

**Consultation on  
Service-Specific Requirements for  
Competition and Voting services  
under the 15th Code of Practice**

12 January 2022

## Contents

About the PSA.....	2
1. Introduction .....	2
The process .....	3
About this document .....	3
Responding to this consultation.....	3
2. Service-specific Requirements for Competition and Voting Services.....	5
Changes proposed to service-specific Requirements in section 3.13 .....	6
3. Amending Code 15 and bringing the revised service-specific Requirements into force .....	8
4. Table of proposed amendments to Requirements .....	10

## About the PSA

We are the UK regulator for content, goods and services charged to a phone bill. We act in the interests of consumers.

Phone-paid services are the goods and services that can be bought by charging the cost to the phone bill or pre-pay account. They include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases. In law, phone-paid services are referred to as premium rate services (PRS).

We build consumer trust in phone-paid services and ensure they are well-served through supporting a healthy market that is innovative and competitive. We do this by:

- establishing standards for the phone-paid services industry
- verifying and supervising organisations and services operating in the market
- gathering intelligence about the market and individual services
- engaging closely with all stakeholders
- enforcing our Code of Practice
- delivering organisational excellence.

## 1. Introduction

1. In 2019 we embarked on a review of our regulatory framework – the Code of Practice. The Code of Practice (14<sup>th</sup> edition) (Code 14) has been in force since July 2016. However, it has evolved largely from the 12<sup>th</sup> Code of Practice (Code 12), which was introduced after our last comprehensive review of regulation in 2011. This review of the Code was, therefore, the first comprehensive one in more than a decade.
2. As we set out in our [discussion document](#) and [consultation document](#) the market we regulate has changed significantly in that period and consumer expectations have also changed, influenced by experiences in other markets and changes in legislation. Our aim was to develop a new Code of Practice (Code 15) more suited for this new market and which meets consumers' expectations. We said we wanted to deliver a Code that:
  - introduces Standards in place of outcomes
  - focuses on the prevention of harm rather than cure
  - is simpler and easier to comply with.
3. While an emphasis on the prevention of harm in the first place should reduce the need for enforcement, we also recognised that any new Code must be underpinned by efficient and effective enforcement.

## The process

4. After setting out our initial approach in a discussion document in February 2020 we formally consulted on our draft Code 15 from April to July 2021. Throughout the development of the draft Code 15 we consulted widely with industry and consumer advocates holding 15 webinars and a number of 1-2-1 meetings. Following Ofcom's approval, we published our [final statement](#) and [new Code 15](#) on 20 October 2021. Our consultation document and the final statement set out in detail our rationale for the proposals we made for draft Code 15 and our final decisions.
5. Code 15 will come into force 5 April 2022. We are now in an implementation phase, and we are committed to working with industry to assist them so that they are ready to operate services in compliance with the new Code from the implementation date.

## About this document

6. Following the publication of our final statement and Code 15 on 20 October 2021, we received representations from several industry participants involved in the delivery of broadcast competitions and voting. They have told us that service-specific Requirement 3.13.3 cannot be implemented by them as it requires them to know when a competition entry or vote is sent which they say is not possible.
7. Following discussion with the industry, we have accepted that minor clarificatory changes are needed to the service-specific Requirements in section 3.13 of Code 15.
8. This document serves as the formal consultation required under paragraph 6.4.3 of Code 15 on the changes we are proposing to make to Code 15. This document, together with the feedback we receive, will inform our final decision on any amendments that may be required to section 3.13 service-specific Requirements. However, any amendments we deem necessary would be subject to Ofcom approval and can only be made and brought into force after the entry into force of Code 15 on 5 April 2022.

## Responding to this consultation

9. We would welcome feedback on the matters raised in this consultation document up until 23<sup>rd</sup> February 2022. We believe that a consultation of this length provides sufficient time for respondents to come back to us on the matters raised in this document as the issues are limited in scope and affect only a small number of companies, many of which we have consulted informally prior to the publication of this document.
10. We plan to make available all responses received. If you want all, or part, of your submission to remain confidential and/or anonymous, please clearly identify where this applies along with your reasons for doing so.
11. Personal data, such as your name and contact details, that you give or have given to the PSA is used, stored and otherwise processed, so that the PSA can obtain your views, and publish them along with other views.

12. Further information about the personal data you give to the PSA can be found on our [privacy policy page](#).
13. Comments should be submitted in writing using [this response form](#) and sent by email to [consultations@psauthority.org.uk](mailto:consultations@psauthority.org.uk). If you have any queries about this consultation, please email them to [consultations@psauthority.org.uk](mailto:consultations@psauthority.org.uk).
14. Following the consultation period we will publish our statement on amendments to section 3.13 of Code 15 and finalised amendments – as soon as possible after 5 April 2022.

