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Phone-paid Services Authority
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By email only to: consultations@psauthority.org.uk

Dear Barbara,

Phone-paid Services Authority's (PSA) consultation on a new PSA Code of Practice (Code 15)

Introduction

1. We welcome the opportunity to comment on the PSA's proposals for the new Code of Practice. This response has not been marked confidential in its entirety, however, the sections highlighted in yellow must be treated as such and are not for publication.
2. We are Virgin Media O2 (VMO2), a joint venture of Telefónica S.A. and Liberty Global. O2 is a leading provider of retail mobile services and one of four mobile network operators (MNO) in the UK. We offer communications solutions to over 33 million consumer and corporate customers through our O2 and giffgaff brands. We are also the MNO of choice for a number of mobile virtual network operators, including Sky and Tesco Mobile.
3. Additionally, we play an important role in the provision of phone-paid services. We are a provider of technical platform services that enable intermediary providers, and by extension merchant providers, providers to deliver phone-paid services to customers. We engage with both intermediary providers and customers, offering a billing facility by which our O2 customers can pay for digital content, donate to charities or cast television programme votes by charging the costs to their mobile bill. This additional revenue is passed on to intermediary providers (who in turn pass on the revenue to merchant providers).
4. We are responding to key areas of interest and/or concern which we consider will affect VMO2, rather than responding to each individual question posed within the consultation, as we believe this will be more constructive.

5. VMO2 welcomes the review of the regulation taking into consideration the significant changes that have occurred in the PRS market in the last 10 years. We are receptive to the standards approach and broadly support the proactive approach to regulation and enforcement.

Subscription 12 month re-authentication

6. Section 3.3.13 of the Draft Code 15 states “For all subscription services, the consent required to be established through an authentication method set out under paragraphs 3.3.8 and 3.3.9 above must be obtained by the merchant provider every 12 months.” VMO2 strongly believes introducing this requirement will be detrimental to the PRS market and that proactive approaches to the customer experience from both the MNOs, the PSA and industry over the last 24 months has reduced the customer harm this section intends to address.
7. In May 2019 O2, following customer feedback, introduced a pin into the payment flows for all online services. [REDACTED]
[REDACTED]
[REDACTED] Since November 2019, and the introduction of special conditions, all providers have adopted a similar flow for subscription services and the complaint levels have remained consistently low. The PSA should consider effective mechanisms that have already been implemented and consider whether these could be taken into account when stipulating what practices provider should adopt as part of this requirement.
8. We believe introducing this requirement would disadvantage customers who would no longer be presented with Charge to Mobile as an alternative payment mechanism on these subscription services. Therefore, we believe that introducing this would be neither fair nor proportionate.

Supervision

9. VMO2 notes the PSA’s proposed new supervisory functions, in particular the provision to carry out thematic reviews into technical matters relating to MNO systems.
10. Under section 4.4 Audits, of the Draft Code 15, the PSA set out requirements for audit reporting. In particular section 4.4.4 states “The person(s) making the audit report must be person(s) nominated or approved by the PSA prior to the audit taking place. In order to be nominated or approved by the PSA, such person(s) must appear to the PSA to have the knowledge, experience and skills necessary for the task of conducting a reliable audit”.
11. It is unclear under what circumstances the PSA would appoint an individual to make the audit report in lieu of a nominated individual from the organisation submitting the report. There are no indications whether the PSA reserve the right to decide whether it is one or the other or whether it is *if* a suitable individual cannot be identified.

12. Where the PSA nominate an individual, it is unclear whether this provision effectively requires the PSA to contract expert witnesses for every thematic review. Dependent on the response, this will not meet the objective of being cost effective and proportionate. From a fairness perspective, the individual would need to be agreed by both parties, particularly as the PRS provider would be directed to pay any “reasonable expenses incurred by the PSA in relation to an appointment made under paragraph 4.6.1(b)”¹. MNOs could demand to appoint the relevant skilled person to complete the reports and would need them to be limited to relevant PRS systems. There is no clear framework or guidance as to what the PSA considers “reasonable” and whether the amount would not exceed a certain amount.
13. The PSA state that thematic reviews would be required “if [they] suspect or become aware of an issue occurring in the market, [they] want to be able to obtain the information required to understand the issue and to enable [them] to take appropriate supervisory or regulatory action aimed at the relevant sector or part of the market”². VMO2 considers that alongside this requirement, the PSA should provide an indication of what the particular triggers would be to instigate such a review, in addition accompanying parameters and KPIs. Whether intended or not there is a presumption of ‘access all areas’ including MNO systems and platforms that have no involvement in PRS.
14. The thematic review monitoring method is very “broad brush” and lacks specificity and, in turn, regulatory certainty from an MNO perspective. A clearer indication of what would prompt a thematic review and also a pre-arranged visit to the PRS providers’ premises is necessary.
15. There is no indication, of what the impacts are of failing to provide consent to the request to conducting a pre-arranged visit.

