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Response to PSA discussion document on Code 15

This is a work in progress, and we would welcome your views, prior to its submission to PSA at the end of June 2020.

Send your comments by email to consult@payforitsucks.co.uk

We urge all consumers to submit their own responses to PSA, as they are currently making minimal effort to seek consumer views. This is an opportunity to influence the future regulation of these services. If consumers stay silent, the current fraud ridden system will continue.

Q1 Do you agree with our proposed overall approach to the review? Please provide an explanation as to why you agree or disagree.

Fundamentally we agree with the approach. However, historically PSA have put MUCH more effort into their relationship with the industry and have paid scant regard to the views and interests of consumers. We'd like to see PSA become more responsive to consumer issues. A "Consumer Panel" with no advertised means of contact is not a substitute for proper public consultation.

Q2 Is there anything else we should be considering?

We believe that as part of making a greater effort to obtain consumer views, PSA should make an effort to involve some of the many consumers who have recently alleged that they have received fraudulent charges on their phone bills. The existing Consumer Panel needs to be replaced with one that is fully aware of the various issues consumers face with Phone-paid Services and can be contacted by consumers to provide them with a genuine method of making their views known. PSA need to understand that the system is not working well for these consumers who have had difficulty identifying, contacting and negotiating with some companies operating phone-paid services.

Q3 Do you agree with our assessment of the market? If not, why not? Is there anything else you think we need to consider?

In general, we agree with your market assessment. There is a continuing opportunity for Phone-payment to thrive, particularly if consumers see it as convenient. However, carrier billing and PSMS now have an existential threat from bad actors in the industry who cynically abuse the system. If this trend is not addressed, the reputation of this payment method will be further impaired and reputable companies will have nothing to do with it. The existing, outcomes based, code doesn't provide PSA with the tools it needs to counteract this fraud. The Code now looks like the "house that jack built" with numerous Special Conditions which appear to be widely ignored and Guidance notes which are apparently unenforceable. When PSA consulted on consent to charge, we remarked that guidance notes were not a good way to protect consumers as they were likely to be ignored. We said

"Tightening the guidance for "consent to charge" is likely to have little effect, when the existing rules are incapable of being enforced. Instead of tinkering with the guidance, PSA

need to be looking at enforcement of the Code and at the provision of disputes mechanisms which are a feature of nearly all reputable payment mechanisms. Adding detailed “expectations” in to the guidance is just “window dressing” and won’t achieve anything if compliance with these expectations is not effectively monitored. When PSA can’t even enforce the Code and the Special Conditions, how credible are these changes to guidance?”

During the past six months the majority of the complaints we have received relate to a single service which is blatantly ignoring the guidance.

We are of the view that PSA need to “raise the bar” for entry in to the industry. This would help deter some of the “bottom feeders” who cynically abuse the system for the purposes of fraud and which PSA currently seem unable to control. We also believe that having left the EU, this would be a good time to require all services to be operated by a UK registered company or UK resident individuals. Consumers have great difficulty in enforcing claims against overseas service providers. It is simply not fair to put consumers in the position where they have to pursue legal action against an overseas entity in order to recover a relatively small amount of money.

Q4 Do you have any evidence of the market to share with us that you think would support our assessment?

Consumers are becoming increasingly aware of the consequences of exempting this payment mechanic from PSD2. Many remain unaware that they can initiate charges to their phone bill while accessing the internet using mobile data. There is a wish to see the networks accept the same level of responsibility as FCA regulated payment processors. If MNOs took responsibility for resolving disputes in the same way as other payment processors, this would do much to establish trust and confidence in Phone-payment.

Consumers have expectations of all payment processors, including the networks currently exempted from the PSD2 regulations

- They expect them to give help in identifying charges that the consumer does not recognise
- They expect the payment processor to secure evidence that a payment has been authorised by the account holder **before** the payment is transferred
- They expect them to have a disputes procedure where consumers can dispute unrecognised or unlawful charges
- They expect the payment processor to be able provide full details of any disputed transaction with dates and times and methods of verification secured at the time of the transaction.
- If the payment processor maintains that the payment was lawful, the consumer expects to be given a detailed explanation of the reasoning and justification behind this.
- They expect a transaction reference (other than account number) which they can use to help a supplier identify a charge they have made.

- They expect to be able to ask for disputed continuous payments to be stopped, so that no further charges are made.
- They expect refunds, where suppliers agree to them, to be paid by payment back into their account or better still by reversing the disputed transaction. They don't expect to be asked to take a text to a Post Office.
- They expect refunds, where agreed, to be processed with the same speed and efficiency as the original disputed transaction. They do not expect to be asked to provide unnecessary personal information as a condition of being refunded.
- They expect the provider to be aware of suspected fraudulent activity and take action to protect them from abuses of the payment mechanism
- They expect to be able to opt-out of the payment mechanism completely, like for example stopping a card when it has been compromised or stolen. All consumers should be able to ask for a "charge to bill" bar, to prevent their phone account being used for 3rd party purchases. As a regulator PSA should be insisting that **all** networks offer this protection and recommend that it be used by vulnerable consumers.
- They expect the payment provider to be aware of complaints made against particular vendors and to exclude them from using the payment mechanism where they generate a disproportionate number of complaints.
- They expect the risk of fraudulent transactions to be very low, due to the payment processors having fraud detection and prevention measures in place.
- They expect the processor to be able to spot trends in complaints and take steps to perform additional verification on transactions which may be suspect.

Consumers have these expectations because of their experience with reputable FCA regulated payment processors. The systems for "3rd party" charges made to phone bills have lagged behind developments in regulated payment systems and have, as a result, become a target for fraudsters.

It is completely wrong that networks are requiring their customers to pay charges for which they hold no evidence of consent.

Q5 Do you agree with our assessment, based on research, of consumer behaviours, experience and expectations?

On the whole, we agree with your assessment. It is clear that in recent years there have been a significant number of complaints about unexpected "subscriptions" to services. You say little about the difficulty in investigating these cases, but from our perspective they appear to disproportionately affect a relatively small number of quite obscure services. We believe that clickjacking and iframing exploits lie behind many of these complaints, but are aware of how difficult it is to prove this.

You say that it is quite possible for a consumer to provide unintentional consent to a subscription service, and we would not dispute this. Many of these services, while promoted lawfully, take

advantage of consumers who fail to read and/or understand the small print. We note a high proportion of complaints from consumers for whom English is not their primary language. We regularly see examples of “sharp practice” in the way consumers are misled by promotions. This does the industry no credit and damages its reputation.

The truth is that we are rarely able to identify how a particular subscription was initiated, but it remains our contention that clickjacking and iFraming are often the cause. Consumers are justifiably upset when service providers and PSA accuse them of lying and having knowingly consented to charges. Where consumers claim to have been charged without consent, they should be believed unless a robust method of verification was used. The two-click method used until recently for subscriptions and still being used for one-off payment is clearly vulnerable to fraud and is not robust.

Even where One Time PIN (OTP) verification is used, the system remains vulnerable. We recently encountered a service where the OTP was displayed on the signup page, rather than sent as a text to the device. This would have enabled any valid mobile number to be “subscribed” from any device. There was some evidence that this had happened – we believe that numbers had been “harvested” from Gumtree advertisements and subscribed to this service.

In cases we have looked at, and have been able to obtain logs, they invariably show a single interaction with the service on the date of the alleged subscription and no interaction thereafter.

Although consumers should always check their bills, we know that many do not, and small regular charges often go unnoticed. Bills being paid on behalf of vulnerable relatives or children often escape scrutiny by the bill payer.

In some cases consumers have been charged for several years for services they never used after allegedly subscribing. Some consumers have been charged in excess of £1000 for such services. The Payfort system had a “120 Day Rule” intended to prevent this abuse. However it never seems to have been enforced (and it is unclear who had the power to enforce it). We believe that such a rule is essential to protect consumers, and that it should be enforced by the regulator. Where a consumer does not interact with a service for a period, the consumer should be invited to renew their subscription. If they fail to do so, the subscription should lapse.

Service providers often claim that ongoing subscriptions of this type are legitimised by the sending of regular text messages. In almost every case we have investigated, the consumer assumed that the initial subscription text was spam and blocked the number, so reminder texts went unseen. We have also seen consumers who have believed that by blocking these texts, they can also block the charges. Unless it is possible to prove that a text has been delivered **and displayed** on the consumer’s device, we believe that relying on text messages in this way is unsafe. Once again, the solution to this rests with the MNOs. Consumers are unlikely to block or ignore texts coming from their network. Cramming fraud could be much reduced if networks verified subscriptions themselves.

In this context we welcome the introduction of a two-step process (with affirmative action required by the consumer) for initiating these subscriptions. In the short term this appears to have been successful in defeating the exploits used by the fraudsters. In the longer term though, we fear that

the reluctance of the industry to take action to rid itself of this malpractice will mean that the fraudsters will once more gain the upper hand.

The experience of consumers who receive “unexpected third party charges” on their phone bills is overwhelmingly bad. The system is highly confusing for consumers, who often only want to get a £3 charge reversed and an assurance that it won’t happen again. The various parts of the “value chain” hide behind one another and consumers frequently find themselves dealing with an offshore company. It is not surprising that the majority of consumers don’t even try to get these charges refunded.

Consumers naturally expect their networks to help them with resolving these issues. Networks make it very clear that, if consumers don’t pay the disputed charges, they will pursue them for the debt. At the same time they disclaim any responsibility for the charges. Maybe a solution would be a no-fault chargeback arrangement where consumers could get the disputed charges reversed, leaving the service provider to pursue the customer directly for any debt. This would be fairer, much simpler for consumers to understand and easier for networks to justify.

Unfortunately, as we predicted, the new rules for subscription services have resulted in the fraudsters moving their attention to other potential revenue streams. Within days of the new rules for subscription charges taking effect, we became aware of a “service” charging consumers a one-off £40 charge, allegedly for a fitness service and using the highly vulnerable “two click” verification now outlawed for subscription services. New guidance on Consent to Charge should have put a stop to this, but again, as we pointed out in our consultation response, this appears to be unenforceable. The fact that this blatant and cynical fraud has been continuing for months does little to inspire consumer confidence in PSA’s ability as a regulator.

Q6 Do you have any other evidence in this area that we need to consider?

We would ask that PSA look at some of the Trustpilot reviews of services which have generated a disproportionate number of complaints in the past year. This might help them understand consumers’ anger when they have to deal with the issue of unexpected third party charges on their phone bill.

We also believe that PSA need to have more contact with the consumers they are supposed to be protecting. We don’t know how members of the Consumer Panel were selected, but they appear to be totally uncontactable, making it impossible to raise issues of which they need to be aware. It would be interesting to know how much experience they have of the problems consumers experience with Phone-paid Services and how they are informing themselves of the views of consumers who have no means of voicing concerns to them. We’d like to see PSA open up to consumers in the same way as it does to the industry with open forums which concerned consumers can attend.

We are disappointed that PSA are not routinely advising consumers that they can ask their network for a charge to mobile bar, if they wish to avoid unexpected third party charges. Phones supplied to children and vulnerable adults seem to be disproportionately affected by these charges and no effort is made by PSA to inform bill payers of this option. Another common issue is that of 4G WiFi routers becoming subscribed to “services”. There is no mystery to this. Any device connected to the router can subscribe it to a “service” using the “two click” method. Of course, the resulting subscription text messages will be sent to the router, which may or may not be able to handle them, and are unlikely to ever be seen by the router owner. We feel that 4G routers should be supplied with a charge to mobile bar already in place.

Q7 Do you agree with our assessment of what the future holds? Please provide an explanation as to why you agree or disagree.

We agree that most of the growth in the industry is likely to come from larger “blue chip” companies. However, there is an existential threat to the industry. If the industry can’t reduce levels of fraud, reputable companies may not wish to use a non-regulated payment method with a reputation for fraud and sharp practice.