## 2. Service-specific Requirements for Competition and Voting Services

15. One of the ways we have simplified Code 15 is through the removal of Special Conditions. These have either been incorporated into Code 15 where they remain relevant or dispensed with altogether. There are a few remaining service-specific Requirements which provide further details for all relevant providers on what additional requirements apply to particular categories of service so as to meet the Code Standards and protect consumers (see Code 15 – 2.1.4).

16. There is a set of service-specific Requirements relating to Competition Services, including broadcast services at section 3.13 of the Code. Code Requirement 3.13.3 currently reads as follows:

“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”.

17. The aim of this Requirement is to ensure the fair treatment of consumers wishing to enter competitions within TV or radio programmes. Where consumers have sent a legitimate entry response to a competition before the time specified in the promotion for the competition, it should be entered into the competition and given equal consideration.

18. However, we recognise that there may be instances where for technical reasons the provider’s receipt of a consumer’s legitimate entry or vote is delayed and the event may have been completed (i.e. winners selected and announced) before the entry or vote is received. Providers of broadcast competition and voting services have also told us that they do not know when a consumer has sent an entry or vote for an event, only that an entry or vote has been received and when it was received.

19. We had hoped that it might be possible to provide sufficient clarity for providers of broadcast competition services through a guidance note setting out our expectations of providers. We included a draft guidance note on service-specific Requirement 3.13.3 in our [consultation on draft guidance](#) published on 27 October 2021. Our expectations as set out in that draft guidance note in relation to Requirement 3.13.3 were as follows:

“that competitions will be run such that there is reasonable time afforded between the closing time for entries to be submitted and the selection of winners, to allow for delayed entries to be received and entered into the competition. “Reasonable time” in this context will vary depending on the nature and terms of the competition, as well as the platform through which the competition is promoted and/or operated”

and

“that legitimate entries that are received by the provider outside of the reasonable time allowed for delayed entries, will not be charged”.

20. We have discussed these expectations with broadcast competition and voting service providers and concluded as a result that the first of these expectations cannot be easily met. We understand that providers, when they receive an entry or a vote, are still not able

to know when the entry or vote was actually sent. They cannot therefore distinguish between entries or votes sent within the timeframe set out in the promotional material and conditions for the event and entries or votes that have been sent outside the timeframe. There is a risk in seeking to address the potential for unfairness to some consumers whose entries are received late, that entries sent outside the timeframe of the event could be included as valid when they should be considered invalid. This would potentially be unfair to those consumers whose entries and votes were sent and received within the timeframes for the event.

21. We have limited quantitative evidence about the scale of the issue that the original wording of 3.13.3 sought to address. Global, in its response to the consultation on draft Code 15 submitted data to the effect that in the months March to May 2021, between 0.0004-0.001% of entries were affected by technical issues. Informal consultation with other providers suggests that the problem is limited in scale.
22. We understand from providers that in practice, late entries or votes are not charged i.e., the service charge for the service is not applied to late entries or votes. This would meet our expectation that entries and votes delayed for technical reasons will not be charged. The current wording of the Requirements in section 3.13 does however allow for charging of late entries and votes where other conditions are met, although not in the case where entries and votes are delayed for technical reasons.

### **Changes proposed to service-specific Requirements in section 3.13**

23. In view of the representations of the industry and the evidence of the limited scope of the potential for harm to consumers who have entries and votes within the timeframe for an event but whose entries and votes have not been received on time, we propose the following changes to service-specific Requirements in section 3.13. We propose to amend Requirement 3.13.3 as below:

“All valid responses for entry into a competition or vote that are sent in by consumers within the timeframe set out in the promotional material must be entered and afforded sufficient time to be given full and equal consideration, except where such responses are received by the provider outside of the timeframe set out in the promotional material and the time that they were sent cannot reasonably be ascertained.”

24. We also propose to amend service-specific Requirement 3.13.5 as below:

“Competition and voting entries that are received by the merchant provider (or a third party on its behalf) outside of the times outlined in the promotion must be considered invalid. Any consumer who has sent such an entry must be informed that their entry is invalid and that they have not been entered into the competition or vote. The consumer must not be charged for an invalid entry. The consumer must be informed that they have not been entered and that they have not been charged or will be refunded where a charge has been incurred”.

25. The amended Requirement 3.13.3 continues to set out the basic principle that all valid entries for a competition should be considered equally, but now makes allowance for

entries that are sent on time but received late. We considered whether this should be further qualified by adding “as a result of technical failure”. However, we consider that this could mean the provider would need to establish which entries had been received late as a result of technical failure and which were simply sent late.

