PSA
Phone-paid Services Authority

Code 15 Procedures

Version: 7 December 2023

The UK regulator for content, goods and services charged to a phone bill

Contents

1. Introducing the Procedures

1. This document aims to provide a comprehensive set of procedures ("Procedures") to support the Phone-paid Services Authority Code of Practice ("the Code") and should be read by all parties in the premium rate services (PRS) value chain. The purpose of the procedures, as established by the Phone-paid Services Authority (PSA) and set out in this document, is to provide both transparency and clarity about the processes and criteria that we will adopt, undertake and/or apply in relation to our core regulatory functions as set out in the Code.

2. The Procedures are not a substitute for the Code (the provisions of which override those in this document in the event of conflict). The Procedures detail our approach to supervision, engagement and enforcement.

3. The Procedures also seek to clearly set out details of the adjudications process, including that used by a Tribunal or single legally qualified CAP member to determine fair and reasonable sanctions, as well as the rights of a provider (including network operators) where it is the subject of a PSA investigation and/or sanction. It is essential that our processes are not only effective and capable of producing a proportionate, consistent and reasonable outcome, but that they can be clearly understood by regulated parties.

4. The Procedures may be used by all stakeholders, including consumers, but will be particularly useful to network operators, intermediaries and merchants. These are collectively defined as PRS providers in the Code. The Procedures seek to clarify our expectations as to the responsibilities of the relevant PRS providers when the PSA supervises or investigates. The Procedures may be updated from time to time and published accordingly.

5. To assist all readers, we provide a glossary of terms at the end of this document. We would strongly recommend that readers read the entirety of the detailed sections of the Procedures.

PSA's remit and jurisdiction

6. The Communications Act 2003 ("the Act") established the regulatory regime for telecommunications services, and established Ofcom as the regulatory body for such services.

7. In respect of PRS, the Act provides Ofcom with the power to approve a Code for the purposes of regulating PRS. Ofcom has approved the PSA's Code of Practice under Section 121 of the Act. The scope of the PSA's remit is set out in the definition of "controlled PRS", contained within the PRS Condition made by Ofcom (which is reproduced at paragraph D.1.2 of the Code).

8. Ofcom has designated the PSA, through approval of the Code, as the body to deliver the day-to-day regulation of the PRS market. The PSA regulates the content, promotion and overall operation of controlled PRS through the imposition of responsibilities on providers of PRS in the Code.

9. Where there is potential and/or actual non-compliance, the Code provides the PSA with a range of regulatory approaches to deal with them. Where appropriate and following due process, this includes the imposition of sanctions on the offender as set out in the Code at paragraph 5.8. The Code is revised from time to time to ensure it continues to provide a trusted environment for consumers and remains a fair and proportionate regulatory regime for the industry.

10. Ofcom retains overall responsibility for regulating premium rate services, and where necessary the PSA may refer providers of PRS to Ofcom.

2. Sources of intelligence

11. Our regulatory activities will be led by the gathering and analysis of intelligence about the market as a whole, the parties in the value chain, the service types and the individual services. Intelligence is used to gauge whether compliance with the Code by regulated parties is being achieved.

12. There is no pre-determined weight attached to any particular factor or type of intelligence. Intelligence may be considered in isolation or in the round. The decision-making process and the regulatory actions that can result from this can be found in section 3.

Consumer contacts

13. