

# Consultation response form

## Consultation on Service-Specific Requirements for Competition and Voting Services

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

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

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

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

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

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

### Confidentiality

We ask for your contact details along with your response so that we can engage with you on this

consultation. For further information about how the PSA handles your personal information and your corresponding rights, please see our [privacy policy](#).

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential?	Nothing
Your response: Please indicate how much of your response you want to keep confidential.	None
For confidential responses, can the PSA refer to the contents of your response in any statement or other publication? Your identity will remain confidential.	No

### Your response

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

### Summary

The PSA are the regulator of the Phone-Paid Services Market, and although this point was raised by us in our response to the Consultation on Code 15, we feel it is important to state again, that it is astonishing that as a regulator of the market a code of conduct was written that was not technically possible for the industry to comply with. This evidences how out of touch the regulator is with the industry, and puts into question the value of the 15th Code.

The PSA clearly missed the mark with this Service Specific Requirement, and are now having to back track and change an approved Code. This highlights the issue in the approval process of the Code being sent for approval by Ofcom before any industry consultation is complete. Had this been done, then the amendment could have been consulted on before Ofcom approved the code, it would not have had such an impact on the implementation of the 15<sup>th</sup> Code, and the need to implement a code not fit for purpose and change it within weeks of it being in use. This at present undermines the 15<sup>th</sup> code and lacks a confidence in it for all industry and especially consumers of phone-paid services.

In the last consultation we stated *“This service specific requirement should be removed in its entirety due to the nature of the service and the impossible nature of complying with the requirement. We believe there should be service specific requirement notices within the guidance and this would remove some of the proposed guidance to be better placed within the specific requirement notice. This leads to the guidance showing a better understanding to industry as a whole and then portions for certain parts of industry, i.e. charities, broadcast media, ICSS etc.”* This however is not what the PSA are doing but trying to cover over the fact of not understanding industry by altering words contained within a piece of guidance and the 15<sup>th</sup> code which are not fit for purpose.

The PSA only published one service specific guidance, (which they have not had to back track on), but they label 8 different sectors of industry within their annual market report 2021. This has been condensed down from 18 within the annual market report 2015. It talks about the changes of industry as a desire to change the code where in reality the PSA seems to be trying to condense services down and not take any account of other consumer wanted service sectors within the industry they would rather not be there.

The PSA have tried to 'downplay' the major mistake that has been made in their thinking and understanding of the industry, this is evidenced by words like "*minor clarificatory changes*", "*issues are limited in scope*" and "*affect only a small number of companies*" when the reality is this effects the largest consumer spend in the industry and the largest growth within the industry 2021.<sup>1</sup>

The PSA mention under paragraph 21 of this consultation that they were informed of this issue during consultation of the 15<sup>th</sup> code by a major player within this service sector, however did they choose to ignore the experts in this field and then realise the mistake on the guidance consultation or did they believe the experts were wrong in their understanding?

The PSA should have done the right thing and, (and still can), taken either the approach of arranging an implementation period of at least 3 months after code launch or delayed the code launch until the 15<sup>th</sup> code is fully fit for purpose.

## Consultation Questions

**Q 1. Do you agree that the proposed amendment to Requirement 3.13.3 clearly sets out what providers must do in respect of valid entries to competitions? If not, please give your reasons.**

No. We do not see the need for the PSA to try and 'future proof' the code, the transaction should be receipted, which it currently is. If your entry is valid you will receive a receipt for your spend, and if your entry is not valid you are requiring that a confirmation of non-entry is provided.

In the 20+ years of text messaging, the ability to ascertain when a text message was sent by the receiver has never been developed so why would it be now? There is no need to 'future proof' this requirement, as the requirement itself accounts for this, if the technology did ever come into use.

However, under the receipting portion of this consultation, (paragraph 24), there is no time limit mention on a receipt being sent if not a valid entry. Does this mean a receipt text message should be sent to a user whom tries to enter after 12 months of closing date? How long should this be, no guidance is given on that along with the additional expense for these messages. To mitigate all of these issues it should be clear and can be placed in service provider's clear T's & C's that a receipt to confirm entry is valid proof of entry. This means no time limit or expense for out of time entries.

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<sup>1</sup> PSA Annual Market Review 2021 pages 6-7

**Q 2. Do you agree that the proposed amendment to Requirement 3.13.5 clearly sets out when an entry to a competition must be considered invalid and what providers must do to inform consumers? If not, please give your reasons.**

The amendments that are proposed to be made to Requirement 3.13.5, are not sufficient. The PSA have clearly rushed the amendments of this following their clear lack of knowledge of the industry and in a panic have redrafted this service specific guidance, which is not adequate.

The PSA have changed the requirements so that the provider must notify the user if they have entered into a service, but have done so outside of the timescales stated in the marketing, and inform them that they will not be charged. There is no time scale to this requirement. The PSA have missed a vital point to this requirement. There is no point in such a requirement if there is no timescale to when they must be notified. It would be expected, given the prescription in other areas of the 15<sup>th</sup> code, this would define this appropriately.

The PSA have introduced a requirement which seems to already be generally common practice within the industry already. We would like to state again, that this evidences that the PSA do not understand the market in which they regulate, and had they done so they would have identified this at the outset of the drafting the code and included it from the beginning and not when the industry told them for the second time that it was not technically possible to comply with their new requirements.

**Q 3. Do you agree that the proposed deletion of Requirements 3.13.11, 3.13.12, 3.13.13 and 3.13.15 remove unnecessary duplication? If not, please give your reasons.**

Yes. The PSA drafted overly prescriptive requirements in the first instance, but also requirements that are not technically possible. The removal of such requirements is supported by us.

**Q 4. Do you agree that the amended Requirements 3.13.3 and 3.13.5 are sufficiently clear that a guidance note is not required? If not please give your reasons.**

No additional guidance is needed to these amendments, provided that they introduce the element of a timescale on the confirmation of 'non-entry' message being sent, or at least defined within the Code.

As stated previously, the PSA also do not need to include wording to 'future proof' the code, given that the wording is sufficient to cover the eventuality that this technological advancement may happen at some point in the future, as it is. If the code is to be future proofed then it has to consider many more advancements in technology than just this issue. This has not been done in the 15<sup>th</sup> code and should not be done at this stage in this context.

**Q 5. Do you agree that the proposed revised Requirements in section 3.13 could be implemented by the industry by 2 May 2022? If not, please propose an alternative date setting out your reasons.**

No. The PSA cannot publish and implement a code that is not fit for purpose. They have clearly evidenced this, through the need to change the code before it has even been launched. Throughout the whole process the PSA have failed to provide the industry with adequate information to be able to comply upon implementation. There are now 5 weeks until the code is due to be implemented and the PSA have still not published the Guidance which is a working document alongside the code.

The code implementation should be delayed, until this updated requirement has been approved by Ofcom, and they should publish one code that is fit for purpose, and not something that will change within weeks of it being published. This does not evidence in any way that the PSA are being clear, transparent or go any way to evidence that the new 15<sup>th</sup> Code is easier and simpler to comply with, when it is being changed with errors affecting the largest service sector within the industry.

### **Submit your response**

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