
Approval of the Phone-paid Services Authority's Code of Practice (fifteenth edition)

A statement and notification approving a new edition of the Phone-paid Services Authority's Code of Practice for regulating Premium Rate Services

STATEMENT:

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1. Overview

This Statement sets out Ofcom’s decision to approve the Phone-paid Services Authority’s (“PSA’s”) new Code of Practice (the fifteenth edition) (“**Code 15**”) under section 121 of the Communication Act 2003 (the “Act”).

We are approving the new Code

Following consultation, consideration of the responses received and having assessed the PSA’s Code of Practice against the relevant legal tests, we have decided to approve it.

Specifically, we consider that:

- (a) the PSA will have the function of administering and enforcing the Code;
- (b) the PSA is sufficiently independent of the providers of premium rate services;
- (c) there are adequate arrangements funding the activities of the PSA;
- (d) the provisions of the Code are objectively justifiable;
- (e) those provisions do not discriminate unduly against particular persons or against a particular description of persons;
- (f) those provisions are proportionate to what they are intended to achieve; and
- (g) those provisions are transparent in relation to what they are intended to achieve.

Code 15 will come into force on 5 April 2022.

There are a range of interactive services that consumers can access via their landline and mobile phones, computers and digital TV. Where these services are charged for via the customer’s telephone bill or pre-pay account, they are known as phone-paid or premium rate services (“**PRS**”). They include charity donations by text, music streaming, entering broadcast competitions, voting on TV talent shows and in-app purchases.

These services are valued by those that use them, however in certain cases they can give rise to consumer harm. Ofcom has overall responsibility to make sure that consumers are protected by ensuring appropriate rules are in place and enforced.

To achieve this, we have designated the PSA to carry out the day-to-day regulation of PRS. The PSA regulates PRS by way of a Code of Practice. The current Code is the fourteenth edition (“**Code 14**”), approved by Ofcom on 21 June 2016.

From time to time, the PSA revises its code of practice to ensure it continues to provide a trusted environment for consumers and a fair and proportionate regulatory regime for the industry.

On 8 April 2021, the PSA published a new draft Code of Practice (the “**draft Code**”) for consultation. In accordance with the statutory scheme, any draft code must be considered and approved by Ofcom.

On 30 April 2021, Ofcom published a consultation in which it explained that Ofcom provisionally considered the draft Code satisfied the legal tests for approval under section 121 of the Act. The consultation, to which Ofcom received thirteen responses, closed on 11 June 2021.

Concurrent to Ofcom’s consultation, the PSA held its own consultation on the draft Code. That consultation received forty-five responses and closed on 5 July 2021. Based upon the responses received, the PSA has made a number of revisions to the draft Code on which it has now sought our approval.

Having considered the responses to our consultation and PSA’s revised draft Code, we are satisfied that it meets the relevant statutory requirements.

This Statement sets out Ofcom’s decision to approve Code 15 for the regulation of PRS under section 121 of the Act.

Code 15 will come into force with Ofcom’s approval on 5 April 2022.

The overview section in this document is a simplified high-level summary only. The decision we have taken and our reasoning are set out in the full document.

2. Background and legal framework

- 2.1 This section sets out the background to our approval of the draft Code, including an overview of PRS, its regulation and the relevant statutory framework.

Background

Premium rate services

- 2.2 The concept of PRS is broad. In general terms, PRS are a form of micro-payment for paid for content, goods and services charged to a consumer's bill for electronic communications services. Technically, they are services delivered via an Electronic Communications Network (**ECN**) and paid to the provider of an Electronic Communications Service (**ECS**).
- 2.3 These services may be accessed by way of a conventional voice call or SMS, but increasingly they are accessed in other ways, such as computers, smartphones or interactive digital TV. Common forms of PRS include charity donations by text, music streaming, broadcast competitions, directory enquiries, voting on TV talent shows and in-app purchases.

Regulation of PRS

- 2.4 The Act provides a framework for the regulation of PRS. Section 120 of the Act sets out the power for Ofcom to set conditions for the *“purposes of regulating the provision, content, promotion and marketing of premium rate services”*.
- 2.5 The Act identifies which services qualify as PRS and hence may be subject to such a condition. It provides that a service is a PRS if:
- a) it is a service falling within section 120(8) of the Act (see below);
 - b) there is a charge for the provision of the service;
 - c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.¹
- 2.6 A service falls within Section 120(8) if its provision consists in:
- a) the provision of the contents of communications transmitted by means of an electronic communications network; or

¹ Section 120(7) of the Act

- b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to the users of the electronic communications service.

2.7 In accordance with this framework, Ofcom has set a condition (the “**PRS Condition**”)² that requires relevant providers to comply with directions given in accordance with an ‘Approved Code’ by the ‘Enforcement Authority’ for the purposes of enforcing the provisions of the Approved Code. The PRS Condition applies only to certain PRS, known as Controlled PRS (“**CPRS**”):

“Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:

- (i) the service is obtained through a PRS Number³ and the Service Charge for the call by means of which the service is obtained is a rate which exceeds 5.833 pence per minute or 5.833 pence per call, exclusive of value added tax;*
- (ii) the service is obtained other than through a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);*
- (iii) the service is a Chatline Service;*
- (iv) the service is an Information, Connection or Signposting Service;*
- (v) the service is Internet Dialler Software operated; or*
- (vi) the service is a Sexual Entertainment Service.”*

2.8 Section 121 of the Act gives Ofcom the power to approve a code made by another party for regulating the provision and contents of premium rate services. The current code (**Code 14**) was drafted by the PSA, which administers and enforces the code, and was approved by Ofcom in June 2016.⁴

² The PRS Condition was most recently updated in December 2018. See Ofcom, [Review of the Premium Rate Services Condition – Statement](#), 19 December 2018

³ This is defined in paragraph 2(t) of the [Premium Rate Service Condition](#) as a “Non-Geographic Number starting 087, 090, 091 or 118”.

⁴ Ofcom, [Approval of the PhonepayPlus Code of Practice \(fourteenth edition\)](#), 21 June 2016

- 2.9 Code 14 sets out wide-ranging rules to protect consumers as well as setting out the processes that the PSA applies when enforcing Code 14. It also provides for the PSA to be funded by way of a levy on industry. As noted above, the PRS Condition requires relevant providers (i.e. CPRS providers) to comply with any directions made by the PSA for the purposes of enforcing Code 14.⁵ If a provider failed to do so, Ofcom could take enforcement action for breaching the PRS Condition. Where provision of PRS does not involve CPRS, such as where telephony services operate at tariffs below the relevant thresholds, the PRS Condition would not require compliance with PSA directions.⁶

The draft Code of Practice

- 2.10 In February 2020, the PSA published a discussion document⁷ in which it explained it was intending to carry out a major strategic review of the Code of Practice. The PSA said this was the first such review since the introduction of the twelfth Code of Practice in 2011, with subsequent Code reviews focussing on incremental changes.
- 2.11 The review was, in particular, intended to build on the PSA's new strategic purpose, which it published in December 2019. This set out the PSA's goal to be a more proactive regulator that seeks to address harm before it occurs while also strengthening the PSA's existing approaches for addressing ongoing or historic harm.

Consultations

- 2.12 On 8 April 2021, the PSA published its draft Code for consultation. The PSA's consultation closed on 12 July 2021, and the PSA received forty-five responses.
- 2.13 On 30 April 2021, Ofcom consulted on its provisional decision to approve the PSA's draft Code. In the consultation document we asked stakeholders whether they agreed with Ofcom's provisional decision to approve the draft Code in its current form and what they considered an appropriate implementation period. The consultation closed on 11 June 2021. We received thirteen responses to the consultation, which are discussed in section 4.
- 2.14 The PSA has made a number of revisions to the draft Code in light of stakeholder responses to its consultation. Ofcom has now reviewed the revised version. This document summarises some of the key concepts and provisions, however, the full detail is available within the PSA's documents and we encourage stakeholders to refer to those documents.⁸

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0017/116531/PRS-Condition.pdf

⁶ PRS providers may be required to respond to PSA information requests in order to assess the use of controlled PRS and any PRS operations falling outside the definition of controlled PRS.

