

# Consultation response form

## Consultation on draft Code 15

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            | Paul Muggleton                     |
| Contact phone number |                                    |
| Representing         | Organisation                       |
| Organisation name    | Phone-paid Services Consumer Group |
| Email address        | paul@psconsumers.org.uk            |

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](#).

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| Your details: | Delete as appropriate: |
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| 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.   | Delete as appropriate:<br><br>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. | Yes                                |

## Your response

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

### Introduction

We are the Phone-paid Services Consumer Group, created to represent consumers who have been affected by weaknesses in the regulation of Phone-paid Services.

We are also responsible for the [payforitsucks.co.uk](http://payforitsucks.co.uk) website which campaigned against the injustices of the networks' "Payforit" system. Sadly, although "Payforit" became discredited and was abandoned, unjustified third-party charges continue to find their way on to customers' phone bills.

It is likely that PSA will wish to redact part of this response, as they have done to responses to previous consultations. We regret that the voice of consumers is stifled in this way. It isn't fair to ask for an explanation of why consumers believe regulation isn't working to protect them, and then refuse to publish examples which support our view. We see no harm in naming and shaming companies which have treated consumers appallingly, where there is ample evidence of this already in the public domain on websites like Trustpilot. Copies of all our consultation responses, in their unredacted form are available on the [psconsumers.org.uk](http://psconsumers.org.uk) website and we urge readers to refer to those rather than the emasculated versions published by PSA.

We recognise that in the past two years, PSA have begun to take steps to reduce the outrageously high levels of fraudulent transactions facilitated by phone-payment. However, the fundamental unfairness remains. PSA suggest that consumers should treat their phone number like a credit card number, but this is not a sensible comparison. Phone numbers, by their very nature, are insecure. Their primary purpose is as a means of communication, not as a method of payment. Unlike credit cards where CVV and PIN numbers are used to prevent

fraud, all that is needed to make a fraudulent phone charge is the consumer’s phone number and a reckless or negligent payment intermediary. There may be rules which merchants making charges are supposed to follow, but no checks are currently made that consumers have consented to charges before those charges are applied to their accounts. Furthermore, there is no mechanism, other than the Small Claims Court, for consumers to dispute these charges.

In our view it is fundamentally wrong for consumers to be charged for RECEIVING text messages. Reverse premium rate texts have been used fraudulently for many years, and nothing in the new Code of Practice will do anything to stop this abuse. The Moblix Media incident in September 2020, where large numbers of consumers were unlawfully charged for multiple premium texts, illustrated the problem. In this case, because of the scale of the unlawful charges, consumers were refunded – albeit after a lengthy delay. Other cases occur regularly, but these consumers rarely obtain refunds, as the service providers are allowed to “mark their own homework” and insist that the charges are lawful without providing any evidence to this effect! Such consumers are offered no means of disputing the charges. There is no ombudsman, so the only means of obtaining redress is to make a claim in the County Court - a step that few consumers would pursue without the support we provide. It is not enough to have rules where compliance is checked retrospectively (if at all). MNOs should hold proof of consent to charge **before** allowing third party charges to reach consumers bills, in the same way as banks require a Direct Debit Mandate for such charges. The Mobile Networks need to be made to take responsibility for these charges. If a consumer refuses to pay one of these “third party” charges, it is the Mobile Network that will ruthlessly pursue the debt, even though they hold no evidence that the charge was lawful. MNOs should not be allowed to pursue payment of charges and harass their customers, when they hold no evidence that those charges are legitimate.

| Consultation questions  | Your response  |
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| <b>Proposed regulatory approach</b>   |  |
| 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. | Confidential? No<br>We agree with the introduction of regulatory standards, but worry that these fail to address some of the major issues affecting consumers. In particular, they fail to provide consumers with any mechanism for disputing unlawful charges.  |
| 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.         | Confidential? No<br>We agree that it is almost impossible to designate a service as “high risk”. When regulation is tightened for one service type, unscrupulous companies will turn their attention to other service types. Is there a case for specific requirements where charges are initiated through a web |

