidance</i> or potential <i>code breaches</i> would trigger these.</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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>N/A</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</p>
<p><b>Standards and requirements</b></p>	
<p>Q13 Do you agree with our proposed Integrity standard and requirements? Please provide an explanation as to why you agree or disagree.</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>We welcome and support these proposals because we recognise the importance of providers conducting their services with integrity to build and increase consumer trust and confidence.</p>
<p>Q14 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</p>

any further information or evidence which would inform our view?	
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><i>Confidential? No (delete as appropriate)</i></p> <p>Yes, because as with the other values, transparency should play a key role in the relationship between the provider and the consumer.</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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><i>Confidential? No (delete as appropriate)</i></p> <p>We have significant concerns about the requirement for people using recurrent donation services to have to re-consent every 12 months. In our view this would be impractical and unnecessarily costly for charities to implement.</p> <p>We also believe it could have a damaging impact on Macmillan's income which has already been negatively hit by the Covid 19 pandemic. In a worst case scenario (i.e. none of our regular T2D supporters decided to opt back in) we would lose approx. £50k per year in charitable income. While, we recognise the intention to give donors greater control, this could still be achieved through using an opt out model instead.</p> <p>Should the PSA move forward with this proposal, Macmillan is likely to no longer see regular giving via text as a viable source of income, meaning we would inevitably reduce our investment in this area. This would be a regrettable and avoidable outcome for both Macmillan and the PSA.</p>
Q18 Do you agree with our assessment against the general	<i>Confidential? No (delete as appropriate)</i>

<p>principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>N/A</p>
<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><i>Confidential? No (delete as appropriate)</i></p> <p>It isn't clear from the consultation document who should have ultimate ownership over complaints management – the provider of T2D services (Instagiv) or the end user (Macmillan).</p> <p>In addition, it is not clear how the customer care standard should align itself with pre-existing complaints procedures previously established by PSA registrants.</p> <p>Finally, we have concerns about the suggestion in the consultation document which said that the PSA has considered introducing a "no quibbles" refund scheme for consumers through "best practice" standards. This appears to be introducing legislation "through the back door".</p> <p>Section 63-65 of Charities Act 2011 outlines the clear and specific conditions under which a donation can be refunded by a charity. We are concerned that a universal PSA "no quibbles" refund policy would mean that charities would not be compliant with the Charities Act.</p> <p>We therefore request that the PSA includes a provision in the new Code which says that returning donations must be in-line with the Charity Commission's processes to avoid confusion.</p> <p>.</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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><i>Confidential? No (delete as appropriate)</i></p> <p>In principle, yes, because we recognise the importance of ensuring that people in vulnerable circumstances are appropriately safeguarded.</p> <p>The Charities (Protection and Social Investment) Act 2016 requires charities to outline the steps they are taking to protect vulnerable people in annual reports.</p> <p>This means that the majority of charities have a Fundraising with People in Vulnerable Circumstances policy in place.</p> <p>At the moment the PSA's proposals do not contradict any of the vulnerable people safeguards the charity sector already has in place. However, we feel it would be useful for the PSA to recognise the pre-existing charity sector's provisions and work to support charities like Macmillan in the event of regulation changing.</p>
<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?</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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><i>Confidential? No (delete as appropriate)</i></p> <p>We feel that introducing a new privacy standard may be unnecessary due to the GDPR which providers are already expected to comply with.</p> <p>It would also be helpful to understand who would be the lead regulator if a breach of the privacy standard was identified – the ICO or PSA?</p>
<p>Q24 Do you agree with our assessment of the proposed new consumer privacy standard against</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</p>



<p>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>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><i>Confidential? No (delete as appropriate)</i></p> <p>Yes, because we agree that it's important for the PSA to help safeguard consumers from harm and offence</p> <p>However, as with the other newly-introduced standards, we'd be keen to understand whether the PSA has considered how its harm and offence standard might align/cross over with the Advertising Standards Authority's (ASA) pre-existing rules on harm and offence.</p> <p>In addition, it is unclear who would take the lead upon receipt of a complaint relating to harm and offence – the ASA or the PSA.</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>N/A</p>
<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?</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>Regarding charity registrations, we would encourage the PSA to consider including charities in point 3.8.9 as one of the categories exempt from re-registering every 12 months.</p>

any further information or evidence which would inform our view?	Charities already go through a rigorous registration process by the Charity Commission which includes giving detailed information on governance and finances, we therefore feel that if an organisation has a valid charity number, this should be sufficient proof that they are meeting the PSA's standards.
Q29 Do you agree with our proposal to introduce a new DDRAC standard? Please provide an explanation as to why you agree or disagree?	<i>Confidential? No (delete as appropriate)</i> N/A
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?	<i>Confidential? No (delete as appropriate)</i> N/A
Q31 Do you agree with our proposal to introduce a new systems standard? Please provide an explanation as to why you agree or disagree?	<i>Confidential? No (delete as appropriate)</i> N/A
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?	<i>Confidential? No (delete as appropriate)</i> N/A
<b>Supervision</b>	
Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.	<i>Confidential? No (delete as appropriate)</i> We have some questions/concerns about the PSA's proposed approach to supervision. It is not currently clear under what circumstances a proactive or reactive approach to supervision would be taken.