⁷ PSA, *Developing the next Code of Practice, Discussion Document*, 27 February 2020

⁸ See PSA's [Consultation on its new Code of Practice](#) and associated documents on the [PSA website](#).

Overview of Code 15

- 2.15 Code 15 sets out a new regulatory approach for the PSA and has three key aims:
- a) **Introducing standards in place of outcomes** which the PSA expects will be clearer and easier for industry to implement, meet consumer expectations but also allow space for innovation.
 - b) **Focusing on prevention of harm rather than cure** by introducing new provisions which enable the PSA to work with industry to build best practice and compliance, minimising the risk of consumer harm and the need for resource intensive enforcement.
 - c) **A code that is simpler and easier to comply with** by as far as possible merging the current framework of Code of Practice, Special Conditions and other documents, into a single consolidated document.
- 2.16 The key changes made to Code 14 are outlined in section 3.

Approval of Code 15

- 2.17 In accordance with the statutory scheme, any code for regulating the provision and content of premium rate services must be considered and approved by Ofcom. In this section, we set out our assessment in light of the legal tests.

Legal tests under section 121 of the Act

- 2.18 The PSA has responsibility for drafting the Code and consulting on the substance of the Code, which has been undertaken concurrently to Ofcom's consultation. Ofcom has responsibility for deciding whether or not to approve the Code, and thereby confirming the PSA as the designated person for regulating CPRS.
- 2.19 Under section 121(1) of the Act, Ofcom may approve a Code if it appears:
- “(a) that a code has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;*
 - (b) that the code contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services; and*
 - (c) that it would be appropriate for them to approve that code for the purposes of section 120”*
- 2.20 Under section 121(2) of the Act Ofcom may not, however, approve a Code unless satisfied:
- “(a) that there is a person who, under the code, has the function of administering and enforcing it; and*

- (b) that that person is sufficiently independent of the providers of premium rate services;*
- (c) that adequate arrangements are in force for funding the activities of that person in relation to the code;*
- (d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;*
- (e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;*
- (f) that those provisions are proportionate to what they are intended to achieve; and*
- (g) that, in relation to what those provisions are intended to achieve, they are transparent.”*

Impact Assessment

- 2.21 Impact Assessments (‘IAs’) provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice in policy-making. This is reflected in section 7 of the Act, which states that Ofcom should carry out IAs where our decision would be likely to have a significant effect on businesses or the general public or would involve a major change in Ofcom’s activities. As a matter of policy, Ofcom is committed to carrying out and publishing IAs in relation to the great majority of our policy decisions.⁹ Our consultation document constituted our impact assessment for the purposes of section 7 of that Act.
- 2.22 As part of our IAs, we conduct an Equality Impact Assessment (“**Equality IA**”) to identify whether our decisions would have particular effects on specific groups within society. We have therefore considered whether to undertake a full Equality IA in respect of this decision. On the basis of our Initial Equality IA Screening, we determined that this was not required, because the changes in the code do not raise specific equality issues.

⁹ For further information about our approach to IAs, see the guidelines [Better Policy-Making: Ofcom’s Approach to Impact Assessment](#).

3. Key changes proposed in Code 15

- 3.1 This section summaries the key changes from Code 14 which were the focus of our consultation.

Key Changes

Standards and requirements

- 3.2 In our consultation, we explained that the draft Code introduced a number of consumer-orientated, organisation-orientated, and service-specific standards and requirements. The final version of the Code retains this structure and approach. To some extent, these standards and requirements consolidate the regulatory rules and obligations contained within Code 14 special conditions and associated guidance.¹⁰ In order to achieve each standard, providers are required to meet each of the supporting requirements, which set out in more detail exactly what providers must do.
- 3.3 The regulatory standards are summarised below.
- **Integrity:** Organisations and individuals involved in providing PRS must act with integrity and not bring the PRS market into disrepute.
 - **Transparency:** Consumers must receive clear, complete, and timely information to enable them to make fully informed decisions when purchasing phone-paid services.
 - **Fairness:** Consumers must be treated fairly throughout their experience of PRS, including by being charged for PRS only where they have provided informed and explicit consent to such charges.
 - **Customer care:** Consumers must receive excellent and timely customer care including the resolution of their complaints.
 - **Vulnerable consumers:** Services must be promoted and provided in a way that ensures they are not likely to cause harm or detriment to consumers who are, or may be, vulnerable because of their particular circumstances, characteristics or needs.
 - **Consumer privacy:** Consumer privacy must be respected and protected.
 - **Prevention of harm and offence:** Promotions and services must be provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public.

¹⁰ PSA, [Code, Special conditions, compliance updates & guidance](#)

- **Organisation and service registration:** Organisations and individuals involved in providing PRS must provide the PSA with timely, accurate and detailed information about themselves and the services they offer or intend to offer.
- **Due diligence, risk assessment and control (DDRAC):** Organisations and individuals must perform effective due diligence on any person or organisation with whom they contract in relation to PRS. They must conduct a full and thorough assessment of potential risks arising from the provision, content, promotion, and marketing of PRS on an ongoing basis.
- **Systems:** All systems, including payment and consent verification platforms, used for the provision of and exit from PRS must be technically robust and secure.

3.4 In addition to these general standards, the PSA also identified specific requirements for certain services that it does not consider appropriate, or relevant, to apply more generally. These requirements built on some of the specific requirements of the current special conditions and apply to such services as society lottery services, competition services and remote gambling services.

Supervision and verification

3.5 Our consultation noted the draft Code introduces an increased focus on supervision and verification. This is intended to help deliver the PSA's goal of moving to a more proactive regulatory model which is intended to prevent harm in the first place rather than dealing with issues after harm has occurred.

3.6 In order to achieve this, Code 15 provides the PSA with a number of new powers to carry out its new supervisory activities which, among other things, will enable it to assess a provider's compliance with the code, to identify and resolve issues and, ultimately, to reduce the risk of actual or potential harm to consumers resulting from such non-compliance or other issues. These activities include assessing complaints and other intelligence, requiring audits or skilled persons reports to be prepared and requesting certain data to be provided periodically.

3.7 As noted above, one of the new regulatory standards relates to due diligence, risk assessment and control, which the PSA refers to as DDRAC. This requires providers to undertake more thorough verification of their contracted partners by setting clearer and more extensive DDRAC requirements. This will apply to all parties and require that sufficient checks and ongoing risk management is undertaken of any party they contract with, and by having the ability for the PSA to undertake enforcement action if these requirements are not complied with.

Engagement and enforcement

3.8 Our consultation also highlighted that the draft Code imposes a new structure to the PSA's enforcement activities. It replaces the 'track 1' and 'track 2' enforcement procedures set

out in Code 14 with a model based on engagement and enforcement. The overall aim of this is to enable the PSA to have a clearer framework around informal resolution which aims to provide more flexibility in terms of how it deals with any compliance concerns, and allow the opportunity for more cases to be dealt with through informal resolution rather than formal enforcement action.

- 3.9 While informal resolution of compliance concerns was possible under Code 14, it was not explicitly set out and, in the PSA's view, this limited its effectiveness. Accordingly, Code 15 sets out the ability of the PSA to issue 'enquiry letters' and 'warning letters' which are both aimed at addressing actual or potential compliance concerns through a swift informal process.
- 3.10 Where cases are escalated to formal enforcement, the overall approach is consistent with the PSA's existing practices and processes. Code 15 introduces decision-making processes involving a single legally qualified member of the Code Adjudication Panel (rather than a full Tribunal) for certain cases. In addition, Code 15 aims to strengthen the settlement procedure by encouraging providers subject to enforcement proceedings to use the process where appropriate.

4. Stakeholders' responses to our consultation and our response

- 4.1 This section sets out Ofcom's consideration of the consultation responses received, and the revised Code provided by the PSA following consultation feedback.
- 4.2 We received five confidential and eight non-confidential responses to our consultation. To the extent that the responses are non-confidential, they have been published in full on our website.¹¹
- 4.3 Out of the thirteen respondents to Ofcom's consultation, twelve did not agree that Ofcom should approve the draft Code as consulted on.¹² Below we cover the objections raised across the following key themes:
- 12-month 're-opt in' requirement;
 - Board member independence;
 - Ability to assess the Code provisions in the absence of associated guidance and other supporting documentation;
 - Customer care;
 - Due diligence and supervision requirements;
 - Data retention requirements;
 - Transitional arrangements relating to Code 15;
 - Amendment power; and
 - Other concerns highlighted by stakeholders.
- 4.4 Unless stated otherwise, references to requirements of the Code refer to the new Code 15.

12-month 're-opt in' requirement

- 4.4 The most contentious issue was the proposal for 12 month re-opt in requirements for subscriptions.¹³ The draft Code included a new requirement for subscription providers to obtain consumer consent every 12 months for paid for subscription services (including recurrent donation services, e.g. to charities), to continue charging for such services.
- 4.5 Nine respondents¹⁴ voiced concerns about the 12-month re-opt in requirement. We summarise these concerns below.

¹¹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/approval-of-psa-code-of-practice-15?showall=1>

¹² Only FCS supported the approval of the draft Code.

¹³ The draft Code, paragraph 3.3.11 (as per PSA's consultation).

¹⁴ aimm, Fonix, mobile UK, Telecom2, Vodafone, [3<], [3<], [3<], and [3<].

- 4.5 Five respondents¹⁵ stated that the opt-in model would put PRS at disadvantage compared to other payment methods, as other forms of payment are not subject to such strict regulation. They therefore said the requirement was discriminatory. In particular:
- a) A confidential respondent [redacted] noted that [redacted].
 - b) aimm stated that global brands would not be able to justify the cost of making the changes required to their systems solely for the UK market and instead would choose to stop using carrier billing in the UK.
- 4.6 Three respondents¹⁶ commented that the cost of implementing an opt-in model was not proportionate and that it would result in global brands and blue chip companies leaving the market in the UK. aimm noted that charities and merchants would move to other payment methods and Fonix also noted that merchants would remove mobile payments as an option affecting charity and streaming services, as well as deterring new entrants into the market.
- 4.7 Four respondents¹⁷ commented on the negative impact the opt-in model would have on charities' revenues and so the growth of the PRS in this sector.
- i) aimm noted that this would mean that charities would move to other payment methods where there was no risk of inadvertent opt-out (as mentioned above).
 - ii) aimm, Fonix, Telecom2 and a confidential respondent [redacted] indicated that existing provisions exist for charity donations and they were sufficient.
 - iii) Both aimm and Fonix noted there was a lack of evidence of consumer harm (in relation to charity donation) to demonstrate that an opt-in method was required.
- 4.8 Three respondents¹⁸ noted that existing consumer protections were sufficient, given the presence of multi-factor authentication and provisions such as the ability for consumers to cancel subscriptions at any time. This indicated that consumers are far more in control with PRS than with other payment methods.
- 4.9 Three respondents¹⁹ noted that having an opt-in model could confuse consumers, who are already used to an opt-out model. They thought it could lead to consumers thinking the messages related to a scam or are spam, and so they ignore the message.
- 4.10 We received the following other responses relating to the opt-in model:
- a) aimm noted that broader regulation around auto-renewal was being undertaken by the government²⁰, which was looking at all payments mechanisms across the industry not

¹⁵ [redacted], Vodafone, Mobile UK, aimm, [redacted]

¹⁶ aimm, [redacted], [redacted]

¹⁷ Telecom2, [redacted], Fonix, aimm

¹⁸ Telecom2, [redacted], Fonix, [redacted]

¹⁹ Fonix, aimm, [redacted]

²⁰ <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy>

just for PRS, and it would be prudent to wait for its conclusion, before making any amendments.

- b) A confidential respondent [3<] noted that this model would incentivise high-risk merchants to operate on a short-term basis, as they will try to maximise their gain over 12 months and then leave the market.
- c) A confidential respondent [3<] noted that testing of the provision had not been undertaken.

PSA's decision to remove the 12 month re-opt in requirement and Ofcom's response

4.32 The 12 month re-opt in requirement was almost unanimously rejected by industry stakeholders in response to the PSA's concurrent consultation.²¹ Based upon the evidence presented by respondents, the PSA was persuaded that the proposed 12 month re-opt-in requirement would not meet consumers' expectations and that existing measures have been effective in reducing consumer harm as evidenced by the current low level of consumer complaints to the PSA. Consequently, the PSA decided to remove the 12 month re-opt in requirement from Code 15.

4.33 Instead, the PSA has decided to require all subscription services, except recurring charity donations, to send an annual subscription reminder providing details of how to opt out of the service. For subscriptions with a defined period, reminders will have to be sent not less than 7 days and no more than 30 days before the end of the subscription period. Subscriptions with an indefinite commitment period must have a reminder sent within the 14 days preceding each anniversary from of the date the consumer entered into the subscription service. The reminder must state what service or product the consumer has subscribed to and state that the subscription will continue until such point as the consumer opts out.

4.34 We welcome the PSA's decision to remove the 12 month re-opt in requirement. The revised requirement is less onerous than the original proposal consulted upon and reflects consultation responses.

4.35 We are satisfied that the PSA's revised requirements relating to subscription services are proportionate and meet the legal tests in section 121 of the Act.

Board members' independence

4.36 A confidential respondent [3<] suggested that two PSA board members are not sufficiently independent of PRS providers. Under section 121(2)(b) of the Act, Ofcom may approve the Code if the person who is responsible for administering and enforcing it is "*sufficiently independent of the providers of premium rate services*".

²¹ See PSA Statement following consultation – Ofcom notified at PSA Code 15 Development Project Board (September 2021).

4.37 The confidential respondent contended that the PSA is not independent as required by section 121 of the Act and the provisions of the draft Code and that there is a conflict of interest. In particular, the confidential respondent noted that the draft Code states “No member of the Board may have any current commercial interest in PRS ...”, but that there is currently a member of the PSA board who is directly involved in the PRS industry (with reference to a Board member who holds a directorship at ITV). The respondent goes on to suggest that this has led to the PSA giving favourable treatment to broadcasters in the past. The confidential respondent’s response also suggests that another Board Member’s interest in the Charity Commission could lead to bias in favour of that sector.

Ofcom’s response

4.38 In light of the confidential respondent’s comments, we have re-considered whether the statutory tests are met. In this case, the relevant test is that the person who is responsible for administering and enforcing the code is “sufficiently independent of the providers of premium rate services”. We acknowledge that one member of the PSA’s current board has an interest in the PRS sector, which was permitted under Code 14.²²

4.39 However, Section 1.4.1 of Code 15 has been amended so that it now states: “*The PSA operates independently from the industry. All members of the PSA’s Board are appointed in their individual capacities. No member of the Board may have any current commercial interest in PRS but Board members may be appointed on the basis of their contemporary industry knowledge.*” This means that from the date Code 15 comes into force, the PSA’s Board members will be precluded from holding current commercial interests in PRS. The PSA has confirmed to Ofcom that from the entry into force of Code 15, no PSA board member will have a ‘current commercial interest’ in the PRS sector.²³

4.40 We also note that the PSA Board Member Handbook²⁴ requires board members to declare potential conflicts of interests and has procedures in place for board members to exclude themselves from decisions where their impartiality would be in question. We are therefore satisfied that the PSA’s board is ‘sufficiently independent’ of PRS providers.

Ability to assess the Code in the absence of guidance and other supporting documentation

4.41 The draft Code states a PRS provider’s compliance with the code will be assessed in line with the PSA’s expectations set out in its guidance document. This guidance has not yet been published.

²² Section 1.4.1 of Code 14 said, “Apart from a minority of members who are appointed on the basis of their contemporary industry knowledge, no member of the Board may have any commercial interest in the premium rate sector”.

²³ We received confirmation of this from the PSA on 13 October 2021].

²⁴ See: <https://psaauthority.org.uk/-/media/Files/PSA/00NEW-website/About-us/Board-and-CAP/Board-Handbook-07-02-2020.pdf?la=en&hash=972061539A052B6514E5EFA88A89F8E60C656297>

4.42 Five respondents²⁵ said that in the absence of the published guidance, there is insufficient detail in the draft Code to assess whether the provisions are transparent or proportionate. We summarise these responses below.