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|  | interface rather than via a premium rate call or a Mobile Originated text? These services have historically generated more complaints.  |
| Q3 Do you agree with our proposed regulatory approach relating to Guidance? Please provide an explanation as to why you agree or disagree.                     | Confidential? No<br>We agree. Furthermore Tribunals should take a failure to follow guidance as an aggravating factor, increasing the potential sanctions for non-compliance.   |
| Q4 Are there any areas where you consider that Guidance would assist with compliance with the standards and requirements?                                      | Confidential? No<br>Guidance on Complaint handling and Refunds needs to be tightened and clarified. It is unacceptable for consumers to have to resort to legal action in order to have their complaint properly investigated and resolved. The lack of a clearly defined disputes resolution procedure is really unacceptable. All reputable payment mechanics offer such a service. |
| Q5 Do you agree with our proposed regulatory approach relating to compliance support? Please provide an explanation as to why you agree or disagree.           | Confidential? No<br>Broadly we agree. Where a service provider genuinely wishes to comply with the Code, PSA should be willing to offer non-binding advice. However, care needs to be taken that PSA resources aren't overstretched by providing such advice.   |
| 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.    | Confidential? No<br>Once more we agree, but are concerned that providing such documentation doesn't overstretch PSA to the point that essential consumer protection is ignored.   |
| Q7 Are there any areas where you consider that Best Practice information would be helpful?   | Confidential? No<br>As for Q4, we feel that Complaint Handling is a weak area for most Phone-paid Services.   |
| 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. | Confidential? No<br>We agree that the proposed supervision and regulation has the potential to improve protection against consumer harm. However there is a danger that this becomes a "box ticking" exercise, wasting the time of both PSA and the service providers. It also fails to address the <b>fundamental</b> injustices of the system.                                      |
| Q9 Do you agree with our proposed regulatory approach relating to Code   | Confidential? No<br>We agree with this approach. Where a provider fails to co-operate, PSA need to move quickly to  |

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| <p>compliance: engagement and enforcement? Please provide an explanation as to why you agree or disagree.</p>   | <p>enforcement. PSA should publish details of enforcement notices in the interests of transparency.</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? No<br/>We disagree. Such arrangements have a history of causing consumer harm. The MobBill Tribunal Adjudication is one example of this. PSA agreed that they could operate a "single-click model" which did not comply with the code in force at the time. It ended badly, and with a great deal of consumer harm.</p>   |
| <p>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>                                   | <p>Confidential? No<br/>We believe that it would be better if <b>ALL</b> services were required to comply <b>fully</b> with the Code. Where deemed desirable, the Code should be amended to allow for innovation, <b>but only after proper consideration of the need to protect consumers.</b></p>   |
| <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>  | <p>Confidential? No<br/>No.<br/>If it is felt desirable to allow a service to operate which fails to comply with the current Code, changes to the Code should be properly consulted on. This would allow proper consideration of the potential for consumer harm which has been lacking in the past.<br/>We recognise that this has potential to delay the implementation of such services. However, in the past, where PSA have taken action to protect consumers, the lengthy consultation process has resulted in consumer harm continuing over a prolonged period. The time taken to implement MFA for subscription services is an example of this. If consumers have to go through a consultation process to obtain proper protection, a similar consultation process should apply to code amendments which benefit the industry.</p> |
| <p><b>Standards and requirements</b></p>  |  |
| <p>Q13 Do you agree with our proposed Integrity standard and requirements? Please provide an</p>  | <p>Confidential? No<br/>We agree that the integrity of participants is essential to improving consumer confidence in Phone-paid Services.</p>  |

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| <p>explanation as to why you agree or disagree.</p>   | <p>The Integrity standard is somewhat subjective. We are concerned that under para 3.1.2 providers have to act “knowingly or recklessly” to breach the Code. We have seen a number of intermediaries who have onboarded services without proper DDRAC. We believe that you need to make clear that a failure to properly assess such business partners will be considered “reckless”.</p>   |
| <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>                              | <p>Confidential? No<br/>Yes</p>   |
| <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>  | <p>Confidential? No<br/>We agree. However, while there is a requirement to provide full information, there needs to be clarity about what information is important, and a requirement to bring such important information to the consumers attention. We sometimes see attempts to obfuscate the true cost of services by disguising subscriptions as one-off payments. We have seen cases where, for example, the consumer is presented with a sign up page “Pay £3 Now to win an Ipad4” in big bold print. Lower down the page, in a position where it won’t display on most phone screens are terms and conditions in tiny, faint print stating that by entering the competition you agree to a weekly subscription of £3. It needs to be made clear that such subterfuge is not an “acceptable business practice”. Vulnerable consumers, including those for whom English is a second language are particularly affected by deceptive practices like these.<br/><b>We’d like to see checkout information displayed in a standard manner – as for example when using Paypal or Amazon Pay.</b></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? No<br/>No.<br/>We feel that more needs to done to protect vulnerable consumers from the “sharp practices” of some in the industry. These measures as they stand discriminate against the vulnerable.</p>   |

