

Consultation response form

Consultation on draft Code 15

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

Full name	Joanna Cox
Contact phone number	██████████
Representing	Self / Organisation (delete as appropriate)
Organisation name	aimm
Email address	██████████

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

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, please clearly identify where this applies along with your reasons for doing so.

Personal data, such as your name and contact details, that you give/have given to the PSA is used, stored and otherwise processed, so that the PSA can obtain opinions of members of the public and representatives of organisations or companies about the PSA's subscriptions review and publish the findings.

Further information about the personal data you give to the PSA, including who to complain to, can be found at psauthority.org.uk/privacy-policy.

Confidentiality

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

<p>Your details:</p> <p>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/your name/organisation name/whole response/part of the response (you will need to indicate which question responses are confidential).</p>
<p>Your response: Please indicate how much of your response you want to keep confidential.</p>	<p>Delete as appropriate:</p> <p>None/whole response/part of the response <input type="checkbox"/> (you will need to indicate which question responses are confidential in the table with questions below).</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/No (delete as appropriate)</p>

Your response

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

Introduction to aimm

The Association for Interactive Media and Micropayments (aimm) is the specialist UK-based trade organisation representing the commercial and regulatory interests of member companies involved in the interactive media and micropayment industries - where consumers interact or engage with services across converged media platforms and may pay for those services or content using a variety of micropayment technologies including premium rate. We are a not-for-profit organisation, funded by our members, run for our members. We create conditions for growth and protect the regulatory environment in which our members operate.

aimm has a membership that represents the entire value chain – from the providers and promoters of information to the network operators and technical service providers that deliver and bill them to customers. No other organisation has such reach or representation. Members of aimm work collaboratively to address key industry issues and to build a trusted business environment, encouraging investment, creating new opportunities and developing business partnerships.

aimm promotes excellence in the world of interactive media and micropayments. The purpose of aimm is to create an environment of consumer confidence and trust within which our members' commerce can flourish. aimm promotes and abides by the philosophy that consumers who are accurately and openly informed of the nature, content and cost of participation in an interactive

service experience should be perfectly placed to exercise their freedom of choice and thereby enjoy the most effective form of consumer protection.

Membership input

aimm welcomes the opportunity to respond to the 15th Code Discussion Document. To assist aimm in providing a comprehensive input to the Phone-paid Services Authority, aimm communicated with its Members in the following manner;

- Whole Membership workshops (moved online due to Government advice on social distancing)
- Membership sector specific workshops (moved online due to Government advice on social distancing)
- Written input from Members
- One-to-one telephone discussions
- Conference calls
- Individual meetings

Information gathered from all those who attended meetings/submitted feedback in all these ways is presented below.

aimm Members who operate in the Phone Paid Services markets are broadly split into seven categories although there is some overlap inside individual Member businesses.

- Fixed Line Networks who are often Fixed line L1
- Mobile Networks
- Mobile L1 aggregators
- L2 providers of traditional PRS services (fixed line, PSMS, and DCB)
- Broadcasters (who are often L2 providers)
- Charities and Charity enablers (who are often L2 providers)
- Industry Support companies

aimm sought responses from Members across the Network Operators, L1 community, L2 community, Third Party Verification and Anti-Fraud Specialists, Broadcasters and Charities and in this paper varying views are represented.

Some of aimm's Members may input their response directly to the PSA through their regulatory staff or regulatory representatives. Wherever possible, we ensure that views of members made through independent responses are in synergy with aimm's collective views.

As our response is guided and supported by Members' input, some views may be expressed that are not necessarily those of the aimm Executive or aimm's Board of Directors.

Timeliness of response

Due to the lengthy nature of the consultation, and the workshops, sector specific workstreams, individual meetings and written submission from Members spanning the value chain, aimm requested a sizeable extension to the deadline to ensure all aspects of response were fully available for the PSA to consider in our response. Unfortunately, as this extension was denied, we have had to focus on the

aspects of the draft Code which Members feel that they need more clarity on or have concerns with. This does not mean that there are not areas of the Code that Members have a positive view on, but simply that in the time allowed, we have not been able to capture those.

Response to PSA questions

Consultation questions	Your response
Proposed regulatory approach	
Q1 Do you agree with our proposed regulatory approach relating to regulatory standards and requirements? Please provide an explanation as to why you agree or disagree.	<p>Confidential? Yes/No (delete as appropriate)</p> <p>Members consulted are generally open to the principle of moving to Standards and there is support for that approach. However, what is concerning is that, within the Code and accompanying consultation document, there is not enough detail for a comprehensive decision to be taken on the Standards put forward. Without an understanding of how the Standards are likely to be applied, which we understand will be consulted on further in terms of Guidance and Best Practice, Members worry that there is a risk of subjectivity that could render them ineffective.</p> <p>Members consulted suggest that the entire Code should be available for review particularly when Guidance and Best Practice will inform the PSA's decision on how Standards can best be achieved, and when Members will be judged on how they apply (or don't) that Guidance/Best Practice. As such, this approach appears incomplete.</p> <p>Members ask that the PSA engage with Industry to understand the limitations that strict Standards may have on technical neutrality. If they are too specific, they could limit creativity and as such technical USP and commercial advantage. As such, care should be taken in the Guidance and Best Practice that supports Standards relating to this area. Again, without a view of this Guidance/Best Practice it is a difficult task to comment on whether Standards of this type are workable for Industry.</p> <p>Some Members assert that the problems being addressed in this Code have already been solved (for example with the comprehensive work carried out on the Security framework), so a Standards approach across the piece is not necessarily needed and in fact it</p>

	<p>is just a fuller Registration process (with verification) that is required.</p> <p>Additionally, Members suggest that the Code should be mindful of the language used throughout, as it does not appear in some areas to cater for App Stores or direct carrier billing (an example being the use of the word “numbers” in relation to services that use bill descriptors, such as in the carrier billing journey).</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>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted generally were open to the idea of Service Specific requirements, instead of Special Conditions, however, should there be Guidance or Best Practice that will inform those requirements, they would need to have visibility of that information before being able to definitively support them. As such, without sight of supporting documents to inform Members further, they cannot fully agree with this approach.</p> <p>Some Broadcast Members asked for an amendment for 3.13.3 which states:</p> <p><i>3.13.3 All valid responses for entry into a competition within a TV or radio programme that are sent in by consumers within the timeframe set out in the promotional material must be entered into the competition and given equal consideration.</i></p> <p>As the PSA are aware, not all entries that get sent in are actually received and paid for, due to latency issues or other technological issues that can occur. As such we would ask that the words ‘sent in’ are amended to something more accurate, such as ‘received and paid for’.</p> <p>At 3.13.5, the Code proposes that:</p> <p><i>3.13.5 Competition entries that are sent outside of the times outlined in the promotion must be considered invalid. Any consumer who sends such an entry must be informed that their entry is invalid and that they have not been entered into the competition. The consumer must also be informed whether or not they have been charged.</i></p> <p>This is not standard practice for all Broadcasters and as such has the potential to cause consumer harm where it is not commonplace. Some Broadcasters are very</p>

	<p>clear that unless, as an entrant, your entry is confirmed, then you have not been entered. To add complexity to this process for them is unnecessary and could cause confusion.</p>
<p>Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>No.</p> <p>Guidance has not been included in the document so it cannot be evaluated.</p> <p>The consultation document states that;</p> <p><i>“While the guidance will not be binding on providers, we will take into account whether or not providers have followed the guidance in considering any alleged breach of the Code and/or the imposition of sanctions.”</i></p> <p>This means that the value chain is being asked to agree to a Code that will be supported by Guidance that may be used against them with no transparency around what that Guidance will be.</p> <p>Equally there is concern around the interpretation/potential subjective application that could occur with individual personnel within the PSA Executive. A live example is verbal assurance which has been received from an individual Member around DDRAC being applied on the next contracted party in the value chain being at odds with another expressed view from the PSA that the onus would be on MNOs to ensure they have awareness via their own risk control of merchants (via monitoring houses) but with no clarity to the extent. This is one example demonstrating why clarity through Guidance is necessary before Industry can agree to Standards.</p> <p>As such, the approach is not transparent enough for Industry to be able to agree or disagree with its contents.</p>
<p>Q4 Are there any areas where you consider that Guidance would assist with compliance with the standards and requirements?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Without understanding the form that Guidance will take it is not possible to gain feedback on areas that would benefit from it.</p>
<p>Q5 Do you agree with our proposed regulatory approach relating to</p>	<p>Confidential? Yes /No (delete as appropriate)</p>

<p>compliance support? Please provide an explanation as to why you agree or disagree.</p>	<p>Members consulted agree that the current model of Compliance Support is due for a change and as such it is right to approach this in terms of making it more efficient and effective. It can currently be quite long-winded and not always useful. There is a strong sense that it is also subjective, and – due to the Outcomes based nature of the current Code- cannot be absolutely tied to an area of Code for absolute assurance. This means that advice could currently differ depending on who a Member reaches at the PSA when seeking that advice.</p> <p>Members feel it is imperative that Compliance Support offered be consistent and equitable for all parties. As such, if advice can be directly mapped to a Standard and that Standard can be utilised to provide the advice, then this is felt to be an improvement on the current process. It follows then, that if this is the case and if the Standards and Requirements are transparent and simple to understand, then the need for Compliance Advice should fall away.</p> <p>If that stage was to be reached, Members consulted feel it would be useful if - rather than giving Compliance Advice - the PSA were able to direct new Industry players, or those needing a little more direction, to the relevant Standard and offer a 'helpline' approach. This would be preferable to the current process, which is non-binding for the PSA, but can be used against a business who finds themselves in breach if they choose not to follow or who unknowingly misinterpret the advice they've received.</p> <p>Members request clarification on the use of Compliance Houses if the PSA are to take on that role. Given the PSA stated view that there are certain resource limitations to providing an Industry compliance advice service, can the PSA clarify what advice they're willing to provide merchants and whether this function would be adequate to replace any requirement for advice from compliance houses?</p>
<p>Q6 Do you agree with our proposed regulatory approach relating to Best Practice information? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>No. Best Practice has not been included in the document so it cannot be evaluated.</p> <p>The consultation document states that;</p>

	<p><i>“We propose to take compliance with best practice information into account when considering any alleged breach of the Code and/or imposing sanctions.”</i></p> <p>This means that the value chain is being asked to agree to a Code that will be supported by Best Practice that may be used against them with no transparency around what that Best Practice will be.</p> <p>As such, the approach is not transparent enough for Industry to be able to agree or disagree with its contents.</p> <p>Members also request clarification on the difference between Guidance and Best Practice and which takes priority?</p> <p>Members noted that Best Practice is to be developed with a “focus on actions and behaviours that go beyond compliance with the Standards and Requirements by setting out the most effective way of meeting consumer expectations in the provision of phone-paid services”. As such, Members ask whether consumer research has been carried out to set the expectations that form this Best Practice? If so, Members would need visibility of that research in order to assess whether this approach is sensible. If this research has not been carried out, then Members cannot agree with an approach based on consumer expectations for Best Practice that has no base in actual expectations.</p> <p>Members also urged caution in using consumer expectations for phone paid services which may be based on other payment mechanics. Such expectations may well be lacking the level of education required to understand the technical operation and the unique selling points of this Industry, such as what makes phone paid services convenient, secure and attractive. As such those expectations may be based on an alternative payment mechanic that has no parity to phone paid services and prohibitive for Industry growth.</p> <p>Additionally, Members noted that there are currently contradictions between MNO’s codes and regulation. This means Intermediaries can be forced into having to create multiple sets of approaches to one service which can be prohibitive to smaller businesses with a lack of</p>
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	<p>spare resource. They ask for assurance that the PSA are sure in taking this approach that they are not creating a Code that clashes and effectively works against existing satisfactory MNO's Code of Practice.</p>
<p>Q7 Are there any areas where you consider that Best Practice information would be helpful?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>It was suggested by one Operator Member that Best Practice could be visual examples of how services could be promoted to ensure consumers understand their contents/price. Price was considered by this Member to be an area where Best Practice would be useful and could be utilised to assist consumers greatly.</p> <p>It is worth noting that Best Practices can be at their most successful when worked on collaboratively. aimm has produced – and continues to produce – Best Practice templates for Members. We would be happy to collaborate with the PSA on Best Practice documentation to strengthen the engagement procedure with Members and the wider value chain.</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>Confidential? Yes /No(delete as appropriate)</p> <p>Members agree with an approach that prevents bad actors from joining the market, however some are sceptical about enhanced Registration when the existing Registration system is not entirely reliable and contains incorrect information.</p> <p>It was agreed that the approach should be equitable and achievable for all levels of business, to encourage new business and innovation.</p> <p>Additionally, Members require confirmation that the approach will also focus on PSA verification such as validating the details that are provided to them – so it is not just a tick box exercise.</p> <p>Generally, Members support an approach that strengthens DDRAC, however they request assurance that this requirement is also an obligation for App Stores. An example was given of malware – for instance – in Google Play, that could be attributable to the merchant, when it in fact could potentially be dealt with at an App Store level. DDRAC must be equitable and realistic at all levels of the value chain.</p> <p>Finally, Members questioned whether this approach has been costed out and seek assurance that it will not increase cost in an already commercially prohibitive regulatory environment.</p>

<p>Q9 Do you agree with our proposed regulatory approach relating to Code compliance: engagement and enforcement? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>No. The approach to Engagement and Enforcement was partly based on a recognition by the PSA that improvements were required on both sides to streamline the effectiveness of enforcement.</p> <p>Whilst there is a clear process in place for Industry, Members were very disappointed that there is no SLA of any kind mentioned as being applicable to the PSA. This does not feel like the right approach as it is not addressing both sides of the problem. Members also seek assurances about the level of skill that will be held by the proposed single person CAP and would like visibility of the analysis of qualifications/industry experience and knowledge held by the individuals concerned which led to this approach.</p> <p>Members also query whether the process detailed will actually save time, in terms of administrative burden on both the PSA and Industry and would like visibility of the impact assessment carried out in this area to inform this approach.</p> <p>Finally, Members are disappointed that the PSA have decided not to take on board any “lessons learned” from the research carried out by AIMM (through Fladgate) on the state of regulation in various territories. In particular it would have been encouraging to see a streamlining and shortening of the investigatory process through better stakeholder engagement.</p>
<p>Q10 Do you agree with our proposal to tailor our approach to regulation, including introducing Bespoke and General permissions as part of the draft Code? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members are surprised by this approach and unsure of its value in a Standards based Code. The downsides of an Outcomes based Code have been put forward by the PSA, and permissions that deviate from the Code because they meet the same Outcomes feels like it could be counter intuitive here.</p> <p>The need for clarity is absolute – and Industry must be clear on what exemptions have been granted and why, to avoid monopolisation by bigger brands who use their reputation to push exemptions that smaller businesses cannot benefit from.</p>

	Again, as these Permissions cannot be assessed as they are not available for scrutiny so Members cannot agree or disagree with this approach.
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>Certainty and clarity must be achieved by being totally transparent for every example of permissions including who they have been granted to and how that decision has been reached. Without having assurance on this level of detail in advance Members cannot agree or disagree with this approach.</p> <p>Members do note that the Society Lottery exemption took an extended length of time to be agreed and seek assurance that this is not the template that is proposed for future exemptions.</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>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted felt that this is another “add-on” which the PSA suggest they are trying to move away from. With Standards, Requirements, Guidance, Best Practice and Prior Permissions, Members wonder if any time or resource be saved with this new Code proposal?</p>
Standards and requirements	
Q13 Do you agree with our proposed Integrity standard and requirements? Please provide an explanation as to why you agree or disagree.	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members agree that Integrity is of the upmost importance for maintaining consumer trust in the market and generally agree with the proposed Standard. They do however seek clarity on what lengths are deemed reasonable to ensure compliance with 3.1.4 <i>‘PRS providers must not permit the involvement of a PRS provider in respect of whom a sanction has been imposed, so as to enable that person to operate in breach of that sanction’</i>. I.e. what lengths are providers expected to go to and how far back historically are they to investigate?</p> <p>Additionally, with regards to 3.1.4, the PSA must ensure that this sanction information is correctly associated with the provider in question in order that Industry know which providers have received breaches. There have been reported historical examples of PSA produced Due Diligence reports that have not been accurate and as such the value chain would not expect to be held accountable for a breach in this instance.</p>

Q14 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members generally agreed with the assessment of the proposed Integrity standard against the general principles set out in the discussion document. They do however seek assurance that the burden will not be increased - and as such become disproportionate – due to the level of work required to ensure compliance with 3.1.4.</p>
Q15 Do you agree with our proposal to introduce a new transparency standard? Please provide an explanation as to why you agree or disagree?	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members note that it is critical for consumers to fully understand all the necessary information required for them to make an informed decision to purchase or engage with a service.</p> <p>Some Members do ask for further details around the ‘timely’ element of this Standard as this is not covered in the subsequent Requirements.</p> <p>Members are concerned about the requirement at 3.2.5 which states:</p> <p><i>“Merchant providers are responsible for ensuring that any third party contracted to carry out promotional activity on their behalf complies with all Standards and Requirements.”</i></p> <p>Whilst it was agreed that in an ideal world this would be aspirational, the practicalities of ensuring that the promotional party complies with ALL Standards and Requirements may be overly onerous. This can be put in contract, but ongoing monitoring of all Standards and Requirements would simply not be possible. Members also ask for clarity around how this will apply to App Stores and the hundreds of services covered through those agreements.</p> <p>Members also ask for clarity around 3.2.6 which states:</p> <p><i>“Where a PRS promotes or is promoted by a non-premium rate electronic communications service, both services will be considered as one.”</i></p> <p>...specifically, they would like examples of where this would apply.</p> <p>Members note that the PSA have stated at 3.2.15:</p>

	<p><i>“The requirements set out at paragraphs 3.2.12–3.2.14 above do not apply to voice services.”</i></p> <p>Voice service providers seek assurance that 3.2.8 equally does not apply to their services, as these are technically impossible.</p> <p>At 3.2.2, some Charity Members are concerned in some instances about the requirements when promoting charity shortcodes in certain circumstances. For example, in a charity event where a runner is wearing a t-shirt that reads “Text Joanna to 12345 to donate £5” the inclusion of all the other text feels overly onerous and is unlikely to be read. Equally other events where shortcodes are printed on boats, bikes etc would have similar challenges.</p> <p>At 3.2.12, some Broadcast Members who run competitions are concerned about the following proposal:</p> <p><i>“3.2.12 The merchant provider must ensure that following a consumer’s initial sign-up to the service, and after each subsequent transaction (where the service is recurring), the consumer promptly receives a receipt, at no additional cost to the consumer.”</i></p> <p>However, at 3.13.4 they are told that:</p> <p><i>“3.13.4 Consumers whose entries are valid must receive confirmation that they have been entered into the competition.”</i></p> <p>Those Members seek assurance that they are not expected to send a receipt for each competition entry, which would not fit into a standard 160-character SMS response. In fact, the requirements might warrant around three reply messages to fit in the proposed receipting contents. This would cause consumer confusion and annoyance and deter competition entrants from revisiting the service.</p> <p>Members note that at 3.2.14 the PSA state that:</p> <p><i>“The receipt must set out: (a) the name of the service as registered with the PSA”.</i></p> <p>However, since App Stores do not register the names of their services with the PSA, Members ask for clarity on how this can be achieved? Additionally, it was noted</p>
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	<p>that – when using an App Store service – users can turn receipts off. If receipts are turned off, Members ask for assurance that they will not be penalised when receipting does not occur.</p> <p>Additionally, to this point, Members suggest that a universal API be made available for download from the PSA, so that names as registered with the PSA are easily accessible. It would be very easy for naming conventions to vary across Industry and as such there is a concern that Members may find themselves at risk of administrative breaches should typos or grammatical errors occur.</p>
<p>Q16 Do you agree with our assessment of the transparency standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Potentially effective Where technically possible, requirements designed to improve overall consumer awareness of phone-paid services and enabling them to make fully informed decisions about purchases before charges are incurred are useful in preventing instances of uninformed consent. Where not technically possible these are confusing and ineffective.</p> <p>Holding merchants accountable for all activities of the parties they contract under every Standard and Requirement is aspirational but may not be feasible. Members question how App Stores will comply.</p> <p>Potentially unbalanced Whilst these requirements have been largely adapted from current Code 14 requirements and providers should be familiar with the concepts and expectations regarding transparency, some additions to Code 15 are unbalanced. For example, the requirement for voice-based service providers to adhere to 3.2.8 which is not technically possible for them.</p> <p>As above, holding Merchants accountable for all activities of the parties they contract under every Standard and Requirement is aspirational but not feasible. Members seek clarity that App Stores will be obliged to comply but question how this would be practical.</p> <p>Potentially unfair We note there are some differences of approach in the proposals for non-voice-based services versus voice-based services regarding receipting. This is due to the</p>

	<p>PSA considering that it would be both impractical and unduly costly to require voice-based services to do this. As such it is unfair to propose that voice-based services are required to comply with 3.2.8 which is not possible for them to do.</p> <p>App stores do not register the names of their services with the PSA, so this proposal is not equitable across all parties. Additionally, Members ask how compliance will be monitored in relation to the requirement to ensure third parties comply with all Standards and Requirements. If this is not supervised equitably then this is unfair.</p> <p>Potentially disproportionate Having to ensure that – at 3.2.5 - Merchant providers are responsible for ensuring that any third party contracted to carry out promotional activity on their behalf complies with <u>all</u> Standards and Requirements set out in this section of the Code will disproportionately increase the regulatory burden on providers.</p> <p>Members note the narrowing of the scope relating to the proposed new receipting Requirements and, in particular, that the PSA are proposing not to apply these to voice-based services (whether landline or mobile) but ask that 3.2.8 be included in this, as these proposals are not possible for voice-based services.</p> <p>Potentially transparent This could be transparent if the confusion over App store registration and voice-based requirements are clarified.</p>
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Q17 Do you agree with our proposal to introduce a new fairness standard? Please provide an explanation as to why you agree or disagree?

Confidential? [REDACTED]

Members consulted are generally in agreement with the introduction of a Fairness Standard but have grave concerns about some elements of the proposed Standards and have identified some areas where they would like more clarity as will be indicated below.

More clarity is requested on what constitutes "excessive use". Will this be set out in Guidance or Best Practice and if so, will it be standardised or equitable depending on customer engagement and profile/type of service? If this is to be set out in Guidance or Best Practice at a later stage then Members cannot be expected to agree to it, or not, at this time. If it is not to be set out, then it is a vague and subjective requirement and, in these circumstances, Members would look for reassurance that they would not be penalised for making their own decision on excessive use.

Members consulted were also disappointed to see that valuable points relating to future proofing this Standard - in relation to MFA - have not been realised in this Code. The examples given of acceptable MFA do not allow for any use of technology as it progresses that will deliver the same level of authentication using a different method. Members would ask that this be accounted for in order that further consultation is not required in what could be a relatively short space of time, as technology evolves.

Equally, Members question the proposal for MFA at 3.3.8 which states that:

"(b) use of a secure PIN loop system, which must be initiated and confirmed by the intermediary provider through interaction with the consumer. The secure PIN must: i. comprise no less than four truly random integers; ii. be entered by the consumer (and must not auto-populate or self-generate);"

Where mobile phones automatically populate PIN codes, as part of their operating systems, Members ask for confirmation that they will not be responsible for this auto-population.

Members consulted were absolutely united in their robust disagreement of the Fairness Standard proposed at 3.3.11 that requires the reauthentication of subscription users every 12 months. It was agreed that