- a) aimm, Telecom2, Vodafone, [redacted], and [redacted] said that the absence of published Guidance and/or best practice, and the lack of detail of what will trigger a thematic review means that the draft Code does not pass the transparency test set out in section 121(2) of the Act.
- b) [redacted] said the draft Code contains insufficient detail for either Ofcom or the PRS industry to know what the final requirements will be and whether they will meet the needs of the industry or the end users. Similarly, Telecom2 stated that the draft Code could not be approved in its current form as it was missing detail in crucial areas which would only be found in supporting documentation which has not yet been published.
- c) Vodafone said the draft Code doesn't satisfy the proportionality requirement set out in 121(2) of the Act as further clarification is required on the Supervision aspect of the draft Code and the introduction of thematic reviews as there is no published guidelines or trigger points. Vodafone also considered the phrase 'potential harm' in the draft Code confers the PSA with disproportionate powers of review, as the phrase is undefined.

Ofcom's response

4.43 In our view, there is sufficient detail in the Code to be satisfied of its transparency and proportionality. The Guidance that PSA intends to publish is not intended to be legally binding on the PRS industry but rather one of the factors that PSA will use to assess compliance. Further, the PSA intends to consult industry upon the guidance before it is finalised.

Customer Care

4.44 The customer care standard as set out in the Code requires that customers receive excellent and timely customer care including the resolution of their complaints. It is supported by requirements setting out how customer enquiries and complaints should be handled and, where relevant, how refunds should be provided to consumers.

4.45 Mobile UK, Telecom2, Vodafone and the Phone-paid Services Consumer Group ("PSCG") commented on the customer care obligations set out in the draft Code. Mobile UK and Vodafone stated that further clarity was required to show who had primary responsibility for customer care. Mobile UK, Telecom2 and Vodafone took the view that responsibility for customer care should fall on the service provider.

²⁵ aimm, Telecom2, Vodafone, [redacted], and [redacted].

4.46 On the other hand, PSCG contended that the draft Code should impose further obligations on mobile network operators and include powers to enforce against them. They said that the PRS condition needs to be amended to ensure that mobile network operators and other telecommunications providers can be held directly responsible for the consumer harm found in PRS.

Ofcom's response

4.47 We recognise that the draft Code was unclear about who would hold primary responsibility for customer care. However following stakeholder feedback, the PSA has updated the Code to clarify those customer care responsibilities.²⁶

4.48 Under paragraph 3.4.1 of the Code, the PSA envisages that depending on the arrangements between the parties in the PRS chain, primary responsibility for customer care could fall either on the intermediary provider or the merchant provider. Where no alternative arrangements exist, the Code states the merchant provider will have primary care responsibility. We consider such arrangements will provide adequate protection for customers and satisfies the legal tests of transparency and proportionality set out in section 121 of the Act. We do not agree that it would be appropriate to extend the customer care obligations to mobile network operators as PSCG suggested.

Due diligence and supervision requirements

4.49 The draft Code requires PRS providers to undertake thorough due diligence on any person with whom they contract in connection with the provision of PRS before providing any service to consumers.²⁷ Five respondents²⁸ commented on the due diligence requirements, as set out below.

- a) aimm said that the requirement on merchant providers to gather information on all those who may be involved in the provision of the service²⁹ is onerous and disproportionate. Further, it said that parties that aren't regulated by PSA would have no incentive to provide this information.
- b) Mobile UK and Vodafone stated the language of the draft Code seems to incorporate out of scope services, as in some places it implies due diligence requirements should be carried out beyond directly contracted parties.
- c) Telecom2 stated the due diligence and security requirements set out in the draft Code are onerous, and disproportionate to the potential consumer harm. It also considered these requirements would act as barrier to entry for new smaller PRS entrants.

²⁶ See paragraph 3.4.1 of the Code.

²⁷ Under the draft Code Standard 3.9 – Due diligence, risk assessment and control, paragraphs 3.9.1 and 3.9.2.

²⁸ aimm, Mobile UK, Telecom2, Vodafone and one confidential respondent [3<].

²⁹ See section 3.8.4(b), which states: Merchant providers must provide the identity of any other PRS providers involved in the provision of the service, as well as information about any other person contracted for, or otherwise involved in, the promotion and delivery of the service.

Telecom2 also noted the PSA should not have commensurate powers to other regulators such the Financial Conduct Authority as the number of consumers affected by PRS is much smaller.

- d) A confidential respondent [3<] said the draft Code contains highly onerous requirements, for example, sections 4.4.3 and 4.5.3 enable the PSA to require PRS providers to provide the PSA with supervision reports, but there is no deadline or end date. The respondent also alleges that the PSA have previously requested information from PRS providers that relates to the general day to day running of the business, and required them to employ certain people and companies.

Ofcom's response

- 4.58 The PSA has clarified that due diligence checks are only expected on directly contracted parties. Our view is that this requirement is proportionate.
- 4.59 We consider the PSA's enhanced supervision and due diligence powers will allow it to be a more efficient and effective regulator of the PRS sector, by streamlining enforcement investigations and preventing harm occurring in the first instance. As such, Ofcom does not consider the PSA's increased powers to be disproportionate.

Data retention requirements

- 4.60 The draft Code set out an obligation on PRS providers to retain data specified in a 'data retention notice'. aimm and a confidential respondent [3<] expressed the following concerns over the scope of PSA's new data retention requirements:
- a) aimm said that the data retention requirements outlined in the draft Code are disproportionate.
- b) The confidential respondent [3<] said that the data retention requirements contained in the draft Code risk putting company in breach of UK General Data Protection legislation. The draft Code requires PRS providers to keep data 'potentially relevant' to an investigation which is not in accordance with the principle of data minimisation especially when the enforcement process does not include a limitation period. Further, the confidential respondent [3<] states the requirements in section 3.5.2³⁰ may encourage those 'monitoring the effectiveness of processes' for vulnerable consumers to seek medical information which is not necessary for the purpose of carrying out their work.

³⁰ Section 3.5.2 states 'Intermediary providers and merchant providers must, on request, provide the PSA with copies of their written policies and procedures concerning vulnerable consumers. Such policies and procedures must include the identification of risks to such consumers and the controls in place to mitigate those risks, as well as procedures to ensure the fair and proper treatment of such consumers. The policies and procedures must also set out clearly the mechanism for internal approval and review, as well as ongoing monitoring of their effectiveness. Intermediary providers and merchant providers must be able to demonstrate to the satisfaction of the PSA how these policies and procedures are being used effectively in the promotion and delivery of PRS.'

Ofcom's response

4.64 We consider that the data retention requirements imposed by the PSA are objectively justified as they will assist the PSA in their new supervisory function. Further, placing specific data retention requirements in a separate notice will help future-proof the Code as this can be easily updated as matters develop. We also note that the definition of a 'data retention notice' in the Code requires providers to retain data only 'to the extent permitted by law',³¹ and we expect the PSA to act in a proportionate manner when issuing data retention notices.

Transitional arrangements relating to the Code

4.65 aimm and a confidential respondent³² raised concerns with the transitional arrangements of the draft Code, which allow the PSA to apply the new Code 15 procedures to all open investigations and/or complaints which commenced under Code 14:

- a) aimm said that under these transitional arrangements a party who was entitled to an oral hearing under Code 14 could be denied one under the new Code. In addition, it thought the limitation in the right to request an oral hearing could be discriminatory depending on the threshold set. It does not consider that the fact that such a transitional arrangement occurred under Code 14 means that it should be permitted in this case.
- b) A confidential respondent [3<] considered the retrospective application of section 5 of the draft Code to existing investigations to be logically and practically difficult. The confidential respondent asserts that it also goes against the principles of natural justice as an oral hearing may have been set for a particular case, then suddenly be cancelled under the new rules.

Ofcom's response

4.69 Under Code 15, the right to an oral hearing is more limited than it was under Code 14. The PSA have made this change as they are concerned that an increased number of oral hearings could result in significant operational and budgetary difficulties. However, the Code does allow a PRS provider to request an oral hearing where there are serious and complex issues to be determined, and a fair determination would not be possible without an oral hearing.

4.70 We also note that even in cases where there is no oral hearing, the subject of enforcement proceedings will have the opportunity to provide a written response to any enforcement notice. As such we don't agree that PSA's proposals under the draft Code are unduly discriminatory.

³¹ See D.2.25 of the Code

³² [3<]

- 4.71 The retrospective application is only in respect of the PSA's procedures³³, and none of the substantive provisions of the Code will have retrospective effect.³⁴ We consider that retrospective application of the Codes procedures is reasonable.

Amendment Power

- 4.72 Vodafone was concerned that the draft Code makes it easier for the PSA to amend future codes without consultation.

Ofcom's response

- 4.73 The amendment power included in the draft Code will allow the PSA to update the Code without consultation *only* where an amendment is required as a result of a change in law, or where minor clarification is required which does not alter the substance and meaning of a provision. The Code makes clear that any substantive amendments to the Code will still be subject to consultation, and approval by Ofcom.³⁵ We consider this amendment power is proportionate, and will prevent the PSA having to consult unnecessarily on minor changes to the Code, which will enable them to operate more efficiently.

Other concerns highlighted by stakeholders

- 4.74 We received a number of other responses from stakeholders, some of which concern issues outside the scope of this consultation. We summarise these comments below.

Definition of a complaint

- 4.75 aimm said that the definition of complaints under the draft Code was wider than in other payment methods and as such discriminatory.³⁶
- 4.76 We do not consider this definition to be discriminatory because it will apply equally across PRS. It is the PSA's duty as a regulator of PRS to increase the standard of customer care and customer's trust in the industry. Good complaints handling is one of the ways to increase consumer confidence in PRS as a product and an industry.

³³ i.e. investigations, information requests, complaints handling and monitoring.

³⁴ See section 1.8 of the Code

³⁵ See section 6.4 of the Code.

³⁶ D.2.17 defines a complaint as follows:

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.

Single decision makers

- 4.77 aimm suggested that having a single decision maker could be discriminatory, depending on their qualifications.
- 4.78 We note that there will only be a single decision maker for straightforward cases, and that the single decision maker will always be legally qualified. We consider that a single, legally qualified decision maker is sufficient for straightforward cases, and we note that in any case it is open to the single decision maker to instruct that a matter is dealt with by the Tribunal instead.

Proportionality

- 4.79 A confidential respondent³⁷ stated the draft Code is disproportionate and not fit for purpose. It contends the draft Code is more prescriptive and onerous than Code 14, but these measures are not proportionate when considering total complaints are 31% down from the previous year.
- 4.80 Ofcom does not consider that the new Code is disproportionate or unfit for purpose, as it provides greater clarity, enabling the PSA to fulfil its regulatory objectives and ensure that it can continue to increase the public's confidence in the PRS market. We also note that the changing PRS market is one of the reasons the PSA is updating its Code - when the PSA first introduced outcomes-based regulation under Code 12, mobile-based services accounted for roughly 40% of market revenues, whereas for the last four years in a row mobile-based revenues have accounted for more than 80% of revenues.³⁸
- 4.81 This confidential respondent also considered that the PSA's power (under section 5.1.8³⁹) to reconsider a case or matter in which it has previously decided not to take further action is unfair, an abuse of process and disproportionate, as it allows the PSA to change its mind about enforcement action at any time.
- 4.82 We do not agree. We consider section 5.1.8 is objectively justified as it gives the PSA the flexibility to resume enforcement action where it is appropriate to do so. We expect the PSA to exercise its powers reasonably and in accordance with its regulatory objectives.

Information, Connection and Signposting Services

- 4.83 UKCTA did not consider that the Code adequately addressed the significant consumer harm caused by Information, Connection and Signposting Services ("ICSS"), and that the

³⁷ [X]

³⁸ See the introduction to the PSA's statement found on the [PSA's website](#)

³⁹ Section 5.1.8 of the Code states:

"The PSA may decide not to take any further action in respect of a case or matter in accordance with any prioritisation criteria that it may publish from time to time. However, where it is considered appropriate, the PSA may at any time reconsider a case or matter in respect of which it has previously decided not to take further action. Where the PSA decides to reconsider a case or matter, it will notify the relevant PRS provider of the decision."

only way to effectively regulate ICSS is to outright prohibit the use of premium rate numbers for ICSS. It states that as Ofcom has overall responsibility for the regulation of PRS, it should either ensure the PSA bans ICSS or takes that action itself.

- 4.84 ICSS is a service which offers to connect customers to an organisation's otherwise cheap or free numbers for the cost of a premium rate call. The provisions PSA has made for ICSS are objectively justifiable, non-discriminatory, and proportionate, and a total ban on the use of ICSS is outside the scope of this consultation. As such, we do not consider this objection to be a barrier to Ofcom approving the Code.

Appointment of skilled persons

- 4.85 Section 4.6⁴⁰ of the Code enables the PSA (i) to require a PRS provider to produce a report for the PSA on any matter relating to the provision of PRS to which that PRS provider appears to be connected; or (ii) to appoint a person to produce a report for the PSA on any matter relating to the provision of PRS. Vodafone thought that such "skilled persons" should be appointed from a list so as not to create an outcome in the PSA's favour based on selection bias.
- 4.86 Our understanding is that Vodafone's suggestion aligns with the PSA's intention. Section 4.6.3 of the Code specifies that "a person appointed to produce a report under paragraph 4.6.1(a) above must be a person appearing to the PSA to have the skills necessary to produce a report on the matter concerned, and must be a person nominated or approved by the PSA".

Comments considered to be out of scope for this consultation

- 4.87 aimm made the following additional points that we consider to be outside the scope of this consultation:
- a) the PSA is too expensive;
 - b) they have long complaint handling times;
 - c) under the draft Code, the PSA will not have a duty to verify the registration data it collects at the outset;
 - d) there is a lack of accountability for performance; and
 - e) the PSA does not engage enough with the industry.

⁴⁰ Section 4.6 of the draft Code says

For the purposes of supervision under Section 4 of this Code, the PSA may:

(a) require a PRS provider to produce a report for the PSA on any matter relating to the provision of PRS to which, in the reasonable opinion of the PSA, that PRS provider appears to be connected, whether directly or indirectly; or

(b) appoint a person to produce a report for the PSA on any matter relating to the provision of PRS.

- 4.88 aimm and a confidential respondent⁴¹ asserted that more should be done to promote the PRS as a form of payment.
- 4.89 PSCG noted:
- a) that while they support the principle that prevention is better than cure, they do not consider such measures effective if they are not properly enforced; and
 - b) the PSA has performed poorly in recent years. They stressed the number of scams and harm caused by the ‘few bad actors’ in the market and the difficulties consumers have in receiving help or getting their money back. PSCG states only a few cases had been pursued through the Tribunals. Where substantial fines had been issued by the Tribunal, few have been paid and consumers did not receive the refunds of these charges as ordered.
- 4.90 These comments relate to the PSA’s performance and are outside the scope of this consultation.

Implementation period

- 4.91 Our second consultation question requested views on the appropriate implementation period for the new Code. We received six responses to this question, which we summarise below.⁴²
- a) aimm said that such a fundamental change in the regulatory landscape will need a lengthy transition period to enable providers to understand and implement changes required to comply. They suggested the implementation period be set at a minimum of 6 months, with an optimum period of 9 months.
 - b) The FCS agreed that the PSA’s plan to publish the revised Code later in 2021 was an appropriate timescale.
 - c) [redacted] said it was not possible to comment on the implementation period at this stage because so much of the detail of the Code will be set out in supporting documents which have not yet been published. However, it thought that the new Code would likely cause mobile network operators to change their Codes of Practice. It also noted there should be time to ensure the cost of implementation could be assessed.
 - d) A confidential respondent [redacted] said that it would be sensible to await the outcome of the Competition and Markets Authority (CMA) review for contract renewals.
 - e) A confidential respondent [redacted] said that six months would be necessary for effective implementation.

⁴¹ [redacted]

⁴² Including FCS, who supported the PSA timeline for implementation.

- f) Telecom2 asked for nine months as network operators will have to review all existing services provided on their numbers and platform to ensure compliance. It said that in many cases, PRS providers will need to formalise existing procedures for areas like vulnerable consumers and customer care required by the new Code.