You also correctly identify that consumer trust is essential if the industry is to grow. In our view the current structure of phone-paid services, with its long, highly vulnerable, value chain is the biggest problem. Networks need to take responsibility as payment processors for these payments. Although the Payforit system became notorious for the scams it facilitated, it did, at least, represent an effort by the industry to standardise the approach across networks. Consumers need a one-stop shop to resolve issues with phone-payments. The current arrangements aren’t working and are leading to consumer dissatisfaction. Networks need to create a disputes resolution system similar to that operated by Paypal and similar payment processors.

Q8 Are there are market developments which we have not factored into our assessment? How do you see these influencing the phone-paid services sector and associated regulatory challenges?

There is enormous scope for development of a reputable, safe phone-payment system. Such a system could be FCA regulated, allowing it to handle payments for a wide range of goods and services. The current system is archaic and needs to be modernised. The reliance on texts to inform consumers of charges is misguided as consumers often regard unsolicited text messages as spam and block the number they are coming from.

A modern system would require consumers to install an App which would be used for authorisation of charges, and to obtain a real-time view of charges on the account. No new technological advances would be needed to adopt this approach, just a willingness to accept that change is needed and to take note of what other payment methods are doing to enhance usability and security. An added advantage of this approach would be that installation of the App would be voluntary and consumers would not have an insecure payment mechanism foisted on them by default.

Consumers want payment mechanisms which are easy to use, secure and where issues are easily and quickly resolved with the payment processor.

Q9 Do you agree with our proposed assessment framework? Please provide an explanation as to why you agree or disagree

In the consultation document you say:

“178. Our assessment framework is underpinned by our principal objective which is to protect the interests of consumers, both present and future, through effective regulation. We will keep the public and consumers at the forefront of our considerations, while developing a Code that supports the development of services and the market, so does not impose unnecessary burdens on industry.”

We agree that your **principal objective** should be to protect the interests of consumers. This has not been apparent from your regulatory efforts in recent years.

However, effective regulation is not enough. What is needed is effective and transparent enforcement of the code. PSA doesn't just need to be protecting consumers, it needs to be **seen** to be protecting consumers. In recent years there have been a number of services which have generated a large volume of complaints and against which no action appears to have been taken. There are a number of possible reasons for this:

- PSA are unable to find anything wrong with the service, despite overwhelming evidence that consumers are receiving unlawful charges. If this is the case, more effort needs to be put into investigations, or the code needs to be changed to penalise services which generate a disproportionate number of complaints
- PSA have investigated “informally” and the company concerned has, at least temporarily, made its service compliant. Such cases need to be reported, so that consumers know that PSA has acted to protect them and, where refunds have been agreed, consumers know that this is the case
- The company fails to cooperate with PSA. This, we suspect, is often the case with companies based overseas. The Code needs to enable PSA to act quickly to suspend any service which doesn't co-operate fully and speedily with PSA investigations.

Some services have been allowed to operate for years while supposedly “under investigation”. PSA have been “investigating” one Cyprus based company for three years. Indeed consumers are continuing to find charges from this company on their bills, although the “services” long since ceased to exist.

PSA's inability to act to protect consumers from ongoing harm, not just for weeks, but for months and in some cases years is its biggest failing. If Code 14 doesn't give PSA the powers it needs to protect consumers, then Code 15 needs to see an improvement in this respect.

Q10 Are there any factors we have not taken account which we should?

We believe that the cross border nature of many of the Phone-paid Services needs closer examination, particularly in the light of Brexit.

PSA advise consumers, who have problems with Phone-paid Services, to complain to the company operating the service. This often results in the problem being speedily resolved, even though it isn't always clear what caused the problem in the first place. Consumers who are dissatisfied with the response from the company get no help from their network or from PSA who currently offer no help in resolving individual disputes. Where a company is UK based, the Small Claims procedure provides an effective and usually speedy way of resolving these disputes. However, where the company is based overseas, the consumer is unable to follow this course, as there is no UK entity which can be held accountable.