Due Diligence, risk assessment and control (DDRAC)

16. VMO2 notes the provision to cascade the DDRAC obligation through the full value chain in section 3.9.11 of the draft Code 15 which states “Network operators and intermediary providers must take reasonable steps to satisfy themselves that any contracting party involved in the provision of a PRS meets the DDRAC Standard and Requirements in respect of any other person in the value chain with whom that party contracts.”

¹ Paragraph 4.6.6 Draft Code 15

² Page 110 paragraph 407 Consultation on a new PSA Code of Practice (Code 15)

[REDACTED]

18. VMO2 would like confirmation that we are only to be held responsible for those we are directly contracted to within the value chain and amendments are made to the relevant clauses to ensure clarity in the proposed code.
19. Additionally, section 3.9.13 of the draft Code 15 states “Where a network operator contracts with a PRS provider which is acting in the capacity of both an intermediary provider and a merchant provider, the network operator is responsible for undertaking DDRAC in respect of that provider and its services”. VMO2 believe that our current process adequately covers our responsibility even with respect to App Stores where we take reasonable steps at set up and on an ongoing basis. VMO2 requests that the PSA recognises that no further steps would need to be carried out in this respect.

Complaint requirements

20. The definition of a complaint in section D2.17 alongside section 3.4 on Customer Care may change the existing complaints process which has been in place for many years at the MNOs. At VMO2 our process is to ensure the customer has the information available to them to be able to contact the merchant directly should they have any query or complaint. The merchant is best placed to handle these queries or complaints because they have all the specific information available to them regarding the charges.
21. Section 3.4.4 of the draft code states “The PRS provider in the value chain with contractual responsibility for customer care, whether this is the network operator, intermediary provider or merchant provider, must respond to consumers who contact them promptly and in any event within five working days.” In line with our current complaints process VMO2 requires clarity that the five working days would begin from receipt by the relevant merchant provider.
22. VMO2 would suggest a two-stage process, allowing the relevant merchant provider to rectify the issue with a customer, which would initially be considered an expression of dissatisfaction. Should there continue to be an unresolved issue then a formal complaints process can be initiated which can include a formal escalation to the MNO. This also gives flexibility to customers who have their queries answered adequately at the outset and do not want to be part of a formal complaints process.

Registered name of service

23. In Transparency (Section 3.2) and Organisation and Service Information (Section 3.8) of the draft Code 15, the PSA proposes that the name of the service as registered with the PSA should be available to the consumer throughout various parts of the payment flow and customer care.
24. VMO2 welcomes providing further clarity for customers to make fully informed decisions when purchasing PRS, however, with section 3.8.15 constituting a breach of the code for failing to comply with any requirement within this clause, it does not appear that the PSA has considered the impact of this on the way Mobile Networks currently display this information on their bills and websites. There are specific limitations to what can be presented on the bill however, VMO2 has alternative methods to inform their customers, such as the Premium Service Checker which provides further detail to the information presented on the bill.

Verification of registration process

25. We believe that for effective, proactive regulation, the PSA needs to be able to verify the information provided to them as part of the registration scheme. Currently, registration to the PSA is used as part of the ongoing Due Diligence processes carried out by VMO2 and other parts of the value chain. Having this information verified will only enhance the existing process allowing mobile network operators and intermediary providers to compare this to the information they gather as part of the Due Diligence process.
26. This also has the additional advantage of being able to easily identify rogue players in the market and prevent them from starting PRS services that could go on to cause consumer harm.
27. However, VMO2 would like the PSA to acknowledge that there would be significantly increased burden on the Mobile Operators to be responsible for gathering and verifying the information in Annex 2. For example, Annex 2.3 (I) states “verified names and addresses of all individuals connected to the intermediary provider, merchant provider and/or contracted third party who receive any share of PRS revenue gathered.” For larger intermediary providers or merchant providers this would not be feasible and onerous. The current Due Diligence process verifies the names and address of key personnel who work specifically on the PRS in question, which we consider to be sufficient.