Ofcom's response on the implementation period

- 4.92 The PSA consulted on providing a three to six month implementation period and note that most of the comments they received related to the extended time to implement the 12 month opt-in requirement that was suggested at the time. This requirement has changed to an opt-out notification and is thus far less onerous, which additionally negates the need to wait for the CMA's review. The other changes that are required build on current Code 14 requirements, so the PSA do not consider that these changes will require organisations to build new systems and processes to implement them. The PSA is also of the view that it did not receive substantive evidence on why a longer implementation period was required.
- 4.93 The PSA have decided to allow a five and a half month implementation period for Code 15, and we believe this time frame is reasonable.

Conclusion

- 4.94 Having considered the responses received to our consultation and the revised Code, we are satisfied that Code 15 meets the legal tests for approving a code under the Act. The following section sets out Ofcom's assessment and decision in more detail.

5. Ofcom's approval of Code 15 under section 121 of the Act

- 5.1 This section sets out the reasons Ofcom considers it would be consistent with the legal tests set out in section 121 of the Act (and summarised in Section 2 of this document) to approve the final code of practice ("Code 15").
- 5.2 In relation to section 121(1)(a) of the Act, Ofcom considers that Code 15, developed by the PSA, *"has been made by a person for regulating the provision and contents of PRS, and the facilities made available in the provision of such services"*. In Ofcom's view, it is clear from the provisions of Code 15 that there is no change in this respect compared with the current Code 14, and that the PSA remains the person responsible for regulating the provision and contents of PRS.
- 5.3 In relation to section 121(1)(b) of the Act, Ofcom considers that Code 15, *"contains provision for regulating, to such extent (if any) as they think fit, the arrangements made by the providers of premium rate services for promoting and marketing those services"*. Ofcom's view is that this requirement is met. For the reasons set out in this statement, we consider that the changes proposed in Code 15 are, amongst other things, objectively justified and proportionate measures that address relevant regulatory needs. On that basis, our decision is that Code 15 as a whole contains provisions for regulating the arrangements made by PRS providers for promoting and marketing relevant services.
- 5.4 In relation to section 121(1)(c) of the Act, Ofcom considers, *"it would be appropriate for them to approve that code [Code 15] for the purposes of section 120"*. In considering this, we are particularly mindful of the requirements of section 121(2) of the Act since Ofcom may not approve the Code unless all seven such requirements are met.

The seven requirements

- 5.5 The seven requirements of section 121(2) of the Act, and our specific reasons for considering that they are met, are set out below. While we have set out our assessment under each, some of our considerations are relevant to more than one requirement. We have taken all these considerations into account in assessing whether we think all the requirements are met.

Requirement 1: "that there is a person who, under the code, has the function of administering and enforcing it"

- 5.6 Ofcom is satisfied that the PSA would continue to have responsibility for administering and enforcing Code 15 should it be approved under section 121 of the Act, as it does under the current Code 14. In particular, section 1.1.6 of Code 15 provides that the PSA will monitor

compliance with Code 15 and, where necessary, take regulatory action such as informal engagement or formal enforcement action.

Requirement 2: “that that person is sufficiently independent of the providers of PRS”

- 5.7 Ofcom is satisfied that the PSA, operating in accordance with Code 15, would be sufficiently independent of the providers of PRS. Generally, Code 15 does not make any changes that Ofcom considers would have a bearing on the PSA’s independence from PRS providers.
- 5.8 Code 15 emphasises that the PSA operates independently from industry and that all Board members are appointed in their individual capacities only. It goes on to confirm no member of the Board may have any current commercial interest in PRS, but Board members may be appointed based on their contemporary industry knowledge.⁴³
- 5.9 This principle is also reflected in the PSA’s Governance Statement,⁴⁴ which sets out how the PSA is run and includes details of its constitution, regulatory approach and operating principles, and the Board Members’ Code of Conduct.⁴⁵ While these documents are not part of Code 15, we have taken them into account in considering whether the PSA is sufficiently independent of providers of PRS.
- 5.10 We consider that Code 15 also contains appropriate provisions to guarantee that the bodies responsible for making adjudications are sufficiently independent of PRS. In particular, Code 15 confirms that members of the Code Adjudication Panel – who act as final decision makers in enforcement matters under the code – will not have any commercial interest in the PRS sector throughout the entire duration of their membership.⁴⁶

Requirement 3: “that adequate arrangements are in force for funding the activities of that person in relation to the Code”

- 5.11 Ofcom is satisfied that Code 15 provides adequate arrangements for funding the activities of the PSA in relation to Code 15. Generally, Code 15 does not make any changes to the existing arrangements that Ofcom considers would affect the adequacy of the PSA’s funding arrangements.
- 5.12 The PSA is a non-profit making organisation and is currently funded by a levy on industry participants calculated as a proportion of the financial transactions in the PRS value chain that are required to be collected by the Network Operator. We also note that the PSA

⁴³ See section 1.4 of the Code

⁴⁴ PSA, [Governance Statement](#), November 2019

⁴⁵ PSA, [Handbook and Code of Conduct for Board Members](#), November 2019

⁴⁶ See section 6.3 of the Code

continues to operate the registration scheme by requiring registrants to pay a reasonable registration fee.

- 5.13 The PSA consults on its business plan and budget each year, following which the business plans and budget (and the level of the levy necessary to meet that budget) are submitted to Ofcom for consideration and approval in accordance with the Code and Memorandum of Understanding. The funding arrangements for the PSA are set out in full detail in chapter 7 of the Code.

Requirement 4: “that the provisions of the Code are objectively justifiable in relation to the services to which it relates”

- 5.14 Ofcom considers that the provisions of Code 15 are objectively justifiable in relation to the services to which it relates. In particular, Ofcom considers that Code 15 – which builds on the PSA’s new strategic purpose⁴⁷ – will establish an appropriate regulatory regime for PRS by building a framework that both seeks to reduce the risks of consumer harm occurring and provides for strong and effective enforcement.
- 5.15 Code 15 represents a change in the regulatory approach of the PSA which is seeking to be a more proactive regulator that seeks to address harm, or potential harm, before it occurs in order to build consumer trust and confidence in the market. It does so by placing greater emphasis on verification and ongoing supervision by the PSA, including more stringent requirements relating to due diligence undertaken by network operators and intermediary providers in the value chain on parties they contract with for the provision of CPRS. This is intended to ensure the Code is fit for purpose not only for the market and consumer expectations today but also considering potentially rapid changes driven by the growing importance of digital markets.
- 5.16 This is an evolution of the underlying approach adopted by the PSA in recent codes of practice, which was an outcomes-based model that emphasised *ex post* enforcement as the key tool to achieve compliance.
- 5.17 We consider that the aims and objectives set out in the PSA consultation, and summarised above, are appropriate in the context of the PRS market, and indeed are necessary to ensure a well-functioning market that delivers for consumers.
- 5.18 To a significant extent, Code 15 builds on the existing rules and requirements of the current Code 14, however, there are three key changes which we have considered in particular detail.

Regulatory standards and requirements

- 5.19 Code 15 sets out seven consumer-facing standards and three organisational standards each of which are supported by a set of more detailed requirements. In our view,

⁴⁷ PSA, [Strategic Purpose](#), December 2019.

consolidating the core regulatory elements of the Code of Practice in this framework helps ensure the objective of each requirement is clear. Having considered each standard, and the overall framework, we consider the standards, and their associated requirements, are objectively justified for the reasons set out below.