	<p>much good work has gone into improving the consumer journey around subscriptions services already, and as such there is no further action required. In the consultation document, the PSA state that</p> <p><i>“Auto-renewal should generally be on an ‘opt-in’ basis upfront, and include a clear and prominent option without auto-renewal in most markets”.</i></p> <p>We know that consumers partaking in phone-paid services are aware – through various proven communications – that they can opt out of the service at any time. There is no contracted period to be served, no notice period and as such no renewal period.</p> <p>In order to contextualise our response, Members within the value chain supported the commissioning of research into consumer expectations in this area. 1000 qualified users of phone-paid services were questioned on their understanding and preferences within the consumer journey, and more specifically what should happen after their subscription has been running for one year.</p> <p>The research was commissioned and paid for by Donr and Fonix, with additional financial support given by others in the value chain, including aimm. Donr will be submitting the research evidence that supports the following commentary along with their response.</p> <p>The research demonstrated clearly that digital content subscriptions have largely become a normal way to purchase in the UK.</p> <p>75% of those questioned subscribed to Netflix and 33% to Spotify for example. More traditional subscriptions to magazine or newspaper content were found to be 15% and 10% respectively. This demonstrates that there is a clear demand around the opportunity to pay for content in this way and that newer subscription services have become successful quickly due to their convenience and ease of use.</p> <p>Indeed, the PSA’s own research shows that subscription service complaints have dramatically reduced and that consumers are more satisfied than ever whilst using these types of billing methods.</p> <p>The above are just a small number of available subscriptions within the Industry. As subscriptions have become mainstream and there are many different use cases for this payment mechanic, it feels restrictive to try</p>
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	<p>and consolidate them into a single regulatory type. As the regulation for one off charges varies for different service types (voice shortcode, charity, gambling etc) a blanket approach in this area feels like a blunt approach.</p> <p>What is also shown in the research, is that there is a mindset around these subscriptions being long term, not just an annual purchase.</p> <p>This is demonstrated by 75% of respondents stating that they had been donating via subscription for over one year, and 70% of Netflix subscribers stating the same. Equally, a large majority of subscription users are comfortable - and in fact have an expectation – that their subscription will be ongoing, with no end date, until they choose to cease it. This is borne out by the 71% of recurring donors stating that this was their view alongside 57% of Netflix users.</p> <p>The research demonstrates that consumers acknowledged that they were enrolled in a subscription service until they chose to notify the service provider that they did not want to continue.</p> <p>44% of consumers stated that an annual reminder would be useful but only as a “good to know”.</p> <p>The research shows that consumers want subscriptions to be provided on an ongoing basis.</p> <p>Our research showed that in fact only 22% of users would prefer the option of a fixed term contract.</p> <p>As an extension to that, 74% of subscription users did not agree with a blanket cancellation after 12 months.</p> <p>The current model that allows users to dip out whenever they choose allows for the nuanced approach.</p> <p>What also became clear from the research was that subscribers feel that they are currently receiving too many notifications about how to exit from their chosen subscription/s.</p> <p>Only 14% of those within our research were satisfied with the current monthly reminder process. 21% felt that 3 months was more appropriate, 19% were in favour of 6 monthly reminders and 17% felt that yearly was sufficient (for clarity, this is to receive information about how to opt out, not a yearly SMS enforcing an opt in to continue, as suggested in the draft Code 15). 24% suggested the reminders should depend on the type of subscription and</p>
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	<p>4% did not want to be reminded at all. What this does tell us is that we are already bombarding our users with too many notifications. If a consumer feels that they are in receipt of an overly onerous amount of messages, such as is shown in the research, the effect could be tantamount to training users to ignore those messages. Adding another, unexpected message into the schedule can only make this worse. Additionally, if that one annual message is ignored the proposed draft Code states that the user should be opted out and denied continued access to their subscription/s.</p> <p>Reassuringly, our research demonstrates that only 1.5% of people are paying for a service they don't use.</p> <p>Additionally, only 7% of users did not find the process of joining a subscription as clear as they would like. These results reinforce the view that there is no problem to solve with subscription services and that further regulation is unnecessary.</p> <p>Following on from that statistic, it is unsurprising that 90% of consumers want it to be their decision to cancel a subscription, at a time that suits them.</p> <p>They do not want an annual forced opt in, that they are proven to be likely to ignore, sent on a date that may not be convenient. Consumers are armed with very regular (too regular it seems) information currently about how to opt out should they want to do so.</p> <p>Just 3% of users agreed with the default position of draft Code 15 that will see their subscription cancelled after 12 months if they do not respond to an enforced opt in.</p> <p>Nearly two thirds of respondents indicated that they either thought that automatic cancellation was excessive, received too many text messages already, felt it was up to them when they stopped donating, or preferred the status quo of monthly reminders.</p> <p>*****</p> <p>Alongside our research, extensive consultation with Members has produced the following insights and feedback on this proposal.</p> <p>Members initially ask for the evidence that harm exists here, particularly following the latest PSA Industry Liaison Panel meeting where complaints as a whole were presented as being the lowest in PSA history and where</p>
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	<p>the Charity sector, who will be massively impacted by this proposal saw zero complaints. Specifically, Members ask for proof of the number of complaints received by the PSA since the Special Conditions were implemented that are expressly concerning the term of a 'contract' (general queries about subscription services not being relevant).</p> <p>Charity supporters who give a regular donation (also included under this proposal), receive regular reminders that they can SKIP a donation or STOP their donations at any time.</p> <p>Users are very used to this established opt out method for charities.</p> <p>For commercial models, the same is true - consumers are very familiar with the format of opting out of those subscriptions. They are regularly reminded (our research would suggest too regularly) about the service they are using and how to leave it at their discretion.</p> <p>The public are often urged by consumer advice programmes and also by the PSA themselves, not to engage with unexpected text messages. To move from a recognised opt out model, to then - once a year – sending consumers an opt in message which they are not expecting will result in one of two outcomes. 1) The consumer will assume it is SPAM and ignore the message, meaning they will be inadvertently and unwillingly opted out of the service or 2) The consumer may consider it to be a real message, but be mindful of all the advice that states they should not engage with unexpected messages, and err on the side of caution, meaning they will be inadvertently and unwillingly opted out of the service. In both scenarios, the consumer is opted out of the service and the Charity loses that support.</p> <p>For commercial services, the same will be true.</p> <p>Members strongly assert that these services do not have a renewal date, as they are not annual contracts with no break opportunity and because neither the service offering or price changes, to necessitate such a renewal trigger. This regulation makes sense when aimed at such services that require renewal such as insurance, or where a subscription is taken out by the purchaser for a contractually agreed amount of time (one year) but not in this instance where contracts are rolling and can be cancelled at any time.</p> <p>The PSA also state that;</p>
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	<p><i>“In the discussion document, we considered fairness in a broad context, looking at prepurchase, purchase and post-purchase. We said that we wanted to consider how best to ensure consumer expectations are being met, including: • aligning customer authentication with standards of other payment mechanics • the clarity of the purchasing environment”</i></p> <p>Members ask for evidence of the research that shows that consumers expect to reauthenticate their subscriptions and recurring donations on an annual basis which they access using phone-paid services, when they know they have not signed up for a one-year term. Inputs derived from the consumer panel on this cannot be assumed to represent inputs from consumers themselves. The Consumer Panel is comprised of consumer advocates, not real consumers. Our consumer expectation research has demonstrated clearly that these are not the expectations of actual consumers, and should not be taken as such. Members strongly suggest that taking input from consumer advocates is very different to input from genuine consumers who use these kinds of services, as our research has shown.</p> <p>Additionally, this is doing the opposite of aligning customer authentication with other payment mechanics, as those paying, for instance, for a recurring donation by direct debit are not subject to this reauthentication. Neither are customers from the burgeoning services now offered on monthly rolling subscriptions for everything from newspapers to App Store games and music subscriptions. As such, phone-paid services will be disadvantaged by this proposal, which will see users confused by unnecessary communications sent to them and will move to easier methods such as direct debit. As such, how can consumer expectations be met under these proposals, when the two payment mechanics will be different? The PSA will be knowingly materially disadvantaging a market with regulation that advantages competitors which could be seen as market shifting.</p> <p>The subscription service requirements seem to be framed against old issues – this can be seen by the dramatic reduction in complaints, and those complaints that do exist being against historical services. Actions in the Code such as Consent to Charge regulation mean that inadvertent sign up is not possible, and the PSA will be over-regulating if they overreach to this point. There is no requirement for further regulation in this area, and as such no alternative solutions are being suggested.</p>
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	<p>One Intermediary Provider can clearly demonstrate - with a drop off of over 90% of users - that on subscription services where usage can be proven, asking consumers to opt back in, rather than opting out causes confusion, and lack of response. This is not a consumer expectation.</p> <p>Another Intermediary Provider warned of the significant risk to the UK side of their business with their global streaming service partner if that partner were forced into development work of this nature solely for onerous UK based regulation.</p> <p>Indeed [REDACTED], having reviewed the proposal, authorised their MNO [REDACTED] to give us the following statement “This requirement would be challenge for our platform. Subscription reauthentication is not something we have the infrastructure to support”. They also reiterated the view that with receipting, recurring charges that have robust consent to charge will not be a surprise to the user and as such they view this as unnecessary regulation.</p> <p>If an annual reminder is deemed necessary, and there is no basis in fact that this is the case, then it should be an opt out or a “good to know” message, which is more in line with consumer expectations as demonstrated in our research. However, we firmly believe there is no real need for this, as consumers already receive notifications related to exiting the service.</p> <p>For the Charity sector, this would be catastrophic in terms of donations. As already stated, supporters already receive a monthly option to SKIP a donation or stop it completely – which is an opt out. This can be demonstrated across the Charity sector as effective. They then receive a receipt for their donation if they have not used the SKIP option.</p> <p>A regular donation is not a service/product that has a renewal. There is no annual contract, change in service offered or amount charged, and no consumer harm comes from these services. However, sending them a link to opt-in, when they have been consistently used to receiving links to opt-out (SKIP or STOP) is confusing and not in line with expectations. They will simply ignore it, as they have been advised to do so in the case of unexpected messages, and those donations will be lost unnecessarily.</p> <p>In reading the proposal there is also a suggestion that charity supporters have to go through a double opt-in each year, meaning that they couldn't even receive a message asking them to reply YES to continue with their</p>
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	<p>regular gift. There are only so many times you can ask a consumer to keep approving a service and the view of our members in the charity sector is that this would not only hold back growth, but also cause a significant reduction in current donation volumes.</p> <p>Charity Members also note that they are robustly regulated by the Fundraising Regulator and must adhere to their Code of Fundraising Practice: www.fundraisingregulator.org.uk/code. As such their services, which have attracted no complaints in the last year, do not need another layer of prohibitive regulation here.</p> <p>It was noted by Members that the PSA have informally indicated that there is to be a higher ruling due on this issue from the BEIS. Since there has been no public announcement of this, Members are not aware of the initiative. We would ask for formal confirmation that this is the case and the distribution of information related to it. If this relates to the letter here:</p> <p>Tackling the loyalty penalty (publishing.service.gov.uk)</p> <p>...then rolling subscription services with robust consent to charge, spending receipts, no annual tie in, a method of opt out at any point and a SKIP function for Charity donations are not in scope. It seems that that this consultation considers regulation on a distinctly different contractual model of subscription which feature an automatic renewal of a fixed term subscription with a price increase or significant change in other terms.</p> <p>Additionally, if there is to be a change of regulation at that level, which will affect ALL payment mechanics such as direct debit also, Members suggest that the PSA should wait for that regulation to be confirmed, rather than push it through now with the result that phone-paid services will be hugely disadvantaged. By making this change earlier than other payment mechanics do, this will cause market shifting as merchants will simply move away from this Industry to other payment methods which do not yet require this step.</p> <p>Furthermore, Members note that in the Code consultation document the PSA state that;</p> <p><i>“134. The proposed requirements have also been simplified and condensed where, in our provisional view, it is appropriate to do so. For example, where a category of service is dual regulated, such as remote gambling and</i></p>
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society lotteries, we have reduced the number of applicable requirements by not replicating Gambling Commission rules”

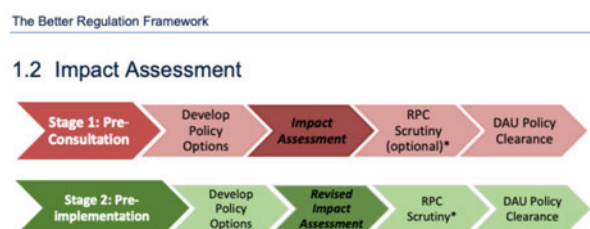
As such, Members would ask that the PSA wait until such time as regulation is issued from government that informs all payment mechanisms about how to proceed in this area and as such does not duplicate, and therefore make more complex, the Code, as per the above statement.

Finally, Members note with grave concern that this proposal has not been the subject of an Impact assessment by the PSA.

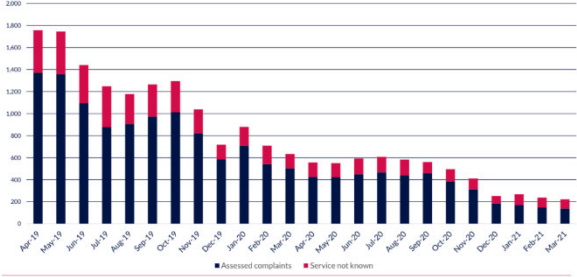
The Better Regulation Framework Guidance published by Government first in February 2018 then most recently update in March 2020 states that;

““This interim guidance explains how the better regulation system should operate. It is written for government Departments and replaces the Better Regulation Framework Guidance August 2018. This guidance sets out a general threshold for independent scrutiny of Regulatory Impact Assessments (RIAs) and Post Implementation Reviews (PIRs) where the equivalent annual net direct cost to business (EANDCB) is greater than \pm £5m. For measures below this threshold, Departments should undertake proportionate cost-benefit analysis to inform decision-making, as well as demonstrating that the impact of a measure is below the \pm £5m EANDCB threshold. The guidance also sets out flexibilities for departments to decide how they comply with the better regulation principles of robust evidence, transparency and proportionality in their policy making cycles.”

This is also demonstrated within that document by a schematic as below:



In a recent meeting, the PSA commented that this consultation was their Impact Assessment, and they were waiting for Industry to respond and advise them of the Impact. Members do not feel that this is satisfactory.

