



Phone-paid Services Authority

Consultation response form

Consultation on draft Code 15

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

Full name	
Contact phone number	
Representing	Organisation
Organisation name	Mobile Commerce Solutions Ltd
Email address	<div></div>

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 psaauthority.org.uk/privacy-policy.

Confidentiality

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

<p>Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?</p>	<p>Delete as appropriate:</p> <p>Nothing</p>
<p>Your response: Please indicate how much of your response you want to keep confidential.</p>	<p>Delete as appropriate:</p> <p>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>

Summary overview

This code review and consultation has been proceeded with during a global pandemic, when business are trying to operate during exceptional circumstances and under extreme pressure. Many of the businesses that this code effects have had to spend the last 18 months making difficult decisions about how their business is going to move forward. The PSA at no point put any stop to their code review, or delays in its implementation timetable to reflect the extreme circumstances going on around the world. However, on the 14th April 2020, PSA CEO Jo Prowse issued a statement, published on the PSA website, which states: "In late March, we published our decision to reduce the amount of regulatory change in this uncertain period. We are very conscious that many companies need to focus on delivering for consumers and may not have the time to engage in policy development or implementing changes to regulation. Therefore, we have suspended our refunds guidance statement and put on hold our planned consultation on new due diligence, risk assessment and control guidance." Yet the PSA continued to plough on with the Code 15 work despite openly admitting that they needed to give businesses time to focus on working through the pandemic, and would not have time to engage with the PSA. Webinars were then held on the code during the period of 31st March – 9th April 2020, 5 days before the CEO states that people do not have time to engage. This is clear evidence that the PSA ran webinars for stakeholder engagement when the PSA are openly admitting people did not have time to attend. The PSA have therefore pushed through this code development with the sole purpose 'burying bad news', in the hope that people would be too busy focusing on getting through the pandemic to notice what they were intending to implement.

The PSA extended the deadline on the Code discussion document by 3 months, as a direct result of the pandemic, and to improve the number of responses, but then seek for the code to come into place at the same time. By extending the consultation, it was hoped there would be more input into the process but yet the PSA fail to allow adequate time to consider the additional input. The PSA are showing evidence here that they have no intention of considering the industry's response to the draft, but are merely ploughing through what they want with no consideration.

The PSA decided in March 2020, to put a hold on a consultation on DDRAC Guidance. They made this decision given, that they currently have existing DDRAC guidance. Given that the code 14 was written after a judicial review, it clearly is an existing, adequate code for the industry, and the new 15th policy work should have also been placed on hold until such time that the pandemic subsided sufficiently and government restricts eased sufficiently to allow for better industry engagement.

It is also noted that the PSA appear to have gone back on their own statement in March 2020 which said the DDRAC was adequate, but proposing lengthy and unbalanced new DDRAC requirement, which they themselves are not willing to comply with, but expect all PRS providers to.

It is with note that the same argument is being used by the PSA to move from an outcome based code to a standards/prescriptive code which was used to move from

prescriptive code to outcomes based. Does this mean the PSA made an error of judgement in moving the code from one to the other previously and evidence of this of course is the 14th code having to be complied following PSA losing a Judicial Review in court. This new code does not allow for any new innovation or flexibility within the market place and industry along with the PSA placing standards that they themselves seem to either can't or won't set for them to meet.

N.B. The paragraph on the front page of this document, states that this is in response to the PSA's Subscription review. We would like it noted that this is our response in relation the Draft 15th Code of Conduct.

Consultation questions

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.

No.

The standards themselves, are a good basis for regulation and seem to be in line with Outcomes Based Regulation. However, the requirements under each standard are very prescriptive and are over the top and not proportionate regulation.

The standards themselves, should be a baseline for industry to comply with, and should not be too farfetched in their aims and achievements.

The code is meant to be easier and simpler to comply with, however the use of standards and then very prescriptive, wordy requirements in addition to the standards means that the code becomes very lengthy, cumbersome and difficult to comply with. Combined with the guidance that is due to be issued for consultation at a later stage, this is the opposite of what the PSA have stated they are trying to achieve with a new code.

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.

No.

Special Conditions should be kept in place and these should not be included in the new code.

For example, charities appear to have been included in normal subscription services, however these pose very low risk to the industry and should therefore be subject to alternative requirements which reflect this. The Special Conditions should then be subject to periodic review and their risk level considered as to

whether the exemption or service-specific requirements are still relevant. Services should still be assessed on a risk basis and with the ability for that to be fluid and to change as the market and service types and needs change too. This cannot be done if the requirements are included in the code, and not under Special Conditions.