We'd like to see a requirement that all Phone-paid Services have a UK based company which can be held accountable in the case of disputes. This could be done by limiting access to the market to only UK companies and individuals. Alternatively, the responsibility of the aggregators could be expanded to make them legally responsible for overseas based services using their platform. It simply isn't reasonable to expect consumers to take legal action against service providers based overseas in order to recoup what are usually small amounts of money.

Q11 Do you agree with our proposed initial thinking in terms of proposed changes to our regulatory strategy and approach? Please provide an explanation as to why you agree or disagree.

We agree that the regulatory approach needs to change from the current, outcomes based approach. The subjective nature of many of the "outcomes" makes it possible for service providers and aggregators to claim that a service complies with the Code despite causing significant consumer harm. PSA have to make a case that the outcomes are not being achieved in order to sanction a service. This approach has made it difficult or PSA to effectively regulate the market. The current code looks like the "house that Jack built" with the core code having been added to by umpteen "special conditions" which seem to be almost unenforceable and guidance notes which even PSA admit are unenforceable. Even as we write this we continue to receive a steady stream of complaints about one service which is operating in a manner completely at odds with your recent guidance on consent to charge. A more objective approach is needed for the new Code.

There are structural issues with the Phone-paid Services industry. There are a large number of entities involved

- Mobile Network Operators
- Aggregators (Level 1 Providers)
- Service Providers (Level 2 Providers)
- Customer Service companies
- Affiliate Marketers
- PIN Service Providers
- Refunds Services

.. there are probably others!

Whether by accident or design, action or a lack of action by any one of these entities can result in a non-compliant service and consumer harm.

We believe that a fundamental reform is long overdue, and that Mobile Network Operators need to be forced to take the lead in this. Only by starting at the top end of the complex and highly vulnerable “value chain”, will it be possible to prevent its abuse.

The current system is not fit for purpose and should be scrapped. Recognising that this is unlikely to happen, we’d like networks to become fully accountable for the services they allow to be charged through their billing system. Although some MNOs have begun to take action to exclude rogue operators from offering services through their network, another has not. With the demise of “Payforit”, cooperation between the networks appears to have ended and one network, in particular, is awash with fraud complaints.

Networks take a hefty fee for allowing these services to be billed through them. It is time that they did something to earn that money. They should be required to handle customers’ complaints. They should also be expected to take responsibility for obtaining proof of Consent to Charge **BEFORE** handing their customers’ money over to a third party. Where evidence of consent to charge is not available, a chargeback system would enable networks to offer customers a refund direct to their phone account.

Q12 What are your views with regards to how we can best ensure that all firms operating in the phone-paid services sector will follow, and be held to, the same standard of professionalism?

It is clear that the checks being made under Code 14 are wholly inadequate. The recent Veoo case illustrated the problem. Level 1 providers have an interest in turning a blind eye to sharp practice and fraudulent activity, as long as they are able to distance themselves from it sufficiently to avoid regulatory action against themselves. The only way to rectify this is to make Networks and Level 1 providers fully responsible for breaches of the code by their Level 2 “partners”. In a case where a Level 2 provider, or one of the other parties lower down the “value chain” is found to have breached the code, the MNO and the Level 1 provider should have to **prove** that they took **every possible measure** to perform due diligence and risk assessment of the party guilty of the breach. In the absence of adequate proof, there needs to be a fine which more than removes the benefit from allowing a non-compliant service to operate.

One particular Level 1 provider has consistently worked with companies which have a very poor reputation for compliance and which generate large numbers of complaints. We believe that they are behaving as irresponsibly as Veoo did, but have so far avoided regulatory action. It is our belief that Level 1 providers that knowingly allow such services to use their platform would not do so, if the financial penalties were a sufficient deterrent.

PSA need to ensure that upward accountability of the type we describe above isn’t just a theoretical concept, but that it is ruthlessly applied to remove the financial benefit to MNOs and Level 1 providers of fraud perpetrated by bad actors lower down the value chain.

Q13 What are your views with regards to developing appropriate ‘Pre-purchase standards?’

We believe that consumers need to be warned, and to be fully aware that they are in a “purchasing environment” whenever they use mobile data to access the internet. Consumers are often shocked that clicking links on web pages can result in charges to their phone account.