	<p>Members also note that despite every area of Industry being opposed to this proposal, there seems to be a view expressed from the PSA in follow up communication (such as meetings and emails) that this is just a small subset of the market. In every conversation which has been held across the value chain there has been no support for this element of the draft Code. It is clear from our research that it is also not supported by consumers. As such, Members as for clarity around those sectors of Industry that have provided positive feedback for this proposal.</p>
<p>Q18 Do you agree with our assessment against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>No Not effective</p> <p>The proposal for a 12-month reauthentication is not effective. Consumers do not have an expectation that they will have to opt in again to continue their access to their chosen service and this will result in confusion and loss of service for consumers who have actively and robustly subscribed.</p> <p>Consumers are already protected from unsolicited charging by Consent to Charge.</p> <p>Complaints are falling and the majority of the low number of complaints now are about legacy services before Consent to Charge changes in the Code. Complaint data presented by the PSA at the latest ILP meeting (see below) shows the downward trend of complaints, which are now at their lowest level ever recorded.</p> <p>Total complaints – last 24 months PSA</p>  <p>It is the view of industry that harm has been minimised and proactively dealt with already because prior measures have dealt with the issue in a satisfactory way.</p> <p>The PSA state that <i>“auto-renewal should generally be on an ‘opt-in’ basis and that ‘customers must be sufficiently informed about the renewal and any price changes</i></p>

	<p><i>(through sufficient notifications) in good time</i>". These are not renewal services, they were never promoted as such, they have no annual contract date, and as such this point is out of scope.</p> <p>Industry will be damaged by this change which is neither required by Industry or consumers, nor has been impact assessed by the PSA.</p> <p>Not balanced Consent to Charge regulations already ensure that consumers know what they have signed up for, which is not a renewal product with an annual contract. They have no expectation of opting in again after 12 months. Sending an additional message at one year is not an expectation and is not welcomed by consumers.</p> <p>Not fair and discriminatory The 12-month reauthentication discriminates against phone-paid service providers. When other payment mechanic providers are not under the same proposed rules, operator billing will naturally become a less attractive offering to those Merchants that have multiple payment methods for customers to use. Also, because it is not being applied retrospectively it won't actually address the harm that this is trying to protect consumers from!</p> <p>The proposed Requirements will create the opposite of a level playing field for all providers of subscription services. This will devastate healthy competition as phone-paid service providers will not be able to offer the same service as other payment providers. Merchants will switch to other payment mechanics which do not have these onerous technical requirements that will actively disadvantage this market and lose them users.</p> <p>The PSA have commented on cost but the real concern relates to loss of revenue via this channel. The introduction of an opt in renewal will increase attrition rates and income, which will leave Charities and Merchants investing money in other sources of donations/revenue which have a better ROI. For Charities, whilst the PSA has predicted that donations will increase between the period 2019/20 and 2020/21, this upward trajectory will drop off if supporters are presented with another barrier to charitable giving.</p> <p><u>Entirely disproportionate</u></p>
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	<p>There is no longer an issue with unknowing subscriptions. Consent to Charge is robust. MFA means the risk of harm is no longer present and the PSA demonstrated at the May Industry Liaison Panel meeting that complaints are at their lowest in PSA history (and there were precisely zero complaints for the Charity sector which will suffer significant reductions of monthly donations as a consequence of this proposal).</p> <p>The PSA stated they saw no evidence that an introduction of a 12 month opt in would lead to increased costs, because any costs associated with obtaining an opt in would be offset by the reduced costs associated with less consumer complaints. As a sector, charities have experienced zero complaints, therefore there will be additional cost to them due to the proposed change in processing donation opt-ins. In fact, Charities are more likely to receive complaints as a result of this change from supporters wanting to know why they are being contacted or why their donation has stopped.</p> <p>The BEIS letter that has been circulated by the PSA on this puts phone-paid subscriptions out of scope. There is no problem to solve as they are not covered in the letter. Consumers sign up to an ongoing service, not an annual contract and can opt out at any time. There is no annual renewal process.</p> <p>If the phone-paid services industry are forced to implement this and other payment mechanics are not, or are not until a later date, then Merchants and Charities will simply choose not to employ the use of our Industry for their subscriptions and recurring donations. Global subscription brands have indicated that they may decide not to make these onerous changes that only affect the UK market and could drop phone -paid services and utilise other payment mechanics instead.</p> <p>If later down the line there is regulation of this nature, it should be applied equitably, at the same time and in the same way across all payment mechanics. The PSA will not need to codify that regulation as it will come from government and as such – in order to ensure the regulatory process is simplified and not duplicated - as is the intention of the Code, it will clearly not require replicating.</p> <p>It has also been recognised that the proposal of obtaining a valid opt-in every 12 months will increase costs for some providers and will absolutely decrease revenue for no proportionate reason.</p>
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	<p>Not transparent</p> <p>The research that supports the proposition that consumers expect as 12-month reauthentication to a non-renewal product which has no service level change or price change has not been shared. In fact Industry have produced research that shows that this is absolutely not a consumer expectation.</p> <p>The impact assessment for this fundamental change which will put this Industry at a disadvantage to other payment mechanics has not been shared.</p> <p>Members would also like visibility of all information regarding the BEIS regulation change that the PSA state that they know about, which is coming down the line.</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>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted agree that Customer Care is important and should be to a high standard. There is however concern over the definition of a complaint as stated in the Draft Code which reads</p> <p><i>"A complaint is a written or oral expression of dissatisfaction made by a consumer of PRS in relation to: (a) a network operator, intermediary provider or merchant provider regarding the promotion, operation or content of a PRS; or (b) the customer service experience that the consumer has received from a network operator, intermediary provider or merchant provider regarding the promotion, operation or content of a PRS, and where a response or resolution is explicitly or implicitly expected."</i></p> <p>There are several areas of clarity that Members are seeking in relation to this statement. Firstly, Members feel that this is a loose definition, as this could include comments on social media, informal discussions or opinions that are broadcast via any medium including public forums. A tighter definition is required that defines a complaint based on how it is made and who it is made to.</p> <p>Timescales around complaints also require clarification. In this value chain, there is already a recognised 'ideal' consumer journey which sees the customer going to the Merchant to solve their query. The PSA have agreed that this is the best course of action, and MNOs ensure that this is their advice to customers also. As such, the point at which the clock starts on a complaint will be different depending on who it has been made to. If a complaint comes into an MNO, they will direct the customer to the</p>

	<p>Merchant for resolution. At this point, they hand the complaint over, and would not expect to be judged on the timescales proposed in the consultation document, should the complaint not be resolved by the merchant. The complex nature of our value chain makes this difficult to police, and Members are very keen for more clarity that delineates timescales based on how a complaint is made, and whether they have approached the correct respondent to that complaint (i.e. the Merchant). Additionally, provision should be made for consumers who do not respond in a timely fashion to requests for more information needed to investigate a complaint.</p> <p>MNO Members seek assurance that there will not be duplication or contradictions to the already agreed complaints process in place with Ofcom.</p>
<p>Q20 Do you agree with our assessment of the proposed new customer care standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Partly effective Members are unsure that the statement made by the PSA is accurate</p> <p><i>"As a result of the proposed changes, we consider that consumers should know who to contact."</i></p> <p>There is no customer education piece accompanying this proposal, so Members see no reason why it will help consumers initially know who to contact.</p> <p>Potentially Balanced As long as the process of 'starting the clock' on a complaint is clarified and takes into account our complex value chain and the process of 'passing over' of complaints to the correct recipient of such complaints that is accepted practice.</p> <p>Potentially unfair and discriminatory If complaints made on social media or in open public forum are designated as 'complaints' as per the proposed requirements, then this will discriminate providers who will be held to a much more onerous standard of customer care than other payment providers.</p> <p>Potentially Proportionate As long as the process of 'starting the clock' on a complaint is clarified and takes into account our complex value chain and the process of 'passing over' of complaints</p>

	<p>to the correct recipient of such complaints that is accepted practice.</p> <p>Partly transparent More clarification is needed as explained above as to the definition of a complaint and the process of ‘starting the clock’ on the timescales proposed.</p>
<p>Q21 Do you agree with our proposal to introduce a new vulnerable consumers standard? Please provide an explanation as to why you agree or disagree?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members agree that it is important to ensure that the needs of vulnerable consumers are considered when providing phone-paid services. They do however seek clarity on whether Industry is being asked to identify vulnerable consumers in advance of them interacting with a service – which seems a difficult task. If this is the case, then there must be a balance struck between identifying and prohibiting vulnerable users and allowing vulnerable consumers fair use of services which they wish to access. One Broadcaster Member suggested that it might be useful if the PSA were to provide a risk grid to provide clarity in this area -such as Ofcom has recently done within recent updates to the Broadcasting Code (below). Guidance notes on Section Seven: Fairness (ofcom.org.uk) However, even with clarity such as this, it will still be very difficult for providers to be aware of vulnerabilities before users interact.</p> <p>Members also ask for clarity on requesting evidence to prove that someone is vulnerable if there is nothing to suggest that it is the case. Is there a suggestion that anyone who claims to be vulnerable should be refunded? This could lead to a flood of claims of this nature, undermining those who really are in a vulnerable position.</p> <p>Within the vulnerable consumers Standard, the PSA state:</p> <p><i>“3.5.6 Services that are aimed at or are likely to appeal to children must not offer cash prizes or prizes that can be easily converted to cash.”</i></p> <p>Members seek clarity on this, as services ‘aimed at’, and services ‘likely to appeal to’ children are both subjective and two very different things. Members note that competitions within high profile family TV programmes are likely to appeal to children. In fact anecdotally, Members have commented that their children have commented to this very point. The phrase ‘likely to appeal’ is one that causes concern and Members would</p>

	<p>like to see this definition narrowed, perhaps to something like ‘services delivered within or actively targeted to accompany children’s content’.</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>Confidential? Yes /No (delete as appropriate)</p> <p>Members generally agreed with the assessment of the proposed Vulnerable Consumers standard against the general principles set out in the discussion document. However, it has been noted that there will be an increased burden on providers to compile the documentation that may be required by the PSA to evidence what is already in place in many instances.</p>
<p>Q23 Do you agree with our proposal to introduce a new consumer privacy standard? Please provide an explanation as to why you agree or disagree?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members agree that consumers have the right to privacy and that this is of the utmost importance.</p> <p>Members question 3.6.1 and whether the PSA, in its proposal to strengthen its information gathering powers, encourages Industry to break GDPR laws when it states:</p> <p><i>“501. Under Code 15, we propose to make it mandatory that providers retain all information that is potentially relevant to an investigation by bringing this within the scope of Code 15. This would give us the ability to impose a penalty if a provider fails to retain any relevant data as required.”</i></p> <p>Retaining ‘all information that is potentially relevant’ is too broad an obligation that could be limitless in its requirements and as such means information may be required to be stored that would be in conflict with other data protection laws.</p> <p>Members suggest that to be in line with the PSA’s overarching aim to simplify regulation, this Standard could have comprised just 3.6.1 and avoided the confusion of attempting to duplicate regulation in this area.</p> <p>Clarity is sought however around 3.6.2 and the process for a consumer who withdraws their consent to be contacted in terms of contacting them with service message information or in case of refunds being required.</p> <p>At 3.6.4 the PSA state;</p> <p><i>“Where PRS involve the collection of any personal data, merchant providers must ensure that before such data is collected: (a) the purpose for which the information may be used must be communicated explicitly and clearly to</i></p>