- a) The **Integrity** standard requires organisations and individuals involved in the provision of the PRS to act with integrity and in such a way that will not bring the PRS market into disrepute. It is supported by requirements that providers take steps to ensure compliance with the Code and that consumer complaints are resolved quickly and fairly. We consider this will help foster trust in the PRS market and act as a deterrent to providers whose practices could harm consumers.
- b) The **Transparency** standard requires that consumers receive full and clear information to enable them to make a fully informed purchasing decision. It is supported by a range of detailed requirements including the promotion and marketing of PRS, the use of certain services and receipting arrangements. We consider that this will help improve overall consumer confidence in PRS by ensuring consumers are able to make informed decisions throughout their use of any particular PRS.
- c) The **Fairness** standard requires that consumers must be treated fairly throughout their experience of PRS including being charged for PRS only where they have provided informed and robust consent. It is supported by a range of detailed requirements, including requirements for multi-factor authorisation (in certain circumstances) and retaining evidence of consumer consent. We consider that this will help ensure customers are not charged for services they do not want to purchase and are not misled into doing so.
- d) The **Customer care** standard requires that customers must receive excellent and timely customer care including the resolution of their complaints. It is supported by requirements setting out how customer enquiries and complaints should be handled and, where relevant, how refunds should be provided to consumers. We consider that this will help ensure consumers have good experiences of PRS and will help protect consumers where things go wrong.
- e) The **Vulnerable consumers** standard requires that services are promoted and provided in a way that ensures they are not likely to cause harm or detriment to vulnerable consumers. It is supported by a requirement for providers to have, and to produce on request, policies and procedures aimed at mitigating risks to vulnerable consumers. In addition, there are specific requirements for the protection of children, including age verifications for certain services. We consider this will help ensure vulnerable consumers are protected from harm.
- f) The **Consumer privacy** standard requires consumer privacy must be respected and protected. It is supported by requirements relating to the collection of consumer's

data, including personal data. We consider that this will help ensure that the personal information of consumer is collected lawfully and responsibly.

- g) The **Prevention of harm and offence** standard requires that promotions and services are provided in a manner that does not cause harm or unreasonable offence or distress to consumers or to the general public. It is supported by requirements for providers to ensure PRS do not promote or incite hatred, encourage consumers to put themselves at risk and do not cause fear, anxiety, distress or offence in consumers or the general public. We consider that this will help ensure PRS are provided in a safe and responsible manner that minimises certain risks of consumer harm.
- h) The **Organisation and service information** standard requires organisations and individuals involved in providing PRS to provide the PSA with timely, accurate and detailed information. It is supported by requirements for PRS providers to register with the PSA and provide, and keep updated, certain information on their organisation and services. We consider that this will ensure the PSA has appropriate oversight over the PRS market, providing greater transparency and enabling effective regulatory interventions.
- i) The **Due diligence, risk assessment and control (DDRAC)** standard requires that organisations and individuals perform effective due diligence on any person or organisation with whom they contract in relation to PRS, and conduct a full and thorough ongoing assessment of potential risks arising from the provision, content, promotion and marketing of PRS. It is supported by requirements setting out the how providers should undertake these activities (including by complying with the additional requirements set out in annex 2 to Code 15) and setting out particular expectations of intermediary providers and network operators. We consider that this is appropriate to ensure a culture of compliance through the PRS value chain and ensure that consumers are adequately protected from harm. This aligns with the PSA's objective of preventing non-compliance in the first place, and the consequent consumer harm, rather than dealing with issues after the event.
- j) The **Systems** standard requires that providers have in place systems (including relating to payment and consent verification) that are technically robust and secure. It is supported by requirements setting out how providers should ensure systems are operated with specific requirements for intermediary providers (including to comply with the technical standards set out annex 3 to Code 15) and network operators. We consider that this will help ensure providers' systems remain secure and minimise the risk that consumers are charged for services they did not intend to purchase.

5.20 In addition to these general standards, Code 15 also imposes a number of service-specific requirements for Society Lotteries, Professional Advice, Competitions (including broadcast voting), Remote Gambling, Live Entertainment, and Services using virtual currency. We consider that these requirements are appropriate in light of the specific risks associated with these services.

Supervision

- 5.21 A significant new feature of Code 15 is the set of supervisory powers described in chapter four of Code 15. The objective of these powers is to enable PSA to have ongoing oversight of PRS providers and services to achieve and maintain compliance with the Code. We consider that this will help ensure that compliance with Code 15, thereby ensuring customers are better protected from actual or potential harm.
- 5.22 As part of our assessment we have considered whether each of the supervisory tools is objectively justified given the PSA's overall objective of supporting and monitoring compliance with all the obligations set out in Code 15. These tools include:
- a) requiring a PRS provider to submit an audit report annually or periodically as specified by the PSA;
 - b) requiring a PRS provider to periodically report data and information; and
 - c) requiring a PRS provider to produce a report on any matter related to the provision of PRS or to appoint a person to produce such a report.
- 5.23 We consider that these tools are appropriate and are necessary to enable the PSA to undertake supervisory activities with the aim of ensuring compliance and mitigating the risks of consumer harm.

Engagement and enforcement

- 5.24 Code 15 builds on the existing models of enforcement that have been employed by the PSA in recent codes of practice but, in addition, sets out a range of alternative processes. This includes:
- a) A clearer framework for informal resolution of compliance concerns;
 - b) A more flexible framework for formal enforcement that allows for better use of pre-enforcement steps, such as the use of enquiry letters and warning letters that may enable compliance concerns to be resolved;
 - c) An enhanced settlement process to enable quicker resolution of certain matters, for the benefit of both the PSA and industry stakeholders; and
 - d) A more flexible decision-making procedure for enforcement cases that would allow a single legally qualified member of the CAP to make certain decisions.
- 5.25 We consider that these streamlined processes will improve the efficiency and effectiveness of the PSA's enforcement regime and will enable parties who wish to cooperate with those streamlined processes to benefit from a quicker resolution in individual matters. We have also assessed those aspects of the Code which strengthen, or otherwise change, other elements of the enforcement regime.⁴⁸ This includes changes to the interim measures, the

⁴⁸ We note section 121(5) of the Act provides for enforcement provisions.

threshold for individual sanctions and the availability of an oral hearing procedure. We consider that these changes are objectively justifiable and will help ensure an effective enforcement regime.

- 5.26 Finally, we have carefully considered the information gathering powers set out in the Code. We note these strengthen and expand upon the information gathering powers set out in previous codes. In our view, the ability for the PSA to gather accurate information, and rely on it, is critical to its ability to effectively regulate the sector and to make well-informed decisions, including those associated with enforcement. We consider the information gathering powers set out in Code 15 are objectively justified to achieve those goals.
- 5.27 Accordingly, taking all these points together, our view is that Code 15 meets the relevant objective justification requirement.

Requirement 5: “that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons”

- 5.28 Ofcom does not consider that the provisions of Code 15 discriminate unduly against particular persons or against a particular description of persons. Code 15, including its standards and underlying requirements, will be applied uniformly to relevant parties engaged in the premium rate sector, as defined under section 120 of the Act.
- 5.29 Code 15 provides for more flexible regulation and in particular the ability for regulatory parties to achieve the specified regulatory standards through alternative means (other than strict adherence to the underlying requirements of that standard). Although this may mean that certain parties are subject to a different regulatory context, we do not consider that this makes Code 15 unduly discriminatory. This framework enables the PSA to take a different regulatory approach where the circumstances justify that approach and avoids creating an unnecessarily rigid code that fails to take account of different circumstances. We note that that the tailored approach to regulation set out in section 2.6 of Code 15 is in principle available to all providers of PRS and, where this provision is used, the PSA intends to publish details of any such arrangements on its website.
- 5.30 In relation to enforcement, Code 15 provides the PSA with greater procedural flexibility (relative to the current Code 14). In particular, it codifies the PSA’s ability to resolve matters informally, to settle cases where appropriate and adopt streamlined decision making in certain cases (in which a single legally qualified member of the CAP would make a decision rather than a full Tribunal). As above, we consider that this flexibility will enable the PSA to adopt approaches that reflect particular circumstances and results in both efficiency and effectiveness benefits.
- 5.31 The PSA will, in due course, consult on supporting procedures, which will further set out how the PSA would expect to use these differentiated models of regulation and enforcement. We expect these procedures to provide assurance that the PSA will, in practice, operate this more flexible Code in a way that is fair and not unduly discriminatory.