Making reverse PSMS and “Charge to Mobile” opt-in services would go a long way to addressing this issue, and protecting children and other vulnerable consumers. We have no doubt that some consumers wish to be able to charge third party services to their phone bill and we would not want to see them prevented from doing so, as long as they are aware of the risks of using an unregulated payment mechanism. However we believe that there is no justification for foisting this insecure system on unsuspecting consumers.

Q14 What are your views with regards to developing appropriate ‘Purchase standards?’

We agree with all your proposals to increase the technical protections.

We recognise that there are conflicting requirements here. Code 14 allowed a lot of flexibility in how companies complied with the code. The intention was to allow for innovation. Sadly, all it seems to have allowed is increased levels of fraudulent activity. Prescriptive technical requirements could stifle the development of innovative consent mechanisms which could enhance consumers’ safety and improve the purchasing experience. Although these services are exempted from PSD2, we believe that Phone-paid services could learn much from the way in which FCA regulate these issues.

As many consumers have no choice but to expose themselves to this payment mechanism, we believe that the requirements should be more stringent. Consumers have to opt in to Paypal, or using contactless payments. They are silently exposed to phone-payments without their explicit consent and some networks won’t even allow an opt-out. Until this changes, we believe that strong customer authentication is essential.

Q15 What are your views with regards to developing appropriate ‘Post-purchase standards?’

The vast majority of complaints relate to consumers who have received “unexpected charges” on their phone bill. We are sure that other issues sometimes arise with services, but as far as we are aware they are satisfactorily handled by the service providers.

We welcome the idea of automatic “no-quibble” refunds and believe that such a system would be best operated by the Mobile Network Operators, so that refunds could be paid back in to the complainants phone account.

Some service providers have told us that they believe that the majority of complaints of unauthorised charges are the result of consumers “trying to get the service for free”. That is not our experience, and we would not support a consumer where there was evidence to support this view.

Where a consumer’s only interaction with a subscription service was at the time they allegedly subscribed to it, there should be an automatic right to a full refund.

Our experience with CommsADR has not been good. They take far too long to look at a case, making the Small Claims procedure much faster in the majority of cases. ADR should be a mediation process, but in the few cases we have seen it has not worked that way and consumers have been disappointed with the outcome which has not been properly explained or justified to them. One

“boiler-plate” letter from CommsADR even named a completely different service to that which was featured in the complaint! It was obvious that the substance of the complaint had not even been considered. Consumers have a natural mistrust of an ADR service funded by the “service providers”. They might have more trust in a **genuinely independent** ADR service funded by PSA.

The small claims court offers mediation (usually in the form of a conference call) in an attempt to avoid the need for a court hearing and this is often successful. If CommsADR offered a similar form of mediation it might become more popular with both consumers and service providers. The law on the issue of “charging without consent” is clear. The burden of proof rests with the vendor to prove that the consumer consented to a contract. There is ample evidence to show that the 2-click method still allowed by PSA for one-off charges is easily spoofed with clickjacking and iFraming exploits and should not be accepted as evidence of consent. Unless there is convincing evidence that the consumer knowingly consented to the charges (such as evidence that they subsequently interacted with it), a court is unlikely to accept the validity of the charges. Indeed, companies that attempt to justify such charges and resist the provision of refunds bring the industry into disrepute and damage consumer trust.

Q16 What are your views with regards to how we can make our investigations and enforcement procedures more effective?

Having attempted to investigate fraudulent charges ourselves, we fully understand the difficulty encountered by the PSA. Just finding the route by which the consumer became “subscribed” can be extremely difficult. Even if this is possible, identifying the party behind the exploit is almost impossible, due to the secrecy around affiliate deals.

This is why we believe that taking technical measures to **prevent** fraud is a preferable approach. Unfortunately any measures introduced to protect consumers are likely to be circumvented. Within weeks of PSA introducing the use of a One Time PIN for subscription services, we discovered that some services were displaying the One Time PIN on the signup screen, completely defeating the intended purpose and resulting in complaints from consumers that they had somehow become subscribed to services they had never heard of.