	<p><i>consumers; and (b) consumers must positively acknowledge that they understand and consent to the use of their data for such purposes.”</i></p> <p>Members already have clear guidance on this from the ICO. The PSA will not need to codify that regulation as it is already covered in existing regulation and as such – in order to ensure the regulatory process is simplified and not duplicated - as is the intention of the Code, it does not need replicating</p>
<p>Q24 Do you agree with our assessment of the proposed new consumer privacy standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Potentially not effective There is confusion regarding the levels of data protection that consumers are legally obliged to receive due to the differing of the process proposed at p135 point 501 of the Consultation document:</p> <p><i>“501. Under Code 15, we propose to make it mandatory that providers retain all information that is potentially relevant to an investigation by bringing this within the scope of Code 15. This would give us the ability to impose a penalty if a provider fails to retain any relevant data as required.”</i></p> <p>Potentially unbalanced Whilst it is understood that consumer privacy is important and should be respected, Members do have concerns that this Code encourages Industry to break other data protection laws.</p> <p>Potentially unfair Members are concerned that the Code will encourage providers to break GDPR rules by asking providers to retain all information that is <i>“potentially relevant to an investigation”</i>, being that this is an unknown entity and may result in more data being stored than is lawful.</p> <p>Potentially disproportionate In some areas this appears to misalign the Code with the current privacy laws as stated above.</p> <p>Potentially not transparent There is confusion about whether the Code will be encouraging Industry to break other data protection laws.</p>
<p>Q25 Do you agree with our proposal to introduce a new prevention of harm and offence standard? Please provide an</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members generally agreed with the proposed harm and offence Standard.</p>

explanation as to why you agree or disagree?	
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>Confidential? Yes /No (delete as appropriate)</p> <p>Members generally agreed with the assessment of the proposed harm and offence standard against the general principles set out in the discussion document.</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>Confidential? Yes /No (delete as appropriate)</p> <p>Members agree that robust validation and verification of phone-paid service providers is essential to protecting consumers and growing a healthy and sustainable market. However, they are concerned that without any additional requirements, the current Registration process is still suffering from teething problems and is not seen as effective.</p> <p>Members still cite ongoing issues with their services appearing in an inaccurate manner on the PSA site. They seek assurances that these will be fixed, and the platform confirmed as stable before further changes commence.</p> <p>Members are disappointed and concerned to see that - despite extensive consultation and feedback – there is still no proposal for the PSA to verify the data that they are requesting. It is common sense that increasing the amount of evidence and information requested to someone entering the market will not protect consumers if that evidence is found to be false having not been verified by the regulator. This is one of the main concerns regarding Code 15 amongst some Operator Members. Members were expecting accountability to be taken by the regulator for regulating newcomers and this is simply non-existent in this proposal. Members feel that this Standard could be fundamental in improving Industry if information was verified but falls disappointingly short of it in this proposal.</p> <p>It is also worth noting that some of the Requirements of Registration will not be appropriate for small businesses, for whom some of the information is not relevant, and therefore this is not equitable. Equally Members seek more clarity on the assessment of financial viability and how the PSA will ensure it is not restrictive to new businesses and entrepreneurs. Additionally, registered</p>

	<p>Charities currently have an additional burden of registering again with the PSA, which Members are not convinced is necessary, considering the low risk attached to their services.</p> <p>Members feel that the wording covering services using direct carrier billing or provided via App Stores is lacking. For example, for each MNO the wording used to identify a service on a consumer's bill could be different, which could prove confusing to consumers. Clarification is sought on whether, for App Stores the PSA are requiring a complete standard internet presence in every instance? This information will be near impossible for MNOs to provide and in any case would likely be different per Operator.</p> <p>Merchant providers seek clarification as to why they should provide details "<i>about any other person contracted for or otherwise involved in, the promotion and delivery of the service</i>". They suggest that if they are not in the value chain, or PRS providers, then this is not necessary and may be onerous. Members believe that this may be aimed at capturing details of technology partners and affiliate marketeers, but as it is written is unworkable. Does this mean that Merchant providers are to include details of advisers, financial assistance received, compliance help, search engine expertise and legal advice?</p> <p>Network Operators are very concerned that they are to be held accountable for Merchant providers registering all PRS and associated numbers before enabling consumer access to a service. This is simply not feasible and would increase resource and therefore the cost of doing business significantly. Members also seek assurances that these obligations are for all in the value chain (again no mention of carrier billing or App Store traffic here, but Members assume they are included?) Alongside this, the proposal requiring providers to notify the PSA of changes within 5 days is also not possible.</p>
<p>Q28 Do you agree with our assessment of the proposed new organisation and service information standard against the general principles which we set out in the discussion document? Do you have any further</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Not effective Oversight of the whole value chain involved in the provision of phone-paid services is undermined if the information provided is not verified. Members feel strongly that this could be very effective but falls short in this respect.</p> <p>Not balanced</p>

<p>information or evidence which would inform our view?</p>	<p>There is no accountability on the regulator for protecting the consumer against rogue newcomers. Regulation here is completely the responsibility of the providers, not the body whom they pay to take on this responsibility. If a newcomer is minded to do harm, then they will simply provide false evidence and pass this tick box exercise.</p> <p>Partially fair and non-discriminatory Smaller businesses may not have this information to provide.</p> <p>Disproportionate It disproportionately increases the burden on industry and removes any accountability from the PSA for regulating rogue newcomers.</p> <p>Partially transparent Explanations and appropriate wording that adequately covers carrier billing and App Stores is frustratingly absent.</p>
<p>Q29 Do you agree with our proposal to introduce a new DDRAC standard? Please provide an explanation as to why you agree or disagree?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted agree that DDRAC is essential to ensure consumers are protected. Many of the DDRAC Requirements are already covered in contractual relationships within the value chains that already exist.</p> <p>There is a concern however, that this is not equitable for smaller businesses.</p> <p>Some items on the list in Annex 2 feel overly onerous, such as 2.3 (e) the compliance history of key officers and staff within the Intermediary provider and/or Merchant provider. Members ask how this will be monitored for App Stores?</p> <p>Members also question the link between the compliance history of a business in the value chain and individual liability. It seems sensible that a responsible individual needs to be identified within an organisation for ease of communication, but the proposal suggests that there is also an intention that they have responsibility for that function. As such does this carry an implicit suggestion of liability? If this is the case, the parameters that trigger that liability must be very clear such that there is no confusion and personnel understand the implications of the role they are being asked to fulfil.</p> <p>In addition, there is a requirement that the MNO's/Intermediaries ensure that they only contract with persons of fit standing to provide PRS. Members seek</p>

	<p>clarity on whether a Head of Compliance of an organisation that represents a large sector of Industry (and as such may have accrued compliance issues) would become progressively less fit?</p> <p>Equally, if a company platform suffers malware, would this make the Head of Security individual less fit?</p> <p>Some Members have concerns about the perceived risk this would have to individuals outside of a limited liability structure and suggest it could have a big impact on Industry. They suggest that the risk might be viewed as untenable by even the most stringently compliant operators.</p> <p>At 3.9.11 the PSA state;</p> <p><i>“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.”</i></p> <p>The value chain are - and have always been – happy to carry out DDRAC on those they contract with, however cannot be held accountable for those that they do not directly have that relationship with. It is beyond their control. It is important however that all those in the value chain are recognised in the Code and can be identified as good providers of that service, for instance compliance houses.</p> <p>Network Operators are concerned that the Requirement at 3.9.13 which states;</p> <p><i>“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.”</i></p> <p>...is also unworkable and this information is simply unavailable to them from the App Stores whom they partner with, and which cover the operation of thousands of apps.</p>
Q30 Do you agree with our assessment of the proposed new DDRAC standard against the	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Partially effective</p>

<p>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>This will only help in as much as this information is available, which may not be the case with smaller businesses who simply don't have these functions/ resources available or to Network Operators seeking information from App Stores that they are unlikely to ever be in receipt of.</p> <p>Partially balanced The value chain can only be responsible for those they contract directly with. Equally, those in the value chain who provide quality services but are not recognised deserve more balance with the proposed Code, for example Compliance Houses.</p> <p>Partially fair and non-discriminatory This is not equitable for smaller businesses with less resource and funding available to them. There is no doubt that on-going monitoring obligations (3.9.2) will greatly increase the cost of regulation for PRS providers. This and the increased liability make the PRS market even more difficult and expensive to operate in for a small business where the responsible person for all areas could be the same person. Will Operators really be expected to do this in respect of App Stores?</p> <p>Partially proportionate This will increase the burden on industry, for example in relation to Network Operators who, within this proposal, will have to undertake DDRAC in respect of the App Stores and all of their services.</p> <p>Partially transparent It is not clear as to the level of personal liability of that responsible person will carry.</p>
<p>Q31 Do you agree with our proposal to introduce a new systems standard? Please provide an explanation as to why you agree or disagree?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted agree that systems which are technically fit for purpose are essential. However, it is generally agreed that this work has largely been completed.</p> <p>Members do question whether there is a potential conflict of interest here. If as directed at 3.10.7. a Network Operator or Intermediary Provider submit their platform security tests to the PSA, Members question what will be done with those submissions? Do the PSA have the expertise to engage with the results? Do the PSA have</p>