	<p>It's also not clear what will trigger the supervision process e.g. a complaint regarding a possible a code or a guidance breach or evidence of such a breach? How high/low is the threshold that would trigger the supervision process ?</p> <p>In terms of "proactive" supervision, what percentage of PSA-registered organisations will be audited each year and how much resource should an organisation dedicate to preparing for ad hoc supervisory visits?</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><i>Confidential? No (delete as appropriate)</i></p> <p>In principle, yes, because it's good to see the PSA taking a more proactive role in ensuring its members are compliant. However, it is not currently clear what the division of responsibilities should be between charities and their providers.</p> <p>It's not clear from the consultation document how frequently and in what format organisations will be required to submit an "audit report" Some clarification on this is therefore needed as we would have concerns about this process if it was to be too frequent or onerous.</p> <p>RE. the "skilled persons reports" proposals, there is no definition in the consultation document about what constitutes a "skilled person" and what "defined circumstances" will require a report to be written. As a charity, we would have concerns if we had to pay for an external auditor and we would like clarification as to whether internal auditors, with suitable qualifications, would be adequate.</p> <p>RE. pre-arranged visits to provider premises, it isn't clear how much notice providers will be given of those visits in order to make the appropriate arrangements and ensure the relevant staff are available.</p> <p>We note however that consent is required and therefore a suitable agreement could be reached.</p>
<p>Q35 Do you agree with our proposals on reporting and</p>	<p><i>Confidential? No (delete as appropriate)</i></p>

<p>notification requirements? Please provide an explanation as to why you agree or disagree.</p>	<p>Yes, because we acknowledge that this will give the PSA greater oversight over the organisations that are registered with them. However, it would be useful if the PSA could clarify how frequently organisations will be required to supply the information and in what format.</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><i>Confidential? No (delete as appropriate)</i></p> <p>As mentioned earlier in our consultation response, it is not clear whether the enquiry/warning letter system will be triggered by breaches of the guidance or the code.</p> <p>It is also unclear what might trigger the provision of an "action plan" as opposed to the warning letter/formal notification process.</p> <p>Finally, it is also unclear when warning letters might be published – the consultation document just says "where we would consider it proportionate or necessary to do so".</p> <p>Some clarity on these points would be welcomed.</p>
<p><b>Engagement and enforcement</b></p>	
<p>Q37 Do you agree with our proposed approach on engagement and enforcement? Please provide an explanation as to why you agree or disagree.</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>See above response to Q36</p>
<p>Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.</p>	<p><i>Confidential? Yes/No (delete as appropriate)</i></p> <p>Yes because it provides greater flexibility and allows organisations to reach settlement with the PSA earlier in the process, thus freeing up resources in terms of time and costs.</p>
<p>Q39 Do you agree with our proposals to strengthen the existing interim measures regime? Please</p>	<p><i>Confidential? Yes/No (delete as appropriate)</i></p> <p>N/A</p>

<p>provide an explanation as to why you agree or disagree.</p>	
<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.</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>In principle, we have no objections to this but it would be useful to know whether there is an appeals process for decisions made by the single decision maker along with the criteria that the PSA uses for appointing them.</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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><i>Confidential? No (delete as appropriate)</i></p> <p>We would welcome some further clarity on the thresholds that senior managers would be required to meet to ensure that they were taking “reasonable steps” to prevent breaches of the PSA Code.</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><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</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</p>	<p><i>Confidential? No (delete as appropriate)</i></p> <p>N/A</p>

discussion document? Do you have any further information or evidence which would inform our view?	
<b>Other general Code considerations</b>	
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?	<i>Confidential? No (delete as appropriate)</i>  N/A
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?	<i>Confidential? No (delete as appropriate)</i>  N/A
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.	<i>Confidential? No (delete as appropriate)</i>  N/A
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.	<i>Confidential? No (delete as appropriate)</i>  N/A
<b>Impact assessment</b>	
Q49 Are there other impacts which we have not considered in relation to our proposal to move from a regulatory approach based on	<i>Confidential? No (delete as appropriate)</i>  N/A

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.	<i>Confidential? No (delete as appropriate)</i> N/A
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.	<i>Confidential? No (delete as appropriate)</i> N/A
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.	<i>Confidential? No (delete as appropriate)</i> N/A
<b>Equality impact assessment</b>	
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?	<i>Confidential? No (delete as appropriate)</i> N/A
<b>Next Steps</b>	
Q54 Do you agree with our proposal to set out transitional arrangements that allow the new Code procedures to apply from the commencement	<i>Confidential? No (delete as appropriate)</i> We feel that a 3-6 month transition period is insufficient. Due to the extensive and wide-reaching

date to all investigations and/or complaints or monitoring which commenced under Code 14?	changes to the PSA Code as outlined in the consultation document, we believe that 6-12 month transition period would be more appropriate.
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**Submit your response**

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