Yours sincerely,

Sophie Andreou
Regulatory Manager
Virgin Media O2

Annex

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.	VMO2 welcomes the PSA's review of the current regulatory framework and the proposed approach to regulatory Standards and Requirements will provide greater clarity. However, we would like to reiterate our previous statement that such an approach should be treated with caution as an overly prescriptive approach to regulation could have unintended consequences that might stifle innovation and undermine attempts to raise market standards.
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.	VMO2 broadly agrees with the proposed regulator approach to service-specific requirements allowing for simplified and reduced regulation.
Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.	As the consultation of guidance will follow the publication of the PSA's statement on Code 15, we cannot comment on whether we agree with the proposed approach.
Q4 Are there any areas where you consider that Guidance would assist with compliance with the Standards and Requirements?	As the consultation of guidance will follow the publication of the PSA's statement on Code 15, we cannot comment on whether we consider there are other areas in which Guidance could assist.
Q5 Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.	We agree with the proposed regulatory approach to compliance support as this is in line with the current approach. However, we suggest that this is provided in a timely manner to help assist new entrants to the market, whether it is a new merchant provider, a new service or a new category of service.
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.	As the consultation of best practice will follow the publication of the PSA's statement on Code 15, we cannot comment on whether we agree with the proposed approach. We do agree that it should be considered that a merchant provider has achieved the expectation of best practice.
Q7 Are there any areas where you consider that Best Practice information would be helpful?	As the consultation of best practice will follow the publication of the PSA's statement on Code 15, we cannot comment on whether we consider there are other areas in which best practice information could assist.
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.	VMO2 generally agrees with the regulatory approach relating to supervision and verification but please refer to the Supervision section above, paragraphs 9-15 for further detail.

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.	VMO2 broadly agrees with the proposed approach to Code Compliance: engagement and enforcement.
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.	Although VMO2 agrees with the importance of flexibility regarding regulation through bespoke or general permissions we feel that this could potentially cause confusion for some services or service categories, if dealt with on an individual basis.
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?	Please see response to question 10.
Q12 Do you agree with our proposed regulatory approach to prior permissions? Please provide an explanation as to why you agree or disagree.	VMO2 broadly agrees with the proposal to continue the existing prior permissions regime under Code 15.

Standards and Requirements

Integrity

Q13 Do you agree with our proposed Integrity Standard and Requirements? Please provide an explanation as to why you agree or disagree.	VMO2 agree with the proposed Integrity Standard and Requirements
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?	VMO2 agree with the assessment against the general principles

Transparency

Q15 Do you agree with our proposal to introduce a new Transparency Standard? Please provide an explanation as to why you agree or disagree.	VMO2 agree with the introduction of a new Transparency Standard
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?	VMO2 broadly agrees with the assessment of the Transparency Standard, however with regards to effectiveness of the referred to registered name, please refer to paragraphs 23-24

Fairness

Q17 Do you agree with our proposal to introduce a new Fairness Standard? Please provide an explanation as to why you agree or disagree.	Although VMO2 agrees with the introduction of a Fairness Standard, we strongly disagree with part of the assessment, specifically on the introduction of a 12 month re-authentication process for subscription services. We consider that further discussion is necessary between the PSA and industry to reach a workable and practical solution going forward.
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?	VMO2 strongly disagrees with part of the assessment against the general principles, specifically with regards to proportionality. Please see paragraphs 6 -8 for more details.

Customer care

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.	VMO2 broadly agrees with the proposal to introduce a new Customer Care Standard.
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?	VMO2 has some concerns regarding the assessment of the proposed new Customer Care Standard against the general principles. More details can be found in paragraphs 20-22.

Vulnerable consumers

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.	VMO2 agrees with the proposal to introduce a new Vulnerable consumers Standard.
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?	VMO2 agrees with the assessment of the proposed new Vulnerable consumers Standards, but would like the PSA to reasonably consider the practicalities of identifying vulnerable customers.

Consumer privacy

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.	VMO2 agrees with the proposal to introduce a new Consumer Privacy Standard.
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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?	VMO2 agrees with the PSA assessment of the proposed new consumer privacy standard against the general principles.
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Prevention of harm and offence

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.	VMO2 agrees with the proposal to introduce a new prevention of harm and offence standard.
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?	VMO2 agrees with the assessment of the proposed new prevention of harm and offence standard against the general principles.

Organisation and service information

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.	VMO2 broadly agrees with the proposal to introduce a new Organisation and service information Standard, ensuring further clarity for consumers.
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?	VMO2 has some concerns on the assessment of the new Organisation and service information standard with more details in paragraphs 9-15.

Due diligence, risk assessment and control

Q29 Do you agree with our proposal to introduce a new DDRAC Standard? Please provide an explanation as to why you agree or disagree.	VMO2 broadly agrees with the proposal to introduce a new DDRAC Standard.
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?	VMO2 would like to highlight some concerns regarding the assessment of the new DDRAC Standard against the general principles in paragraphs 16-19.