Close monitoring of services, and of consumer complaints is essential. Where a service begins to attract large numbers of complaints, a close examination of those complaints might help identify the cause. We encourage consumers, as well as reporting their problem to PSA, to leave the service a review on Trustpilot. There are often details in these reviews which help identify the likely cause. One problem is that many consumers are not sure how to access their web history, which can often be very useful in obtaining the signup links used. Interestingly, few consumers report PSA asking for this vital information.

The speed of investigations is also important. It does PSA no credit that some services are allowed to operate for months, making unlawful charges to consumers, when it is patently obvious that something is seriously wrong. PSA should have the power to suspend services generating a disproportionate numbers of complaints, pending investigation. They should also have the power to

suspend services and issue administrative fines where a service does not cooperate with an investigation.

Above all, the outcome of investigations should be communicated to consumers who have made a complaint, even if the investigation gave the service a clean bill of health.

Q17 What are your views with regards to how we might achieve better outcomes for consumers and uphold the reputation of the market through more effective deterrents by considering the range of sanctions available to us?

Outcomes for consumers would be much improved if services generating disproportionate number of complaints could be suspended while they are investigated. Maybe a threshold could be set for the proportion of charges resulting in a complaint. If this threshold was exceeded for more than a four weeks, the service could then be suspended, pending an investigation.

Transparency is vital to public trust. All PSA investigations resulting in a Track1 or Track2 process should be reported. From a consumer's perspective it appears that PSA only investigate a tiny minority of cases and that many of the most serious breaches of the code go unpunished. Publishing details of the outcome of "informal investigations" might go some way towards correcting this view.

There is a serious issue with non-collection of fines imposed by tribunals. Sanctions intended to remove the financial benefit of breaches of the code are consequently ineffective. The ability to make directors of companies personally liable would help. However, would this work for companies registered in, say, Belize?

We'd also like to see PSA properly consider the possibility of criminal prosecution for fraud, where the evidence appears to support it. A high profile case such as that of Zenhya Tsvetnenko might act as a deterrent. While recognising that the levels of proof required are much higher for a criminal case, we do believe that, for example, the evidence in the Veoo case at least warranted a police investigation.

Q18 What are your views on our existing funding model? Does it remain an effective model? Or do you think alternative funding models may provide a more sustainable approach going forward?

We'd like to see a funding model where services pay a levy based on the amount of work they create for PSA. If subscription services generate a higher volume of complaints, they should pay more. A "polluter pays" approach might help clean up the industry.

Q19 Do you consider the current categories of defined providers capture all relevant providers involved in the provision of phone-paid services and appropriately spread regulatory responsibility throughout the value chain? Please provide an explanation as to why you agree or disagree.

We disagree. We have seen high levels of harm from affiliate marketers, and have recently seen issues with PIN service providers.

Many services use Customer Service providers who act to prevent consumers contacting service providers directly and fail to provide satisfactory responses to consumer enquiries. We have seen service providers seek to blame these other companies for breaches of the Code. It needs to be

clear, if regulation is only to apply the three categories identified, that providers will be held directly accountable for the failings of any third party marketing, customer service or PIN provider they use.

Q20 Do you think the current regulatory framework remains fit for purpose? Please provide an explanation as to why you agree or disagree.

No, we believe that the current regulatory framework is inadequate. It fails to properly protect consumers. The current framework is unduly complex with too many add-ons to the code which appear to be unenforceable (and to be fair are probably confusing to service providers). The new code needs to embody existing special conditions and guidance in an enforceable form. The “outcomes based” code has proved incapable of protecting consumers, and it is time to move to something more prescriptive.

Q21 Are there any areas of potential change proposed in this document which may have an impact which you believe should be considered? If so, please let us know, including any evidence you have as to the likely impact

We anticipate that the types of changes proposed will make it more difficult for bad actors to enter the market, and make code breaches unprofitable for service provider – thus encouraging and rewarding compliance with the Code. This would have a beneficial effect on consumer trust and the reputation of the industry.