26. We have sought to future-proof this Requirement with the addition of the words “and the time that they were sent cannot reasonably be ascertained” at the end. It is our understanding that providers cannot currently reasonably ascertain when a competition entry or a vote has been sent. However, should it become possible for providers to be able to determine when an entry or vote has been sent (whether through technical advancements or technical and/or contractual arrangements with mobile network operators), we would then expect providers to be able to consider all valid entries and votes.
27. The amended Requirement 3.13.5 provides protection for consumers against the detriment of being charged for a late entry by codifying what we understand to be the industry’s practice of not charging late entries. In the interests of transparency and fairness we have added the condition that the consumer must be informed that their late entry has not been entered into a competition or vote but that they have not been charged.
28. We understand that current industry practice is only to provide consumers with positive confirmation that an entry has been received and entered into a competition and that they will be charged. We consider that providing the additional negative confirmation to consumers whose entries have not been entered into an event and have not been charged is proportionate and fair. In our view it will help to manage consumers expectations of winning a competition, while also providing reassurance that they have not been charged for an invalid entry. We consider that this should be a minimal additional burden for the industry given the current practice as we understand it.

**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.**

**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.**

29. The proposed amendments to Requirements 3.13.3 and 3.13.5 deal with the issue of entries received outside of the timeframe contained in the promotion for an event. In re-examining these Requirements we considered that they should apply to competitions and to voting. We therefore looked again at Requirements 3.13.11 – 3.13.16 in Code 15. We consider that Requirements 3.13.11, 3.13.12, 3.13.13 and 3.13.15 duplicate elements of Requirements 3.13.1 – 3.13.10 and so we propose to delete them. We propose a minor addition to the current 3.13.14 to make it clear that the Requirement applies only to TV and radio competitions and voting. Minor clarificatory amendments are also proposed to 3.13.2 and 3.13.4. We believe that these amendments and deletions should make the Requirements in section 3.13 overall simpler to understand. All these changes are set out in a table on page 9 of this document.



**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.**

30. We also consider that if these amendments are made to the Requirements in section 3.13, that they will be sufficiently clear to be able to be implemented without further guidance. We therefore propose not to issue the draft Guidance Note on service-specific Requirement 3.13.3 published in the consultation document on 27 October 2021. This proposal has no effect on the other draft guidance notes published in that document.

**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.**

### **3. Amending Code 15 and bringing the revised service-specific Requirements into force**

31. We propose to use the new code amendment provisions of Code 15 contained in section 6.4 of the Code to make the changes to these Requirements. We can only make changes to provisions once Code 15 is in force. However, we can carry out now the requirement under paragraph 6.4.3 of Code 15 to consult on the amendments to be made so that the changes can be made as soon as possible after the entry into force of Code 15. Pending those changes, the PSA would not enforce against providers who may have breached the current paragraph 3.13.3 of Code 15. In any case, the approach we plan to take for Code 15 means that we would be engaging with providers to ensure compliance and not seeking to enforce immediately against providers who are clearly trying to comply with the Code. In this case, as noted above we accept that at present it is not possible for merchant providers to know when a competition entry or vote has been sent.

32. The sequence of events for bringing the amended provisions into force is as below:

- PSA consults on draft amendments to section 3.13 of Code 15 – closing date 23 February 2022
- PSA considers responses and prepares Statement
- PSA submits Statement and finalised amendments to Ofcom for comment and approval
- Code 15 comes into force – 5 April 2022
- Ofcom approves (assuming it is content) the proposed amendments to section 3.13 of Code 15 – as soon as possible after 5 April 2022
- PSA publishes Statement on amendments to section 3.13 of Code 15 and finalised amendments – as soon as possible after 5 April 2022
- revised section 3.13 of Code 15 comes into force – to be determined based on responses to the consultation.

33. We would like to bring the amendments to section 3.13 into force as soon as possible after the entry into force of Code 15. The precise entry into force date will depend on responses to this consultation. Our initial view is that the amendments will have been the subject of close consultation with the industry and they reflect what we understand to be current industry practice. The amendments are designed to be straightforward to implement and so it could be possible to bring these revised provisions into force as soon as 2 May 2022 – i.e. four weeks after Code 15 comes into force.

**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.**

## 4. Table of proposed amendments to Requirements

34. The table below provides a side by side comparison of the current text of Requirements in section 3.13 of Code 15 and our proposed amendments, including revised numbering to reflect proposed deletion of four Requirements.