Requirement 6 “that those provisions are proportionate to what they are intended to achieve”

- 5.32 Ofcom considers that the provisions of Code 15 are proportionate to what they are intended to achieve. The central objective of PRS regulation is to protect consumers from the risks of harm that may accompany the use of such services. As set out above, we think the provisions of the Code pursue legitimate and appropriate objectives and are objectively justified to achieve those objectives. We consider that the provisions of Code 15 go no further than necessary to achieve those objectives and as such do not impose an unreasonable regulatory burden.
- 5.33 In particular we have considered the standards, and associated requirements, set out in chapter 3 of Code 15. These build on the prevailing regulatory framework which has long been accepted as appropriate and necessary and take account of the evolving needs of the sector. We consider they are proportionate to the overall objectives set out in the draft Code.
- 5.34 We have also considered whether the supervision framework set out in chapter 4 of Code 15 and the engagement and enforcement framework set out in chapter 5 of Code 15 are proportionate. In our view these frameworks are necessary to achieve the overall objective of a code that enables a more proactive form of regulation. We note that in both cases, they will be subject to further safeguards as the PSA will set out, in advance through its published procedures, how it will use the powers and processes provided by these frameworks.

Requirement 7: “that, in relation to what those provisions are intended to achieve, they are transparent”

- 5.35 Ofcom considers that, in relation to what Code 15 is intended to achieve, the provisions are transparent.
- 5.36 Code 15 has been produced by the PSA following extensive industry engagement and prior consultation. This includes the publication of a discussion document in February 2020 setting out the PSA’s objectives, early thinking and inviting stakeholder input. This was supported by a series of stakeholder discussions, including:
- a) Topic-based webinars;
 - b) One-to-one, and group, industry meetings;
 - c) Engagement with consumer advocacy bodies; and
 - d) Gaining experience from other regulators.
- 5.37 On 8 April 2021, the PSA published the draft Code in full, together with a detailed consultation document which set out its reasons for proposing to introduce the draft Code. The PSA’s document also sets out how it had considered the feedback from industry

through its engagement and has formally consulted on the proposed changes. In light of this, we consider that Code 15 has been developed in a transparent manner.

- 5.38 We also consider that the provisions of Code 15 are transparent in relation to what they are intended to achieve. Code 15 sets out clearly the expectations, requirements and regulatory approach associated with its provisions. It provides for the PSA to publish, and where necessary consult on, relevant materials that further clarify the operation of the code, including the PSA's guidance and published procedures, and any relevant best practice information.

Ofcom's view is that it would be appropriate to approve Code 15

- 5.39 Ofcom may not approve Code 15 unless we are satisfied of the above matters, as set out in section 121(2) of the Act. We must also be satisfied that it is appropriate for us to approve it. In deciding whether we are satisfied of such matters, Ofcom must act consistently with its general duties under section 3 of the Act, and in accordance with the six requirements set out in section 4 of the Act. We set out our assessment as to those matters, and on approval of Code 15 overall, below.

Section 3: Ofcom's general duties

- 5.40 Section 3(1) of the Act sets out the principal duties of Ofcom in carrying out its functions:

- a) to further the interests of citizens in relation to communications matters; and
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

- 5.41 Section 3(2) and 3(4) of the Act are also relevant. They set out matters Ofcom must secure, and/or have regard, to pursuant to our duties. Section 3(4) provides that, in performing its duties, Ofcom must have regard to "such of the following as appear to them to be relevant in the circumstances", including:

- a) the desirability of promoting competition in relevant markets;
- b) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
- c) the desirability of encouraging investment and innovation in relevant markets;
- d) the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
- e) the needs of persons with disabilities, of the elderly and of those on low incomes;
- f) the desirability of preventing crime and disorder;
- g) the opinions of consumers in relevant markets and of members of the public generally; and

- h) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.
- 5.42 Section 3(3) of the Act provides that, in performing their duties under subsection (1), Ofcom must have regard, in all cases, to:
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
 - b) any other principles appearing to Ofcom to represent the best regulatory practice.
- 5.43 Section 3(5) of the Act provides that Ofcom, in performing its duty of furthering the interests of consumers, must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.

Section 4: The six duties under Section 4

- 5.44 Section 4 of the Act sets out six requirements which Ofcom, in carrying out its functions under inter alia Chapter 1 of Part 2 of the Act, must act in accordance with.
- 5.45 In broad terms, the six requirements are as follows:
- a) to promote competition, including in relation to:
 - i) the provision of electronic communications networks and services,
 - ii) the provision and making available of services and facilities that are provided or made available in association with the provision of electronic communications networks or services, and
 - iii) the supply of directories capable of being used in connection with the use of electronic communications networks or electronic communications services.
 - b) to promote the interests of all members of the public in the United Kingdom;
 - c) to take account of the desirability of Ofcom's carrying out its functions in a manner which, so far as practicable, does not favour (a) one form of electronic communications network, service or associated facility, or (b) one means of providing or making available such a network, service or facility, over another;
 - d) to encourage (to such extent as Ofcom consider appropriate for certain purposes which are specified in section 4(8) of the Act) the provision of network access and service interoperability;
 - e) to encourage such compliance with the standards specified in section 4(10) of the Act as is necessary for facilitating service interoperability, facilitating end to end connectivity, facilitating the charging by end-users of their communications provider, facilitating the retention by end users of their telephone numbers after a change of communications provider, and securing freedom of choice for customers of communications providers; and

- f) to promote connectivity and access to very high capacity networks by members of the public and businesses in the United Kingdom.

Conclusion

- 5.46 Ofcom has carefully considered Code 15 and the responses to our consultation and we have decided to grant our approval under section 121 of the Communications Act 2003.
- 5.47 In reaching this conclusion, Ofcom has had regard to its duties under section 3 of the Act and, so far as relevant, section 4. Ofcom believes that approval of Code 15 would be compatible with those duties, not only because Code 15 would be in line with Ofcom's primary duty to further the interests of citizens and consumers, but also because, amongst other things, it would promote greater consumer confidence in the PRS market and, as a result, encourage investment and innovation, and promote competition, in the sector.
- 5.48 In particular, Ofcom considers that effective competition can only exist where consumers are not misled about the cost or nature of services and where traders who cause consumer harm are held accountable. We are satisfied that Code 15 would further these aims.
- 5.49 In these ways, and others described in this document, the provisions of Code 15, in our view, satisfy the principles of fairness, effectiveness and efficiency with which the Code must be consistent. This contributes to our view that approving it would be in line with our duties.

A1. Notification of Approval of a Code for Premium Rate Services under section 121 of the Communications Act 2003

The approval of a Code for premium rate serves for the purpose of sections 120 and 121 of the Communications Act 2003

WHEREAS:

- 1 Section 121 of the Communications Act 2003 (c. 21) (the “**Act**”) empowers the Office of Communications (“**Ofcom**”), subject to being satisfied of certain matters specified in that section, to approve a code which has been made by any person for regulating the provision and contents of premium rate services, and the facilities made available in the provision of such services;
- 2 on 8 April 2021, the Phone-paid Services Authority (the “**PSA**”) published a draft Code of Practice (the “**draft Code**”) and a consultation document seeking stakeholder views on its content;
- 3 on 30 April 2021 Ofcom published a consultation document on the draft Code (the “**Ofcom Consultation**”), stating that Ofcom was minded to approve the draft Code under section 121 of the Act and inviting comments on that proposal by 11 June 2021;
- 4 on 7 October 2021, the PSA formally submitted to Ofcom the 15th Code with a request that Ofcom approve it pursuant to section 121 of the Act; and
- 5 Ofcom has now considered the responses which it received to the Ofcom Consultation. For the reasons set out in the Statement which accompanies this Notification, Ofcom considers that the requirements for approving a code set out in section 121 of the Act have been satisfied and that it would be appropriate and in accordance with Ofcom’s statutory duties now to approve the PSA’s Code of Practice (the fifteenth edition).

NOW, therefore:

- 6 Ofcom hereby gives its approval of the code for premium rate services set out in the Schedule hereto (and reproduced in Annex 2 to the Statement which accompanies this Notification) for the purposes of sections 120 and 121 of the Act, to take effect from, and including, 5 April 2022.
- 7 Except as otherwise defined in this Notification, words or expressions used shall have the same meaning as they have been ascribed in the Act.

Signed by

A handwritten signature in black ink, consisting of a stylized initial 'G' followed by a long horizontal line.

Gaucho Rasmussen

A2. Phone-paid Services Authority's Code of Practice (fifteenth edition)

The PSA's Code of Practice (fifteenth edition) can be found on the [PSA's website](#).