Systems

Q31 Do you agree with our proposal to introduce a new Systems Standard? Please provide an explanation as to why you agree or disagree.	VMO2 broadly agrees with the introduction of a new Systems Standard, ensuing continuity of existing processes.
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?	VMO2 has some concerns on the assessment of the new Systems standard with more details in paragraphs 9-15.

Supervision

General approach to supervision

Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.	VMO2 has some concerns regarding the proposed general approach to supervision, please see paragraphs 9-15 for more detail.
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Compliance monitoring methods

Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.	VMO2 has some concerns regarding the proposed monitoring methods, please see paragraphs 9-15 for more detail.
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Reporting and notification Requirements

Q35 Do you agree with our proposals on reporting and notification Requirements? Please provide an explanation as to why you agree or disagree.	VMO2 agrees somewhat with the proposal on reporting and notification requirements but had some concerns on the practicalities and potential burden this could impose on us.
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Assessment framework

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?	VMO2 has some concerns regarding the proposed supervisory function, please see paragraphs 9-15 for more detail.
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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.	VMO2 agrees with the proposed approach on engagement and enforcement, welcoming a more timely and effective process.
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Enhanced settlement

Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree. Strengthening the existing interim measures regime	VMO2 broadly agrees with the proposed changes to settlement, welcoming a more timely and effective process.
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.	VMO2 broadly agrees with the proposal to strengthen the existing interim measure regime.

Proceedings before the CAP and Tribunals

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.	VMO2 broadly agrees with the proposal but would like the PSA to ensure clarity and transparency regarding the “single decision maker” and their ability to be impartial with the relevant knowledge of the industry.
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.	VMO2 broadly agrees with the proposal but would like the PSA to ensure this does not limit a providers’ ability to be heard in a timely manner.
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.	VMO2 agrees with the proposal to expand the test for prohibiting a relevant individual from the industry.

Additional powers, responsibilities and obligations

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.	VMO2 broadly agrees with the proposal to strengthen and expand the PSA’s information gathering powers for the purposes of ensuring a more proactive and effective approach to regulation. VMO2 has some concerns which are detailed in paragraphs 9 -15. We also request more transparency in sharing information gathered to ensure that as a Mobile Network Operator we can also act in a timely and effective manner to any potential issues or incidents of consumer harm.
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Assessment framework

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?	VMO2 agrees with the provisional assessment of the proposals but have detailed concerns in paragraphs 9-15.
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Other general Code considerations

General funding arrangements

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?	VMO2 agrees with proposals on general funding arrangements, however we would seek more clarity from the PSA on the allocation of resources and review of the fine collections process to minimise the impact of the levy throughout the value chain and by continuing to enforce a ‘polluter pays’ process.
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Definitions

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.	VMO2 agreed with the amendments to current terminology to clarify the current phone-paid service value chain, however, please find in paragraphs 20-22 our concerns on the definition of a complaint.
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Specified service charges and call durations

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.	VMO2 agrees with the proposal to retain the rules of the current notice of specific service charges and durations of calls within Annex 1 of Code 15.
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Amendment of Code provisions

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.	VMO2 welcomes the ability to have flexible regulation ensuring timely and efficient responses to changes in the market. However, VMO2 disagrees with broadness of the amendment and the potential exposure to risk of inadvertently breaching amendments in the future.
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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.	VMO2 requests that the PSA consider the practicalities of implementing aspects of the new code across the value chain and that the impact is likely to be different for mobile operators compared to other parts of the value chain and vice versa. It is important the new code does not impose processes that are too burdensome to promote growth in the market.
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.	VMO2 welcomes a proactive approach to preventing harm but this can only be effective if the value chain is sufficient informed, and that the data presented to or found by the PSA is shared appropriately to enable intermediary and merchant providers to rectify any issues found.
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.	With the guidance and best practice information not currently available VMO2 cannot comment on the full impacts of the proposal to move to the new Code. VMO2 does welcome a move to simpler and easier to comply with regulation.
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.	VMO2 has no further information on impacts to the proposed changes to the investigations and sanctions policies and procedures.

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?	VMO2 agrees with the provisional assessment on the impact of the proposals in relation to equality.
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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?	VMO2 agrees in principle, however it needs to be made absolutely clear that contraventions which occurred under Code 14 would be treated as such and not under the new Code 15 (excluding enforcement guidelines), therefore clarity around what is meant by “procedures” is required in the statement.
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