This approach is not dynamic, and only allows for the code to go out of date quickly as service types and the market changes. This is the opposite of what the PSA state they are trying to achieve under the new code.

Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an 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?

No.

The introduction of a standard and requirements code is to make it easier to follow and therefore increase compliance. By adding additional guidance in conjunction with the main code, it is harder to follow as the requirements are not all in one place. Any requirements should be within the main code, all in one place and easy to find and follow.

It is also noted that the guidance referred to here in this question, has not been included in the consultation, so would be additional regulation that has not been consulted on by the market. This would evidence the PSA's way of thinking around the draft 15th Code, but the industry does not appear to be privy to that information, so cannot therefore make an informed and reasoned opinion on the draft code without this.

The guidance should be published with the draft code before it is approved, with the opportunity for industry engagement on it alongside the draft code, with an opportunity for amendments to both before implementation.

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

Firms who seek advice from the PSA on compliance should be given binding advice. They are seeking out the correct answers and proactively asking for help and support. This should not be given on the basis that the PSA can then change their mind on that at a later date.

Firms seeking out support should not be subject to be penalised for that later down the line, which providing non-binding advice is doing. Reward firms for seeking help and advice and not just ploughing on and potentially causing harm.

It is an opportunity for the PSA to have open communication with a firm and support them in getting things right, without the threat.

As per the statement by PSA CEO JO Prowse, on the 14th April 2020, “the compliance advice and industry support service is there to provide free assistance to help you meet your regulatory requirements.” How can this help to meet your regulatory requirements, if the PSA do not have faith in their own compliance advice and industry support service.

When the PSA issue warning letters etc. it would appear that the compliance advice at this point is binding on a firm and they must comply with it, but when you approach the PSA for support to prevent you from getting to that stage, they are not willing to make it binding. The is not transparent regulation.

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.

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

No. The use of Best Practice Information is implying that the code is sufficient on its own and that additional information is required to enable people to comply with it. Good regulation would be a code that stands alone and does not need additional, supplementary information to go along side to ensure compliance.

The code is the code and should be of a sufficient standard, (i.e. Bronze), so that no further guidance or information is required around it and then companies can choose to set higher standards, should they wish, but a baseline has been set by the code which is adequate to achieve the mission and goals of the PSA.

The PSA’s 15th code, which is under consultation here, is to set that base line standard and has no place in looking to advance those standards unless the 15th code is not adequate in its achievements or aims.

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.

No.

The supervisory requirements would not need to be so stringent if the PSA did more to stop industry disruptors from entering the market. Putting more requirements on those with good intentions in the market, does not stop those who wish to cause consumer harm from entering the market in the first place, if the PSA do not do sufficient due diligence on them at the outset.

The supervisory role set out in the draft code, is onerous, not transparent and does not make compliance and regulation simpler and easier for the providers of

PSMS to understand. It is invasive, in the reporting requirements and the PSA do not clearly set out their reasoning behind continued reporting requirements which they are proposing. The PSA appear to be using the new supervisory approach to ensure that they have a way of controlling those within the market without formal investigation or adjudication.

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.

No. Whilst we welcome a less formal approach to some elements of regulation, it is believed the PSA could abuse these powers by, not including a limit in which these powers can be used. For example, setting out that only so many enquiring letters or warning letters can be issued in a certain timeframe. Under the draft code PSA would be within their rights to constantly send these types of letters and use them to establish information about a firm where there is no real evidence of breaches or areas of concern.

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.

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?

Yes. Bespoke and General Permissions are an important part of the code and industry. Regulation around this point must be clear, easy and simple to follow, which the PSA appears to have done.

We welcome these changes, however this is only on the basis that the PSA ensure that the permissions are published and that this section of their website is kept current and up to date.

In order to ensure transparency, the code should require that the PSA maintain an up to date list of these permissions and exemptions at all times, and not that it should be updated from time to time which means that the list could be out of date frequently.

All exemptions either bespoke or general should be published regardless and have a standard set for it to be published, i.e. within seven days of agreement.

Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.

The requirements in relation to prior permission does not have any timelines associated with them. It would be fair and transparent for the PSA to include

timelines within these requirements so that the permission must be considered and a decision made on them within a set timeline, and not just left open for the PSA to review and consider whenever they wish.