	<p>relevantly qualified and experienced teams to carry out such analysis and determination, most especially in technical matters? If not, and there is an intention to do this in house, what additional costs to industry will there be for the PSA to recruit, train and manage such teams? If not, and there is an intention to employ a third party to do this for them, then it will either be Copper Horse or another party, both which will come at a cost to Industry. If it is Copper Horse, then there is a chance that they will be auditing their own security test from that provider, which would clearly be a conflict of interest. Alternatively, employing a third party could well be a party used by the value chain, which would again be a conflict of interest. Members would like more clarity in this area.</p>
<p>Q32 Do you agree with our assessment of the proposed new systems standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Partially effective In the absence of clarity, Members are seeking further information regarding the submission of security test results to the PSA. If they are to be audited by a third party, this could bring about a conflict of interest that might render this submission ineffective. If not, Members seek assurance of the skill set at the PSA to conduct these checks.</p> <p>Potentially balanced Should the PSA be able to clarify the point above on audit of results then this may be balanced.</p> <p>Potentially unfair There is a risk of conflict of interest as highlighted above, depending on who is assessing the results of the provided information.</p> <p>Potentially proportionate Proportionate, assuming the new Requirement added – relating to ensuring platform security test results being assessed by suitably qualified or experienced staff, and who will assess those results at the PSA is clarified.</p> <p>Not yet transparent The above points have yet to be transparently laid out.</p>
<p>Supervision</p>	
<p>Q33 Do you agree with our proposed general approach to supervision? Please provide an</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted agree that a pre-emptive approach to regulation is a good idea but recognise that reactive regulation can also be necessary to address issues that</p>

<p>explanation as to why you agree or disagree.</p>	<p>have arisen and not been caught at the pre-emptive stage. However, they do ask for much more clarity on what would trigger a thematic review. Members are concerned that thematic reviews (based on the scarcity of the detail provided) could be onerous and problematic in terms of resource and would like to know what reasonable and justifiable KPIs would trigger a review of this nature. Members note that thematic reviews appear on other Codes of Practice but are usually accompanied by KPIs. As such it is difficult for Members to agree with the approach without this level of detail.</p> <p>Members are concerned that (at 4.2.3) <i>“The PSA will make judgements based on evidence and analysis.”</i> They seek clarity on who will be making those judgements including their qualifications and Industry experience that justifies their appointment to that role.</p>
<p>Q34 Do you agree with our proposed compliance monitoring methods? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted are concerned that the suite of compliance monitoring methods give the PSA powers that are disproportionate to the size of the market which they are regulating. For example, they appear to replicate some of the FCA powers, however the FCA oversee businesses generating many more millions of pounds than those that the PSA oversee.</p> <p>Members question the definition of “skilled person”, seek clarity on how it will be determined what this level of skill should be and whether they themselves will be skilled enough to make this judgement. Members ask for visibility of the “skilled person” making these decisions at the PSA. Members would like to be assured of their qualifications in this area and of their expertise in the market.</p>
<p>Q35 Do you agree with our proposals on reporting and notification requirements? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Audits:</p> <p>Members would like to see an Audit template which they can refer to, to ensure that they are fulfilling the obligations which they are to be audited against. Members ask for clarity on the threshold that would need to be reached to trigger an Audit, and if there are varying levels of satisfaction with the Audit results that would result in differing levels of repeat Audits being required. Members also ask for clarity on who at the PSA will be assessing the results of any Audit that is required, including their qualification and Industry experience that justifies their appointment to that role.</p>

	<p>Reporting:</p> <p>Network Operator Members pointed out that they work in very different ways, that their language is sometimes not common, that their systems are very different and that it may not be technically possible to set them up to capture all of the information that the PSA may require. There is then a real risk of non-compliance through no fault of the Network, either because they do not have enough information – or cannot facilitate – the level of detail that the PSA may ask for.</p>
<p>Q36 Do you agree with our assessment of our proposed new supervisory function against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Potentially effective A collaborative engagement with Industry, who can provide education and expertise to the regulator is a good thing. However, the level of detail in this section is too scarce for Members to be able to judge if this will be the case.</p> <p>Potentially Unbalanced The level of detail around the compliance monitoring tools proposed is too scant. Clarity on thematic reviews and their contents, including the KPIs that will trigger a thematic review are needed. Clarity on Audits and their contents, including the KPIs that will trigger an Audit are needed. Clarity on Reporting and Notification Requirements and their contents, including the KPIs that will trigger Reporting and Notification are needed.</p> <p>The PSA note that verification and supervision is something that larger firms who operate in other markets are used to, and that this approach is consistent with regulatory approaches adopted by other regulators, including the FCA and the Pensions Regulator. Members note that the powers which the PSA seek to give themselves here are out of kilter with the size of the Industry which they are regulating, in comparison to these other regulators.</p> <p>Potentially unfair and discriminatory. The PSA propose that “<i>monitoring compliance with Code 15 will include information gathering activities that are reasonable and proportionate</i>”. There is no evidence of what “reasonable” test the PSA will perform on these judgements, audits and reporting requirements, or any detail on the level of skill or qualification of those who will be making them. Members would like more clarity here.</p> <p>Disproportionate</p>

	<p>This may disproportionately increase the burden on industry, however the level of detail provided does not allow us to make an informed view. Again, clarity on thematic reviews and their contents, including the KPIs that will trigger a thematic review are needed. Clarity on Audits and their contents, including the KPIs that will trigger an Audit are needed. Clarity on Reporting and Notification Requirements and their contents, including the KPIs that will trigger Reporting and Notification Requirements are needed.</p> <p>Members do not deny that these maybe very useful safeguards for industry however they are fearful that these powers have the potential to be used disproportionately against those in Industry trying to do good, and not just for those bad apples who are unlikely to co-operate with the PSA anyway.</p> <p>Not transparent The level of detail in the expectations is not clear in relation to the proposed new supervision functions.</p>
Engagement and enforcement	
<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>Confidential? Yes /No (delete as appropriate)</p> <p>Engagement is a key issue for Members consulted who generally feel that engagement between the PSA and Industry is at its lowest ebb. Members discussed at some length the historical level of the informal sharing of information in the consumers' interest that used to exist and is no longer in place. Despite having Account Managers, there is a feeling that the PSA have little interest in engaging with Industry at the current time. One large L2 provider who was promised an Account Manager noted that they have never been provided with one.</p> <p>Members feel that the PSA have committed to better communications previously, on several occasions, but that from an Industry point of view, this has not resulted in an improvement. As such, if the proposed approach sees a positive increase in collaborative engagement, then this is generally seen as a good thing. However, the proposals do not dwell on engagement at all but instead focus squarely on enforcement, which Members feel is demonstrative of the decrease in collaborative engagement that is being felt across the value chain. As such, Members are hesitant to agree with this approach, as it feels unbalanced.</p> <p>Members remark that there seems to be little interest from the PSA in holding themselves to account for better,</p>

	and timelier, performance. They would ask that timescales and a process template is developed, that demonstrates that the PSA have listened to Industry feedback and will be accountable for acting within a reasonable amount of time in their enforcement proceedings.
Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted note that the PSA have acknowledged that fines are rarely collected. As such, the levy has increased to a degree that threatens the sustainability of the market. Whilst a quick and efficient process would be welcome for very basic breaches of Code that are administrative in nature, such as Settlement may offer, there is a concern that Settlement could be used to gain quick wins for the PSA that are not balanced. For example, a disproportionate fine could be levelled at a provider, with a discount for settlement that seems to be the only way to proceed to avoid risking such a hefty fine amount. Members also note that the discount is only applied after revenue is considered and seek clarity in what the template for discounts looks like, so they can assess the proposal properly.</p> <p>Members also seek clarity regarding whether a Settlement is tantamount to an admission of guilt. Providers now, speak of long-drawn-out cases where they have had no communication or conclusion from the PSA for months or even years. This is very damaging for that provider. Settlement could be a way of providing that resolution, at a cost that is less than the damage than the ongoing process is causing that provider. However, if this comes with an admission of wrongdoing then this may not be an avenue that providers would be willing to explore.</p>
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.	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members were split regarding interim measures, some L1 Members felt that the requirement for the PSA to retain withhold funds would take the pressure off them in terms of managing L2s where a withhold had been required. Some L1s felt that they have been put in difficult positions up until now, where investigations have gone on for so long that they found it onerous to continuously have to try and justify the withholding of funds. With the PSA holding funds, that responsibility would be removed as would the ensuing tricky relationship management that comes from it.</p> <p>Some Members however felt that more clarity is needed in regard to what the money would be used for if held by</p>

	<p>the PSA. With the consumer at the heart of this new Code, will the money be used solely for consumer redress? Will it be used to bring down the levy requirement for the value chain? If an L2 goes out of business, what then happens to those funds? Members look forward to receiving more clarity on this.</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>Confidential? Yes /No (delete as appropriate)</p> <p>Whilst it was understood by Members that the single decision maker would be legally qualified, it was felt to be of the upmost importance that this individual also be Industry experienced, and Members seek assurance that this will be the case to ensure that they understand the complexities of the value chain and the technology it employs. There was a concern raised that by using one individual only, there is more likely to be bias, possibly unconscious bias, leading to subjective judgements that could then be unfair.</p>
<p>Q41 Do you agree with our proposal to reduce the range of circumstances in which a provider can request an oral hearing? Please provide an explanation as to why you agree or disagree.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>During webinars held by the PSA on this topic, it was suggested by the PSA that some businesses use the oral hearing process to drag out the length of time that an investigation takes. In fact, as stated previously, Members note that it is often the PSA that lag in the investigation process, and that their sometimes slow processes should not be used as a reason to deny the market a fair chance to defend their position at an oral hearing.</p> <p>Members are reluctant to agree to giving up their right to an oral hearing as the paper-based system is not trusted and can feel like a fait accompli. Members also note that – were a paper-based decision to go against them – it is much harder to appeal the decision than to go through an oral hearing, and as such, this should be available in the normal course of an investigation.</p> <p>Members also talked about the process that is required to be satisfied should a judicial review be sought. Currently the full regulatory process must have been entered into – which includes using an oral hearing – for this to be an available step. If the oral hearing is denied – Members wonder where this would leave them in exercising their right to the judicial review process?</p> <p>Finally on this point, there was some confusion around point 480. In this point the PSA state that;</p>