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? No

Much of what we say above in relation to transparency also applies to fairness. We see a disproportionate number of vulnerable consumers affected by unfair practices in the industry. Such consumers find it difficult to get fair treatment and rarely obtain refunds for unfair charges until we get involved.

We responded at length to a previous consultation on refunds. Unfortunately we were unable to agree to the publication of the emasculated version, after PSA had redacted much of the content. Nobody would want to read the resulting gibberish! This response can be seen in full on our website and will not be reiterated here.

The proposal to require a valid opt-in every 12 months is welcome and will do much to reduce the scale of bill shock. We have handled cases where amounts in excess of £1000 have been recovered. The service providers in question had no evidence of the initial consent to charge or of any subsequent usage of the service.

We believe that evidence of consent should be held **BY THE NETWORK OPERATORS** and provided to consumers on request. This would benefit both consumers and merchants by providing clarity. It should be made clear that the sending of receipt texts, in itself, does not evidence the existence of a contract between the service provider and a consumer. We often find service providers attempting to claim this.

To show how companies attempt to mislead consumers we reproduce below a email sent by Tap2Bill (a Payment Aggregator) to a consumer on behalf of a service provider called Mobidoo. This was received in response to an email specifically requesting proof that a contract existed between the consumer and Mobidoo.

*Hello,  
The service joined is Mobidoo, a Network approved PayForIt service  
The service has been entered from browsing the internet and clicking on a banner advert which opened the site, then the on-screen prompts where clicked which lead to the charge. The billing is*

*PayFort which is a mobile billing gateway approved by all Network operators.*

*The product adheres to the PFI framework and any payment taken from PFI requires interaction from the mobile device in order to set up a payment or subscription, in any case,*

*In your case, the payment was taken across the cellular data connection 3G/4G and during this connection type your mobile network liaises with ourselves, your network identifies your account and the payment is set up between the us the third party and your network.*

*We can confirm with access logs that the mobile device below accessed the Mobidoo site and it did so by leaving behind some information such as the device type known as a User Agent which can only be accessed upon a device browsing our pages.*

*We are unable to share the above mentioned information and I.D's over this platform as it would be a security breach, furthermore the information would be encrypted so you wouldn't have the software nor licences/agreement to decrypt. You can contact the PSA and ask them to act on your behalf if you are not satisfied with an outcome, as they are the Ombudsman who regulate this industry.*

*As part of your consumer rights to cancel and receive a refund for Mobidoo started the moment your initial entry SMS Message was received and ends exactly 14 days from the day you were delivered the below text.*

*< screenshot showing subscription text message >*

*As you can see above the service was initiated on your handset on 7th September 2019 and then cancelled, when you sent a STOP message from the handset on 30th December 2019. (Please see snippet below)*

*< screenshot showing text messages sent >*

*I hope this resolves your query.*

*Kind regards,*

Not only does this email fail to provide the information required to prove that there was consent to a subscription, but it completely misrepresents the role of PSA. **PSA are NOT an "Ombudsman", nor will they "act on a consumer's behalf"**. These are lies intended to

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|  | <p>trick consumers into making a complaint to an organisation that <b>will not intervene in individual disputes.</b></p> <p>The letter makes an excuse for not being able to show evidence of subscription which would be vital for them to show that the charges are lawful. <b>Of course the account holder is entitled to see this evidence.</b> One way of obtaining it would be to make a Subject Access Request under GDPR. If the handset involved in the "subscription" belonged to the consumer, then this is personal data which he/she can insist on seeing. If the matter went to the County Court, this evidence would have to be provided in order to prove the existence of a lawful contract.</p> <p>The sending of letters like these, using lies and half-truths in an attempt to prevent consumers pursuing their legal rights should in itself be a breach of the Code potentially resulting in sanctions.</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? No</p> <p>Fairness is very subjective. We believe that the system, as it stands is completely unfair to consumers. The balance of power has rested for too long with the service providers, who are able to help themselves to money from consumers phone accounts without showing any proof of consent. We believe that Fairness requires that this imbalance be corrected.</p> <p>Consumers must be provided with some means of disputing transactions. It is simply not good enough for service providers to be "marking their own homework" as happens at the moment. Consumer law makes it clear that where the existence of a contract is in dispute, the burden of proof rests with the merchant to show the existence of that contract. The Code needs to properly reflect that aspect of contract law. Network operators need to be made to take responsibility for the charges they facilitate. If consumers refuse to pay such charges, they are quick to take action including disconnection and debt collection. Yet they hold no evidence that the</p> |