Permissions that are granted, should be granted for a set time period and then reviewed by the PSA and permission continued or revoked subject to the market, industry and individual's compliance at that time. It would not be fair or effective for a permission to be granted indefinitely and never reviewed or reconsidered based on a number of market and individual factors with one year being the longest.

Again, these permissions should be agreed within a set timeline, and published on the PSA website which should be kept up to date with the same timelines as bespoke and general permissions.

Q13 Do you agree with our proposed Integrity standard and requirements? Please provide an explanation as to why you agree or disagree.

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?

Whilst the standard itself, is clear and easy to understand, along with the requirements, these do seem to follow the basis of outcomes based regulation. This is something that would be expected under the 14th code and not the new 15th code. It seems that the code is confused about what it is meant to be.

Those who do not have any intention of complying with this standard, should not be entering the market, which would be the case if the PSA conducted adequate due diligence at the outset of their regulatory role.

In the PSA's rationale for this standard, it is stated 'observe proper standards of conduct'. What is this? Everyone agrees that the market should be run based on integrity and not bring the market into disrepute, however the PSA do not make it clear what they consider a 'proper standard of conduct' other than compliance with the code. Are the PSA saying that compliance with the code is considered a proper standard of conduct? This point is not clear.

Q15 Do you agree with our proposal to introduce a new transparency standard? Please provide an explanation as to why you agree or disagree?

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?

Yes, the standard itself is clear and provides a good outcome of what consumers must receive. However, the requirements do seem to be overly onerous.

3.2.12 for example requires a receipt for every transaction. This doubles the amount of messages to the consumer. A weekly subscription service would only send 64 messages per year under the current 14th code, however under these proposals, the consumer would receive 118 messages, which is not only costly to the merchant provider, but is not clear to the consumer. A merchant is currently only be charged for 12 free to consumer messages under the 14th code, where under the new code, they would be charged for 66 messages, which is an increase of more than 5 times the bulk charges to the merchant. In this example if the free to consumer message was charged to the merchant at 3p, (inter connect charge), their current spend would be 36p per consumer. Under the 15th code this cost would increase to £1.98 per consumer. If you took an average service to have 10,000 subscribers, this would result in an overhead cost increasing from £3,600 per year to £19,800 per year. This is a significant increase which would put a lot of smaller merchants out of business. This is not a balanced approach to an innovative and competitive market, but evidences the PSA's lack of industry understanding.

The number of messages to the consumer should be kept to a minimum in order to stop any confusion. Multiple messages could also be considered spam by the consumer. If the pricing information is correct and compliant for the service, then there is no additional need for receipting. MNO's already have limits of spend in place, and spend reminders, monthly, (or £20), are already a good way to remind consumers of what they are spending and where. This requirement states that the receipt must include details of the amount charged, following initial sign up to the service. However, some services do not immediately require a charge so you would be required to provide a receipt where no charge has actually been made.

This requirement is overly onerous on the merchants and therefore not proportionate regulation, and it would not be considered balanced and effective by consumers who will just get fed up with additional messages with information they already know and have.

There are no other examples of this regulation within the UK by any other payment provider or industry and given the nature of the PSAs regulated industry this should match other payment options to the consumer.

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

Q18 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

No.

The code seems to be confused over its requirements of PRS providers in relation to fairness. Whilst it is agreed that everyone should be treated fairly, and equitably, there are circumstances, which are set out under section 3.5 which requires you to treat some consumers differently. Through ensuring fairness it appears that the PSA could cause you to discriminate against others. The wording of the standard and its requirements are objective, and could be interpreted differently by different people. What one person would consider fair, another would not. Would the PSA consider it appropriate to advertise something using overly large imagery, probably not, they would consider it misleading. However, the person who is sitting on the train partially sighted cannot read the standard sized imagery on the adverts. On one hand you would be in breach of 3.3.3 and on the other you would be in breach of the requirements around vulnerable consumers.

3.3.11 of the draft code requirements for subscription services, states that consent is required to be obtained every 12 months. The requirements do not state what should happen in the event that the consent is not renewed and where the discontinuation of the service could cause potential harm to a consumer. For example, prescription reminder services. If consent was not obtained, and therefore a reminder not sent, a consumer could be going without life saving medication.