	<p><i>"Our experience is that while there are providers who choose the oral hearing route in order to more effectively argue their case and present their evidence, others choose it primarily with a view to securing more favourable terms of settlement prior to the hearing than would have been achieved through the paper-based route".</i></p> <p>With the PSA now choosing to introduce Settlement into Code 15, Members seek clarity into why Settlement is suggested to be unwelcome here?</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>Confidential? Yes /No (delete as appropriate)</p> <p>In this proposal the PSA state that;</p> <p><i>"We will provide further detail as to how this would work within our published procedures, including providing greater clarity and certainty on the following: • identification of the functions/roles that we would consider to be 'senior managers' • obtaining from providers at the outset a clear definition of their roles and areas of responsibility/accountability • what "reasonable steps" to prevent breaches might consist of, so that there are clear expectations for industry and against which sanctions can be imposed where appropriate and proportionate."</i></p> <p>Unfortunately, it is felt that until this detail is made clear, this point cannot be agreed, as this is crucial information.</p> <p>Members are aware that the bad actors in the marketplace are often expert at concealing themselves and their acts and may often have no intention to comply with the Code. As such, it may be near impossible to detect their previous wrongdoings. Members have a concern that businesses that inadvertently have that type of individual in their employ could be penalised. As such, would those responsible for regulatory affairs such as a Head of Compliance be personally liable for the previous acts of such an individual?</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>Confidential? Yes /No (delete as appropriate)</p> <p>The draft Code suggests that the value chain is responsible for DDRAC on all those it contracts within the operation of phone-paid services. However, those who sit outside the value chain and are not regulated by the PSA do not have to adhere to these regulations, so this could be impossible to enforce. Once again this makes the business of attracting brands towards phone-paid services more difficult.</p>

	<p>At point 501 in the consultation document, the PSA state that;</p> <p><i>“Under Code 15, we propose to make it mandatory that providers retain all information that is potentially relevant to an investigation by bringing this within the scope of Code 15.”</i></p> <p>Members entirely disagree with this, as the parameters are too wide and unknown. Members feel strongly that they cannot be expected to know what may be relevant to an investigation when there is no template of documents to work from and the timeline is unlimited. They also have concerns that this would entirely clash with their GDPR obligations.</p>
<p>Q44 Do you agree with our provisional assessment of our proposals relating to: (i) engagement and enforcement proposals; and (ii) additional powers, responsibilities and obligations – against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Potentially effective Whilst Members generally are in favour of a Code which that make the investigation process more efficient, and that would allow the PSA to better recover costs and fines, we would seek assurance on Members’ behalf that the PSA would also look to ensure their own processes match the timelines and demands on Industry.</p> <p>Potentially unbalanced Settlement is encouraged within the draft Code but is also stated as being something to avoid when referring to Industry seeking availability of an oral hearing to achieve just that. Members seek clarity on this point.</p> <p>Potentially unfair Those not regulated by the PSA are expected to be kept in check under these proposed regulations, making the commercial viability of phone-paid services more tenuous than ever as regulation is forced on non-regulated parties.</p> <p>Individuals who will see an increase in liability are expected to ensure bad actors – who are masters at concealing themselves and their deeds – are not present in the value chain, whilst the PSA are not taking accountability for any verification of registration evidence. If they fail to do so, their professional standing and personal reputation may be at stake.</p> <p>Depending on the threshold, providers may be denied the chance to defend their position at an oral hearing and may</p>

	<p>then have access to judicial review denied to them on that basis.</p> <p>Providers may have judgement passed down on them by one potentially subjective individual who may be legally trained but as yet is not confirmed to be Industry experienced.</p> <p>Disproportionate Some elements are not rational and will disproportionately increase the burden on industry who are being asked to retain all information that could potentially be relevant to an investigation, with no parameters of what this might cover and for how long.</p> <p>Not transparent The draft Code does not clearly set out expectations in all areas, particularly relating to data retention requirements for information that the PSA deem might be required in any historical period for an investigation.</p>
Other general Code considerations	
Q45 Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our assessment of our proposals on general funding arrangements?	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Whilst the Levy model is generally seen to be a recognised way of funding regulation there have been concerns over the sustainability of industry if it is asked to continually fund an unadjusted levy of £4 million each year. aimm responded to the PSA's consultation on the Business Plan and Budget in detail and indicated that this is not a model that can continue if the market is to grow. With the commercial model being seriously compromised by the squeeze in available outpayments due to the unadjusted levy, new business will be harder to come by and existing business is threatened.</p> <p>It is difficult to envisage the levy being very much adjusted in the future through fine income, particularly noting the current complaint levels and good regulatory standing that the UK Industry finds itself in. Hence there is an urgent need for a review because of the unadjusted levy impact as a percentage of market revenue. Members do seek clarity on the allocation of resources and fine collection on an ongoing basis to ensure that there is monitoring of spending and that any cost savings are being considered.</p> <p>As such, Members are looking to the PSA to find ways to decrease its cost base and would like to see attention focused initially on Premises and complaint handling</p>

	(complaints being demonstrated as being at their lowest in PSA history).
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?	Members consulted generally agree with the proposals, as the descriptors seem to reflect better the responsibilities within the value chain.
Q47 Do you agree with our proposal to retain the rules of the current Notice of specific service charges and durations of calls within Annex 1 of Code 15? Please provide an explanation as to why you agree or disagree.	Confidential? Yes /No (delete as appropriate) Members consulted generally agree with the proposals.
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.	Members note that this process seems more efficient in dealing with issues that arise, however seek clarity and assurance that these will be tracked, published, and then promoted to Industry, and will not be backdated.
Impact assessment	
Q49 Are there other impacts which we have not considered in relation to our proposal to move from a regulatory approach based on outcomes to one based on standards? If so, please provide appropriate evidence of the likely impact of the change.	Confidential? Yes /No (delete as appropriate) To avoid lengthy duplication of our response covering the impacts that have not been considered, please consider our answers to questions Q13-32 to apply here and give them due consideration, along with the impacts which have been detailed and the points required for clarification.
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	Confidential? Yes /No (delete as appropriate) We note the PSA's recognition that it can do more as a regulator to support the due diligence and security checks already undertaken by MNOs in the market, but are very disappointed that they have decided not to verify the enhanced Registration information which they will be in receipt of at this ideal 'prevention' stage?

<p>appropriate evidence of the likely impact of the change.</p>	<p>IMPACT – by not applying the ‘prevention’ strategy here, there is an opportunity missed to better regulate the market and stop rogue providers from getting through the gates.</p> <p>There is no future proofing which Industry requested at the MFA stage. It is very prescriptive and as such may soon become outdated.</p> <p>IMPACT - no room for Industry to progress with technology and deal with threats that might arise through technical developments.</p>
<p>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.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members are unable to state conclusively that this Code will be easier to comply as there is as yet no Guidance or Best Practice supporting documentation which explains how best providers should do this.</p> <p>IMPACT - Industry are unable to judge the effectiveness of this or fully consider the proposals in their entirety.</p> <p>The proposed duplication of regulation for the proposal around 12-month reauthentication of subscription users, when this regulation is not confirmed is neither simple or easier to comply with. Even were it to be confirmed, it should be commenced equitably at a time simultaneous to other payment mechanics.</p> <p>IMPACT - this is not simpler or easier to comply with and knowingly disadvantages this market.</p> <p>The PSA state the Network Operator’s Codes of Practice are not enough to regulate Industry. Network Operators have led the security framework and consent to charge pieces that the PSA have now codified.</p> <p>IMPACT - the duplication of regulation that has already been introduced by Network Operators is not simpler or easier to comply with.</p>
<p>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.</p>	<p>Confidential? Yes /No (delete as appropriate)</p> <p>To avoid lengthy duplication of our response covering the impacts that have not been considered, please consider our answers to questions Q33-44 to apply here and give them due consideration, along with the impacts which have been detailed and the points required for clarification.</p>

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?	<p>Confidential? Yes /No (delete as appropriate)</p> <p>Members consulted agree that it is right and proper to safeguard those with protected characteristics.</p>
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?	<p>Members were surprised and concerned to read of this proposal. There was a view expressed that some investigations that have lasted longer than required may be being held by the PSA for the purpose of investigating them under the new Code 15 procedures, which could disadvantage those businesses. Members feel that it is wrong to try and 'retro fit' ongoing investigations with new process and that this is not fair or proportionate. For example, could a business under long overdue investigation be denied an oral hearing which they would have been entitled to under Code 14, despite the fact that the investigation has taken months or even years to get to this point whilst under Code 14?</p> <p>Members feel that there needs to be visibility of the scope and extent of the impact assessment that has been conducted on this proposal, as well as the legal justification for its presence in the Code draft. Unlike previous iterations of the Code, this Code establishes manifestly different (and entirely new) standards, different procedures and different outcomes so Members feel that it is entirely inappropriate to suggest that just because this process occurred in the last Code update it should be permitted in this instance.</p> <p>In terms of a transition period, Members note the need for operational and marketing amendments and suggest a minimum of 6-9 months is required with an optimum period of 12 months.</p>

Submit your response

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