Code 15 Requirement Number	Current text in Code 15	Proposed new Requirement Number	Suggested amendment for consultation
3.13	Competition Services (including Broadcast Services and Call TV Quiz Services)	3.13	Competition <b>and voting services</b>
3.13.1	Any promotion must make clear that winning is not a certainty.	3.13.1	None
3.13.2	Prior to entry, the consumer must be clearly provided with: (a) a clear description of how the service works and instructions on how to use it; (b) information on the prizes available (including where relevant the amount of money that consumers stand to win), the number of prizes available, and any restrictions on the number of prizes that can be won; (c) the full cost of participation, including but not limited to the cost of entry; (d) the date and time after which the consumer can no longer enter or participate; (e) how and when winners will be contacted; (f) how and when prizes will be received or money won will be paid; (g) how prize winnings will be calculated; and (h) where relevant, any criteria for judging entries.	3.13.2	Prior to entry, the consumer must be clearly provided with: (a) a clear description of how the service works and instructions on how to use it; (b) information on <b>any</b> prizes available (including where relevant the amount of money that consumers stand to win), the number of prizes available, and any restrictions on the number of prizes that can be won; (c) the full cost of participation, including but not limited to the cost of entry; (d) the date and time after which the consumer can no longer enter or participate; (e) how and when <b>any</b> winners will be contacted; (f) how and when <b>any</b> prizes will be received or money won will be paid; (g) how <b>any</b> prize winnings will be calculated; and (h) where relevant, any criteria for judging entries.
3.13.3	All valid responses for entry into a competition within a TV or radio programme that	3.13.3	All valid responses for entry into a competition or vote <b>within a TV or radio</b>

	are sent in by consumers within the timeframe set out in the promotional material must be entered into the competition and given equal consideration.		<b>programme</b> that are sent in by consumers within the timeframe set out in the promotional material must be entered and <b>afforded sufficient time to be given full and equal consideration, except where such responses are received by the provider outside of the timeframe set out in the promotional material and the time that they were sent cannot reasonably be ascertained.</b>
3.13.4	Consumers whose entries are valid must receive confirmation that they have been entered into the competition.	3.13.4	Consumers whose entries are valid must receive confirmation that they have been entered into the competition <b>or vote.</b>
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.	3.13.5	Competition <b>and voting entries that are received by the merchant provider (or a third party on its behalf)</b> outside of the times outlined in the promotion must be considered invalid. Any consumer who has sent such an entry must be informed that their entry is invalid and that they have not been entered into the competition <b>or vote.</b> The consumer must <b>also be informed whether or not they have been charged. not be charged for an invalid entry. The consumer must be informed that they have not been entered and that they have not been charged or will be refunded where a charge has been incurred.</b>
3.13.6	Where the method of entry is via a phone call, any call that has commenced during the specified time period for entries must be considered valid. This includes calls that have commenced during the specified time period for entries, but have not been completed prior to the closure time.	3.13.6	None

3.13.7	Where a TV or radio programme is repeated, the route of entry must only remain open if the entries received will still be considered valid.	3.13.7	None
3.13.8	Where a service contains multiple routes of entry, all routes of entry must be presented and displayed with equal prominence.	3.13.8	None
3.13.9	All valid entries must have the same chance of winning.	3.13.9	None
3.13.10	Consumers must not be subjected to any additional costs in order to claim prizes once draws have been made.	3.13.10	None
	TV and radio broadcast voting		Deleted
3.13.11	All valid votes or entries sent by the audience must be available in sufficient time to be fully considered and reflected in the outcome of an event. In circumstances where the consumer has been clearly informed of the time period in which votes or entries will be valid, any votes or entries received outside this time will be considered invalid and will not need to be considered or reflected in the outcome of an event.	-	Deleted
3.13.12	All valid votes or entries received before lines have been announced as open, or after an announcement that lines are closed, must be considered invalid and must not be counted.	-	Deleted
3.13.13	Calls that have already commenced at the time of a closure announcement must be completed, considered valid and counted. Invalid votes or	-	Deleted

	<p>entries may only be charged where:</p> <p>(a) the risk of being charged for invalid votes or entries has been clearly communicated to the audience;</p> <p>(b) consumers whose votes or entries are invalid are clearly informed that their vote or entry is invalid and whether a charge has been applied; and</p> <p>(c) the receipt of invalid votes or entries after lines have been announced as closed is not due to technical failure.</p>		
3.13.14	Where a PRS provider has made arrangements for the handling of excess peak traffic by third parties, these arrangements must ensure that all valid votes or entries so handled are treated the same as those received by the provider.	3.13.11	Where a PRS provider has made arrangements in relation to TV and radio competitions or votes for the handling of excess peak traffic by third parties, these arrangements must ensure that all valid votes or entries so handled are treated the same as those received by the provider.
3.13.15	Phone lines must not remain open when programmes are repeated, except where votes or entries will still be considered valid.	-	Deleted
3.13.16	There must be no amendments to the operational systems or procedures relating to the service without senior management authorisation. Any such operational systems or procedures must identify persons in senior management positions within the relevant organisation who have the power to authorise such changes.	3.13.12	None