The 15th Code already requires a receipt to be given after every spend, so the consumer is receiving a reminder every time they spend, that they are part of the service. There is therefore no need for consumer 'resign up' after 12 months, when effectively they are doing every time they spend by not opting out. There is also, the requirement for the monthly spend or £20 reminder. So therefore would another message after 12 months not just be considered another receipt or spam message by the consumer. For example, if you signed up for a medication reminder service, which reminded you to take a tablet once a week. You will therefore receive 52 messages a year, once a week as part of the service. They would then be in receipt of an additional 12 messages a year (assuming it is not more than £20 a month), so per annum you would receive 64 messages per annum as the consumer. With these proposals, this would extend to 118 messages per year which is close to 100% increase, and does not go in making it clearer and simpler for consumers, but would surely make consumers ignore more messages.

This seems to be unproportionate regulation by requiring another message/reminder to be sent to a consumer who is already receiving too many messages. The requirement under this standard are therefore not effective, balance or proportionate.

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?

The introduction of a standard specifically in relation to customer care on the whole would be beneficial to the industry. It provides clear requirements on how all consumer complaints should be dealt with, including prescribed times and is clear for the consumer to read and understand how their issues should be dealt with.

The use of emotive language within the standard itself, is something that could lead to ambiguity. What one person perceives as excellent, another may not. Standards need to be clear and definable and excellent is not a definable word in this instance. Not only will this vary from merchant to merchant, but also from consumer to consumer and regulatory to merchant.

The requirements for refunds, have changed from 1 point in the 14th code to a proposed 5 points in the 15th code. Whilst the expansion on some of the issues around refunds are welcome, in particular in relation to a timescale for which they needed to be provided once agreed, it does seem that the PSA have overly complicated the requirements in this regard.

Surely, if better compliance is the main aim of the 15th Code, keeping the requirements clear and concise would be more helpful as they are easier to understand and easier to comply with.

The 15th code could be condensed into one main point with bullet points confirming the requirements which would be much simpler for providers to understand.

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

The research done behind the initial refunds consultation, which you state is included in this consultation and discussion document, cannot be considered credible information to base such a large change in regulation on. As previously brought up, by industry in responses to the Refunds Consultation, the Future Sight research paper which was published and referenced to in the Refund Consultation was not objective, but used the information gathered to make the industry look bad. One example of this being the use of the figures in Figure 32 of the research document. The use of the 'middle' answer is used to bump up the statistics for both non-phone paid and phone-paid but in opposing arguments. How can a new section of the code be drafted when it is based on flawed research? Therefore, when you state in the discussion document, that the new standard is effective because it has taken into account 'additional intelligence and insights obtained through other sources, in the most proportionate way. This includes consumer complaints, consumer research and our recent refunds

consultation.’, this would not be an accurate statement as the consumer research is clearly not objective.

In January 2020, the PSA, notified the industry of a consultation in relation to refunds. As stated in the discussion document, 12 responses were given to the PSA, yet these were never published, in line with the PSA’s own requirements under consultations. Whilst we appreciate that the consultation was not completed in its usual form, and went on to form part of the code 15 consultation, it is surprising to need to ask for the responses to be published, some of which it is noted are still missing. This is not in keeping with the PSA’s test of ensuring that there is transparency when drafting the new code.

The Refund Consultation document, does not ask at any point about a no-quibble refund policy. However, in the Early Stakeholder Engagement discussions in relation to the code, ‘no quibble’ refunds were a topic to be discussed. Was the idea of ‘no-quibble’ refunds brought to the table after the Consultation was published, and therefore when the consultation was tabled, in order to get this additional point considered within the new 15th code. This was not put to the industry as a whole, and surely such a large change to regulation, which would require no-quibble refunds should have been consulted on at the same time as the other refund guidance? Did the PSA choose not to include this and then try and get it into the new code in a back handed way without the industry having a chance to respond properly on this point under the Refunds Consultation? It is however noted that ‘no-quibble refund’ appear to have been dropped at some point and are not included in the draft 15th code, which we support.

Whilst we are supportive of the increased definition within the code which includes the use of time scales for people to adhere to, there still remains some ambiguity, particularly in relation to 3.4.16 which states:

“3.4.16 Merchant providers must ensure that consumers who pursue a complaint and/or seek a refund are not required to expend undue time, effort or money in doing so.”