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|   | <p>charges are lawful. That is intrinsically unfair. Network operators should not be enforcing charges which they cannot prove are legitimate.</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? No</p> <p>We believe that much more needs to be done here.</p> <p>As you would expect, our experience of the Customer Care offered by many of the smaller merchants can only be described as dismal. Such customer care usually involves an answering service, working from a script, which is employed primarily to deflect complaints and prevent the consumer obtaining redress. We believe that companies providing customer care on behalf of merchants should be brought within the scope of the Code. Failing this it must be made clear to merchants that they will be held accountable for any failings of the third party they employ.</p> <p>Typically we find that consumers need to communicate at least <b>four</b> times with the service provider in order to get a satisfactory resolution of their issue. Where the existence of a contract is disputed, the merchant should be <b>required to provide any evidence they hold to the consumer at the first time of asking</b>. If they are unable to produce such evidence, the consumer should be refunded in full and without attempts to haggle. Despite repeated attempts many consumers are repeatedly told that they “must have agreed to the charges” without being shown the evidence. Often these issues are not resolved until legal action is commenced.</p> <p>Service providers should be required to keep evidence of their complaint handling so that PSA can satisfy themselves that consumers are being treated fairly. <b>A failure to provide evidence of consent to charge at the first time of asking should be considered a breach of the Code</b>.</p> <p>We recognise that providing “no quibble” refunds creates a potential loophole which could be exploited by unscrupulous consumers. However a loophole has existed for many years. It allows unscrupulous merchants “no quibble” access to consumers’ money without any need to prove consent. It leaves consumers unable to recover their money without resorting to legal action.</p> |

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|  | <p><b>An equitable arrangement would provide for evidence of consent to charge to be held by a responsible third party and made available to either the consumer or the merchant on request.</b></p> <p>The most obvious way of achieving this would be for network operators to carry this responsibility and to adjudicate in the case of disputes.</p> <p>The current arrangement where merchants act as the final arbiter of disputes doesn't work and is unfair to consumers. Nothing in the proposed new Code changes this imbalance of power..</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? No</p> <p>No. We feel that these arrangements perpetuate the current arrangements which are demonstrably unfair to consumers. They fail to properly balance the needs of the consumers against those of the merchants and allow merchants to abuse the power they have to take money from consumers without proper checks.</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? No</p> <p>We agree. Merchants need to be more aware of the increased risk of consumer harm when they engage in lawful "sharp practice". In an ideal world, merchants would behave ethically and not seek to deceive consumers. A review of some of the Trustpilot reviews of merchants shows that isn't the case, and we see a disproportionate number of cases affecting children or vulnerable adults. <b>We remain of the view that PSA and the MNOs should be encouraging the use of third party charge bars on phones provided to vulnerable consumers. Indeed we believe that it is negligent not to do so.</b></p> <p>We believe that there is a strong case for making phone-payment an opt-in service, rather than requiring an opt-out as at present. We also believe that Charge caps should apply to such charges..</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</p>  | <p>Confidential? No</p> <p>We agree</p>  |

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| information or evidence which would inform our view?  |   |
| 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>Confidential? No</p> <p>We have recently seen cases where phone numbers have been transferred from marketing database and then used to send Premium Rate texts resulting in unlawful charges to the consumers owning those numbers. Such issues might more properly be considered by ICO. Our main concern with the inclusion of this in the Code is that we may see ICO and PSA "passing the buck" to each other and allowing malpractice to go unchallenged. It might be better for PSA to leave these issues to ICO.</p> <p>There is also an issue around MSISDN passthrough, where consumers' numbers are being passed to third parties without their knowledge or explicit consent. We believe that consumers need to be educated about this and allowed to opt out of having their MSISDN exposed in this way as in Germany.</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>Confidential? No</p> <p>We have no issues with the new standard but would expect PSA to liaise with ICO regarding implementation and enforcement so as not to duplicate effort.</p>  |
| Q25 Do you agree with our proposal to introduce a new prevention of harm and offence standard? Please provide an explanation as to why you agree or disagree?   | <p>Confidential? No</p> <p>We agree</p>   |
| 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  | <p>Confidential? No</p> <p>We agree</p>   |