There is no definition of what the PSA would consider undue time, effort or money. This again is subjective, and what one person would consider onerous, another would not. Given the introduction of 3.4.12 which requires refunds are given promptly and in a method that is easily accessible for the consumer, surely it would not be considered an easily accessible manner if it required undue time, effort or money, so therefore this is just an expansion of the previous point and therefore not required. The chairman’s forward to the consultation clearly states that the 15th code is ‘simplified’, and the document goes on to state that the PSA want to deliver a code that is “simpler and easier to comply with”. This is evidences that this section of the code has not been drafted with ease in mind, but is making the same requirement over several points, so is not clear and concise.

3.4.1 of the draft 15th code requires that “complaints are responded to and resolved promptly.....”. We are unsure how the PSA can require complaints to be resolved. The definition of ‘resolved’ from the Cambridge English Dictionary is ‘to solve or end a problem or difficulty’. We are unsure who gets to say that the complaint is resolved. What happens if the merchant considers it resolved, and

the consumer not? Some complaints are never resolved as the two parties cannot agree, and without the requirement for ADR, where would a consumer go? The PSA's website clearly states that they are a regulator and not an ombudsman, so if a consumer is looking for a refund, where no breach of the code has been made, and they cannot seek resolution of their issue with the merchant, where do they go? They have no place for resolution, so in this instance the complaint would never be resolved, resulting in the merchant now breaching the code. This appears to be a case of the PSA trapping merchants into further investigations, by forcing them into breaching the code where they cannot reach a resolution with a consumer.

It was noted from the discussion document that in the Early Stakeholder Engagement, the topic of ADR was raised, which was based around increasing take-up of ADR schemes. There are numerous responses in support of ADR, including "that there is a place for it in the market", "that ADR can play a role in the case of complex complaints" and "that it does have an important role to play". However, the PSA fail to even address the point of ADR in their assessment of inputs received and there is no mention or provision of it in the draft 15th Code. The lack of a provision for ADR, means that the PSA are forcing merchants into breaching the code in relation to 3.4.1 where they cannot resolve a complaint. This is not effective, fair or transparent regulation.

On the whole, the introduction of timelines into the standard will benefit both the merchant and consumers, there is no doubt about this. Providing clear time lines manages the expectations of everyone within the value chain. It would be nice to see the PSA set out and use these sorts of time line when dealing with investigations or even communications with merchant, L1/2 providers and consumers.

Draft point 3.4.2 requires customer care facilities to be available between specified time. A customer care facility is not defined, so we presume that given the PSA's own customer care facilities, this is not required to be a phone line, but instead can be an online support forum, whereby a query is submitted via an online form. Would it also not be reasonable and proportionate for customer service facilities to only be required when the service was actually active. For example, if a merchant was providing a premier league goal alert service, would they still be required to provide a customer service facility, when there is no actual service running during the off season.

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?

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?

No. This point relates to law that all firms have to comply with anyway. The PSA have already stated that they do not intend to include elements of regulation in the code where service types are required to comply with these elements under other regulation e.g. Gambling Commission, but this is exactly what it appears to be doing here.

Also, there is no definition of a vulnerable person. This can be a very fluid term as people's vulnerability can vary from situation to situation and from time to time. There is too much ambiguity around this term.

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?

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?

The standard itself appears to be a statement rather than a standard.

Again the PSA seem to have expanded a point which is law and therefore made the code unduly lengthy with requirements that are not needed.

3.6.2 requires that the merchant keeps evidence of consent to contact the consumer. There is no time scale to this requirement. How long does the consent need to be kept? Consent cannot be kept indefinitely, especially if the consumer is no longer a customer for example or where the service ceases to exist anymore.

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?

Q26 Do you agree with our assessment of the proposed new prevent 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?

It is noted that the PSA have removed the requirements specifically in relation to the protection of children. It is unclear why the PSA would remove such requirements, when they have been so overly prescriptive in other areas of the code, and this is such an important point to be clear about.

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?

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?

Whilst the introduction of this standard is welcome, it does not go far enough in some respects.

The PSA are the gateway to the Premium Rate Industry, and more should be done by them to prevent people entering the market where they have poor intentions and disregard for the market and consumers.

Whilst the provision of information is an important exercise at the outset of registering providers, the PSA need to go further to verify the information given them, as they require merchants to do so for their own suppliers.

At the present time, it is entirely possible to register with the PSA with any fake details, and gain access to registration details of hundreds, if not thousands of companies and individuals, whose personal details are published, without even verifying an email address.

The PSA do not meet their own test here on the principles of the code. This standard is not effective as it prevents no one from entering the marketing, it is not balanced as it is clearly sided so that the PSA do minimal work and all of the verification is left for merchant to undertake at their own cost, and it is not proportionate to expect one party to undertake no due diligence and yet someone else to undertake an onerous amount.

Q29 Do you agree with our proposal to introduce a new DDRAC standard? Please provide an explanation as to why you agree or disagree?

Q30 Do you agree with our assessment of the proposed new DDRAC standard against the general principle which we set out in the discussion document? Do you have any further information or evidence which would inform our view?

In March 2020, the PSA issued a statement which said that the existing DDRAC requirements were adequate and therefore the consultation was to be put on hold. If the PSA are openly saying that the requirements under the 14th code are adequate, the addition of such exhaustive measures, which the PSA themselves are unwilling to comply with, are unfair on PRS providers and being implemented on a 'change for changes sake' basis.

Whilst the importance of sufficient due diligence is noted, this has to be proportionate to the contractual relationship. The standard, requirements and Annex are too onerous and go too far and are very over prescriptive. If the PSA are not willing to complete such lengthy verification of providers wishing to enter the market, why should merchants be required to perform such onerous due

diligence on the people that they contact with. Whilst a certain level of due diligence is absolutely required, this should be proportionate and on a risk based approach.

For example, the Anti-Money Laundering Regulations, require a risk based approach to things and the level of verification required of an individual is dependent on a certain criteria, including how well know the person is, have you met them and considers their jurisdiction etc.

The PSA should have taken a much more risk based approach to this standard, allowing merchants to assess the risks posed by the party and then undertake appropriate due diligence accordingly.

The term verify is not defined in the code either. There are numerous ways in which someone could verify something, but the PSA do not state the standard in which they require here.

When requiring to verify the names and contact information for all relevant persons with significant influence or control over the party, the PSA do not define relevant nor put a limit on the number of people. You could have a company with numerous people to whom this point could apply, and there the work involved in complying with this could be extremely costly and timely. A limit to the number of people required to be verified should be included in this requirement to make it more proportionate.

This standard is not effective, proportionate or transparent because the PSA are asking the value chain to do something they are unwilling or unable to do themselves.

Q31 Do you agree with our proposal to introduce a new systems standard? Please provide an explanation as to why you agree or disagree?

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?

No.

The requirements in this standard do not account for a small merchant, who cannot afford to employ someone who is "suitably qualified" but instead use platform from a reputable provider. In this instance are they expected to employ such a person?

The same also applies to 3.10.4, where someone chooses to use a platform from a reputable provider e.g. their aggregator, is it the responsibility of the platform provider to get platform tested annually, or does each merchant who uses the

platform need to? if so, then obviously one platform is going to be tested multiple times, which is not cost effective or efficient.

3.10.3 states that the PSA may update the technical standards from time to time, which is completely appropriate and needed to ensure that the standards stay up to date and relevant. However, this requirement goes on to state "The PSA will provide notice of any such updates by publishing them on its website no less than 30 days before any updated technical standards come into force". 30 days is not sufficient time given the nature of this standard. technical updates often are timely as well as costly, with new providers, software or even hardware being required which all takes time to arrange and put in place. 30 days is not sufficient time to put these types of things in place effecttly and without rushing, which could potentially cause a breach of the code elsewhere or consumer harm. These types of notices should be sent to all PSA registered companies, with the details supplied for the responsible person, to ensure that the PSA are making every effort to enable firms to comply with the updated requirements.

3.7 of the technical standards requires the use HTTPS connections, where currently the most commonly used type of connection is SMPP. At this present time only one UK MNO requires the standard of HTTPS, which means, given these rules, all networks will have to change its connections with all of its aggregators, merchants and suppliers. The PSA do not appear to have taken a balance approach to this, but instead come up with a standard and not considered what the industry are currently using.

Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.

Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.

Q35 Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.

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?

No. The PSA are a regulator and not a supervisor. These are very different roles, and the PSA seems to be abusing its power as a regulator to control the market more and more.

The biggest issue with this requirement is that a regulator should regulator the people in the market, which includes only allowing those credible into the market by conducting due diligence at the outset. The PSA are completely missing the

point about being a regulator here by allowing anyone in, and then just asking for onerous, over the top reports constantly.

The supervisory elements of the code are not transparent and proportionate.