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| <p>any further information or evidence which would inform our view?</p>  |   |
| <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> | <p>Confidential? No</p> <p>Yes, we believe that companies operating Phone-paid Services need to be subjected to greater scrutiny.</p> <p>However, we believe that services should need to be registered <b>BEFORE</b> they start operating. <b>The consumer facing “service checker” needs to be linked to the registration database so that details of new services are immediately available to consumers. Failure to register or update registration details should be a breach of the Code and subject to automatic administrative sanctions.</b></p> <p>PSA need to take greater steps to satisfy themselves that the registration details are genuine. An issue arose with the Bodyin8 service, which was registered with PSA as being operated by a company called Well Fitness Ltd. When Well Fitness Ltd failed to respond to complaints, consumers took legal action against this company and obtained County Court Judgements. After judgement was obtained, it was discovered that the proceeds of the service were actually being paid to a completely different company. Not only did these consumers have difficulty getting their CCJs satisfied, but the reputation of Well Fitness Ltd was destroyed.</p> <p>PSA subsequently investigated this case, but are still unable to give a definitive answer as to who was really responsible for this service.</p> <p>PSA must ensure that the company or individual named as responsible for the service can be held legally accountable. PSA should check with Payment Intermediaries that the payments for the service are indeed being paid over to an account owned by the service provider.</p> <p><b>We would also like to see the service checker carry details of the payment intermediary involved in each service.</b></p> <p>We like the idea of having a named overall contact within the merchant organisation.</p> <p>Bearing in mind the issues we have seen with Customer Service, we believe PSA should ask specifically whether this is being carried out</p> |

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|  | <p>directly by the merchant, and if not obtain the details of the third party to which this is outsourced.</p> <p>We believe that any non-UK based merchants need to be subjected to additional scrutiny as consumers are unable to use the Small Claims procedure to seek redress against such merchants.</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 information or evidence which would inform our view?</p> | <p>Confidential? No</p> <p>We agree</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? No</p> <p>We strongly agree. There needs to be greater accountability on the part of providers for the merchants with which they contract. The Veoo case highlighted how easy it was for bad actors to infiltrate the value chain. It was clear to us that some other Payment Intermediaries were also happy to onboard merchants which they knew little or nothing about. They were able to do this with little risk of comeback from PSA. The MNOs should be required to perform DDRAC on the payment intermediaries with which they contract (and be subject to severe sanctions if they fail to do so). If MNOs had taken this responsibility seriously, many of the PSA investigations and tribunals of recent years would have been unnecessary.</p> <p>All parties in the value chain are utilising the Electronic Communications Exemption to PSD2 (ECE). This is granted to the MNOs by virtue of their direct contractual relationship with the consumer. In the UK (but not in some other countries) it is allowed to be "cascaded" down to the other parties in the value chain. In our view the MNOs should be held accountable when an exemption provided to them is abused by one of the other parties in the value chain.</p> <p>As the party to which consumers are likely to make their initial complaint, MNOs are ideally situated to provide early warning when a service generates a</p> |

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|  | disproportionate level of complaints. <b>It should be made clear to MNOs that DDRAC is an ongoing process, and that such a disproportionate level of complaints should be trigger further assessment of risk without delay.</b> MNOs need to put consumer protection ahead of corporate greed and need to face sanctions if they fail to do so.  |
| Q30 Do you agree with our assessment of the proposed new DDRAC standard against the general principles which we set out in the discussion document? Do you have any further information or evidence which would inform our view?   | Confidential? No<br>We agree.  |
| Q31 Do you agree with our proposal to introduce a new systems standard? Please provide an explanation as to why you agree or disagree?   | Confidential? No<br>We agree, but have concerns about effectiveness. In the past two years, since the introduction of MFA for subscription services, we have seen several services where a fake PIN verification system was used to "subscribe" consumers to a service. We doubt that PSA have the technical capacity to monitor a multiplicity of such platforms. Surely it would make more sense for PIN verification to required to be carried out centrally by the network operators? This would have the added advantage of providing MNOs with the evidence that the consumer consented to the charge, |
| 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? | Confidential? No<br>We agree.  |
| <b>Supervision</b>   |  |
| Q33 Do you agree with our proposed general approach to supervision? Please provide an explanation as to why you agree or disagree.   | Confidential? No<br>We agree in principle, but are concerned that PSA do not have the resources to properly supervise the large number of disparate organisations involved in Phone-paid Services. There is a danger that PSA get bogged down in box-ticking exercises while levels of complaints increase. The majority of  |