4.4.3 and 4.5.3, both of which are reporting requirements, are worrying additions to the code. Both of them are open ended reporting requirements which mean that firms could be required to constantly provide onerous reports to the PSA for an undefined amount of time. There should be a limit on these requirements so that the PSA cannot just use these powers to constantly gain information on the market from firms, where there is actually no evidence of any potential or actual breaches of the code.

Some form of annual report would be a great way for information to be communicated with the PSA on complaints and compliance, and could be followed up with a meeting to discuss any concerns. This would allow the PSA to review data that is relevant to compliance, and assess whether things like complaints etc. are going down, as well as provides an open door for proactive discussions with firms around compliance issues, without onerous reporting requirements being put in place for an unknown amount of time.

This level of supervision on the industry is not proportionate. The PSA have increased their requirements so that they can monitor firms more, yet in the Annual Market review, report that complaints have come down. This is therefore not proportionate or transparent. If complaints are down then there is no need for this onerous supervision, which means the PSA are not being transparent about why they are introducing it.

Q37 Do you agree with our proposed approach on engagement and enforcement? Please provide an explanation as to why you agree or disagree.

The draft 15th code, does not include in it any timescales for the PSA to comply with whilst dealing with any engagement or enforcement action. The PSA have a history of requiring firms to respond to their demands in unreasonable timescales, but then taking months to provide any sort of response to these enquiries. For effective engagement and enforcement to work the PSA has to be willing to work to some sort of service level agreement. When taking enforcement actions, particularly but not limited to, when there is a withhold in place, the PSA needs to take action quickly. If they are taking the action because they believe consumer harm has or is being done, then the quicker they respond the better for everyone. If the new approach is so effective then the PSA will not object to putting such timescales in place. Timescales should run from the issuing of the initial request for information, and should be limited in the time to conduct all enquiries, with a deadline for a final decision from the PSA and the matter to be closed.

5.1.8 of the draft code states that ‘the PSA may at any time reconsider a case or matter in respect of which it has previously decided not to take further action.’ This requirement is wholly unreasonable and unfair on those the PSA regulate. How can the PSA even begin to argue that this is effective, balanced, proportionate and transparent regulation? If the PSA decide that there is no case to be had on a matter, their decision must be binding, and they cannot at a later date decide to take further action. This requirement also, evidences that the PSA do not consider that their investigations are adequate, as such requirements would not be needed if they were confident in their ability to conduct thorough and meaningful investigations.

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

It is noted from the discussion document of the PSA's intention to offer a discount to fines issued where early settlement is made. This appears to be a way for the PSA to force providers into early settlement and agreement to breaches in order to lessen the financial burden on them. If you don't agree at the first stage, then it costs you more.

This is neither transparent or an effective way of regulation, where you are rewarded for agreeing to regulator sanctions for financial gain.

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.

Whilst it is appreciated that fines are not collected sufficiently by the PSA, and revenue withhold being the obvious way to increase this, it does not take into consideration that consumer refunds must come first.

Allowing the withhold to be put in place earlier in the enquiries and engagement stage, may prevent a firm from being able to process refunds to consumers who have been effected.

An additional requirement should be included under section 6.2 of the code to include the need to ensure that withheld funds are first used for refunds, before being used as security for PSA fines and admin fees. Consumer refunds are paramount and a deadline of 12months should be in place to establish that all refunds are completed, before the PSA can use any remaining withheld funds for fines and admin fees. This timeline, should be able to be extended given any unforeseen delays by the PSA in the processing of matters following the adjudication.

Have the PSA taken legal advice on this point, where a company enters administration and there is a withhold in place? Those funds should be given over to the liquidators to be dealt with under the liquidation rules, and should not be

<p>held for payment of fines, which have not yet even been adjudicated against, above other creditors. It could be envisaged that this could be a point that could face a legal challenge.</p> <p>Again, there is no timescale to this either, so the withhold can be in place for an indefinite period of time, which could cause the company to go under in any respect.</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>No. The instances where the PSA seem to be suggesting that this could be used, would be a prime example of issues that could be dealt with under the new warning letters. It is unclear in what circumstances a 'single decision maker' could be used.</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>No. Oral hearings are an effective way to have open and honest communications with providers, and the PSA should not be looking to limit the use of these, but should instead be looking to make better use of them which would reinforce effective, transparent and proportionate regulation.</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>This point goes back to the previous points made about the PSA's lack of verification for entrants to the market. If the PSA undertook adequate due diligence on the people wishing to register with them, then there would be less cause for these types of sanctions to be put in place.</p> <p>Whilst there is a place for sanctions against people who continue to breach the code and cause consumer harm, the PSA need to do more to prevent them from entering the market in the first place.</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>No. This again appears to be the PSA abusing their power to gain further information from the market, which they are not entitled too. The requirements lack clarity and implies you have to keep everything in relation to a service, forever as there is no end date to the need for retention. Some of this information</p>