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|   | <p>services create few, if any, complaints. PSA need to be concentrating their resources on policing those elements of the industry which seek to use dubious means to extract unlawful payments from consumers.</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? No<br/> As above we don't feel that a "one size fits all" approach to supervision is desirable and would wish to see PSA concentrating its resources on the service providers and service types generating the most complaints i.e. reactive activity. There is a danger that a proactive approach becomes a meaningless box-ticking exercise, generating costs for both PSA and the providers, without any benefit for consumers.</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? No<br/> Yes, we're in agreement that PSA need to have powers to request data which assists them in their regulatory role and also data which assists investigations. We'd like to see periodic reporting extended to the MNOs. We believe all consumer contacts with MNOs relating to a Phone-paid Service should be logged and periodically reported to PSA. MNOs are usually the first port of call when consumers have an issue with one of these services. We believe that, despite what the networks tell us, most complaints are currently not logged, resulting in them receiving scant attention. Such logging ought to have been a fundamental part of MNOs ongoing DDRAC.<br/> MNO customer service staff are notorious for fobbing off defrauded consumers, often admitting that the system amounts to legalised theft. This has to end.</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? No<br/> Yes</p>   |

**Engagement and enforcement**

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| <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? No<br/>                 We agree. We welcome the intention to speed up investigations and to increase transparency where breaches of the Code have been identified. We have seen investigations move at a snail's pace while service providers fail to engage with the investigative process and present incomplete or falsified information. A failure to engage with a PSA investigation should have consequences – such as the suspension of the service in question. We have seen investigations last so long that the party guilty of the breach has been liquidated long before the case reaches a Tribunal. Interestingly we have also seen such liquidated companies continuing to operate Phone-paid Services after liquidation. How does that happen? PSA need to act decisively to conclude investigations rapidly in such circumstances.</p> |
| <p>Q38 Do you agree with our proposed changes to settlement? Please provide an explanation as to why you agree or disagree.</p>   | <p>Confidential? No<br/>                 We agree subject to the following:</p> <ul style="list-style-type: none"> <li>• Sanctions must always remove the financial benefit of a Code breach as well as including an additional financial penalty</li> <li>• Such agreements are published so that consumers can see that "justice has been done".</li> </ul>   |
| <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>   | <p>Confidential? No<br/>                 Yes we agree that better use need to be made of interim measures, particularly in the case of severe or blatant breaches of the code, or where a provider has failed to cooperate with an investigation.</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? No<br/>                 Yes, we agree that in the interests of speed and efficiency, some simpler cases could appropriately be heard by a single, legally qualified CAP member. There could also be scope for automatic administrative sanctions to deal with issues like delays in registrations.</p>   |
| <p>Q41 Do you agree with our proposal to reduce the range of circumstances in which a provider can request an</p>   | <p>Confidential? No<br/>                 Yes. We have seen oral hearings used as a delaying tactic by providers who have no intention of paying any fine or paying the resulting</p>  |

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| <p>oral hearing? Please provide an explanation as to why you agree or disagree.</p>   | <p>administrative costs. Maybe if a provider insists on an oral hearing, they could be asked to pay a deposit equal to the anticipated administrative costs ( with such a deposit being refundable if the Tribunal does not award costs against the provider)</p>  |
| <p>Q42 Do you agree with our proposal to expand the test for prohibiting a relevant individual from the industry? Please provide an explanation as to why you agree or disagree</p>   | <p>Confidential? No<br/> Yes. We would prefer to see such individuals held personally liable for breaches of the Code where they have been negligent or have knowingly allowed serious breaches of the Code resulting in consumer harm.<br/> We have reservations about the effectiveness of these prohibitions, given that these individuals can proceed to set up new companies “fronted” by members of their family or close friends.</p>                   |
| <p>Q43 Do you agree with our proposal to strengthen and expand our information gathering powers (including for the purpose of supervision/engagement and enforcement)? Please provide an explanation as to why you agree or disagree.</p>   | <p>Confidential? No<br/> We agree. It is clear that PSA are frequently denied the information they require to conclude an investigation. Incriminating data is deleted and PSA are told that the data no longer exists. Even worse, data is falsified. It is essential that a failure to produce data which ought to exist can be pursued as a breach of the Code. By stating clearly the data which should be retained, enforcement should be simplified.</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? No<br/> We agree. For well organised providers, operating within the terms of the Code, there should be little additional work. The measures proposed should simplify and speed up the enforcement process and provide PSA with alternate breaches of the Code which can be pursued when providers employ non-cooperation or delaying tactics to delay investigations or evade sanctions.</p>   |
| <p><b>Other general Code considerations</b></p>   |  |
| <p>Q45 Do you agree with our proposals on general funding arrangements? Do you have any further information or evidence which would inform our assessment</p>   | <p>Confidential? No<br/> No. We remain of the view that the costs of regulation should fall primarily on those services necessitating it.</p>  |

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| of our proposals on general funding arrangements?   |   |
| 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?   | Confidential? No<br>We agree. However we observe that some participants in the value chain are still not included. Consumers have great difficulty understanding the highly fragmented value chain involved in Phone-paid Services, but the proposed new terminology is more descriptive of the roles of these parties.   |
| 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? No<br>We have no concerns about this change.  |
| 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.     | Confidential? No<br>We agree that the Code needs to be flexible. Indeed we would prefer to see no "exceptions". We recognise that there may be services for which the current Code does not work, but which are innovative and have merit. In these circumstances we would much prefer to see the Code amended to accommodate the innovation (after a process where the possible consequences of the Code change can be properly considered). This has to be better than allowing ill-considered "exemptions" which have ended badly in the past.   |
| <b>Impact assessment</b>  |   |
| 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? No<br>We are concerned that the inability of PSA to enforce effectively against MNOs makes a nonsense of the intention to enforce high standards of DDRAC. It is the contractual relationship between MNOs and Payment Intermediaries that has led to much consumer harm in recent years. MNOs are usually the first point of contact for consumers complaining about phone-paid services. Their failure to react when they receive high levels of complaints about a service has resulted in harmful services operating for far longer than should have been permitted. It is essential that MNOs are included in the scope of |

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|  | the DDRAC requirements, and that they are subject to sanctions in the same way as the other parties if they fail to meet their obligations under the Code.  |
| Q50 Are there other impacts which we have not considered in relation to our proposal to focus on prevention of harm rather than cure? If so, please provide appropriate evidence of the likely impact of the change.                     | Confidential? No<br>We appreciate the wish to prevent harm rather than cure it. However, it has to be recognised that the industry is infiltrated by a number of relatively small companies intent on profiting from cynical exploitation of the vulnerabilities of the Phone-payment mechanisms. We applaud the fact that recent regulatory changes have dramatically reduced the incidence of harmful services within the UK. However, a brief inspection of the Trustpilot reviews of some of these companies will leave no doubt that they are continuing to operate in other jurisdictions like Ireland and Denmark. They will undoubtedly seek to re-enter the UK market to exploit any perceived weaknesses. Care needs to be taken that resources are not wasted on pointless box-ticking exercises while this happens. |
| 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.    | Confidential? No<br>No  |
| 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. | Confidential? No<br>No  |
| <b>Equality impact assessment</b>  |   |
| Q53 Do you agree with our provisional assessment on the impact of our proposals in relation to equality? Do you have any further   | Confidential? No<br>Yes   |

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| information or evidence which would inform our view?  |  |
| <b>Next Steps</b>   |  |
| 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? | Confidential? No<br>The transitional arrangements are unclear as to how they will apply to subscriptions still in force at the time of introduction. We frequently get complaints from consumers who have been unknowingly paying for Phone-paid subscription services for a number of years. This can be stopped by insisting that the requirement for annual re-subscription applies to existing subscriptions as well as those initiated under the new Code. There needs to be a date by which this should have happened. |

**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.