under the 15th code, does have a timeline placed on it, which means that the merchant would not have the information that is being requested, and would therefore be forced into breaching the code.

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?

No. The general approach taken by the PSA under the draft 15th Code is overly prescriptive, unbalanced in favour of the PSA and is not transparent. The PSA are proposing excess reporting where no breach has actually been identified, and it is not transparent what or how they will use this information, but instead reserves their right to do what they like off the back of it.

The PSA needs to build a trusting relationship with the providers in the market, and this can only be done through effective open communication, which cumbersome reporting is not. This would also include the PSA requiring the same standards from its organisation as those it regulates. Putting timescales on their part of the process so that they too can be held accountable for their part to play in the value chain. When someone seeks compliance advice from the PSA, they are seeking help and support, and would not expect to then be able to be reprimanded for complying with this advice at a later date if the PSA change their mind on it. If someone is openly asking for help, the PSA should embrace this, and then stand by the person they have supported in relation to that point.

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?

No comment

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?

Whilst the terminology appears to be appropriate, it could go further to clarify the others included in the value chain. For example, definition could be given around a third party provider, third party verification providers, refund providers etc. Intermediary providers should be split down as it is a very broad definition. For example, L1's and sub L1's work in many different way and may not fit under one banner.

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.

The only issue with this particular aspect of the code is that it could be outdated very quickly as it does not take into account inflation, nor does it consider the value of the cost or service it is related to either.

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.

No. The PSA appear to be adding this into the code so that they can make changes as and when they wish without the need to seek approval from Ofcom or consult with the industry on the matters it effects. There should be some procedure around the announcement of the proposed changes so that Ofcom, industry and consumers have a chance to have a say on it before it is changed.

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.

This standard does not reflect a change to one based on standards. The standards stated are outcomes, and the requirements appear to be indicative behaviours. This is a prescriptive code, but only one way. If the PSA are setting standards for the industry, then they must be willing to follow the standards themselves. The code does not seem to include any standard or requirements for the PSA themselves to comply with to ensure that the whole value chain is working to ensure the prevention of consumer harm, and to improve consumer confidence.

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.

The prevention of harm starts with ensuring adequate due diligence is done to ensure those entering the market are reputable providers and will not bring the industry into disrepute. The PSA should be increasing their own requirements on DDRAC to ensure this, and set standards for them to follow.

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.

The draft 15th code does not appear simpler and easier to comply with. It is 104 pages long, almost double the existing 14th code. It is unclear how such a larger code would be simpler and easier to comply with.

There are multiple requirements within the code which are already covered under law, and therefore are not necessary in the code, as you state in relation to specific service types such as gambling and the gambling commission.

The draft 15th code, also makes the same requirement, over several points in a number of cases, which again is not clear and concise, but can be confusing and difficult to understand.

The code seems to contradict itself at times, which means that should a PRS provider comply with one requirement it would breach another. Is this a deliberate ploy by the PSA to make use of their funding by fines regime, by forcing people into breaching the code.

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.

The PSA seem to be introducing more powers for them to intervene with providers, and increased sanctions, but do not seem to be increasing their requirements for verification of people entering the market, which would negate the need for increased investigation and sanction powers.

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?

No comment

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?

No - any investigation which was ongoing at the time that the 15th code come into force, should be completed under the procedures of the 14th Code. Only new investigations which are launched after the 15th code has been implemented should be subject to the procedures under that code.

Breaches found against the 14th code should be dealt with against the procedures of the 14th code and not the 15th code. If a case is brought in an English court which relates to a crime committed 30 years ago, the court can only punish

someone based on the laws which were in place at that time. For example, if someone under the age of 18 commits a crime, but doesn't face prosecution until they are of legal age, they are still tried as a juvenile as that is what they were when the crime was committed. The same rules should be applied by the PSA to their approach to the 14th and 15th code investigations and adjudications.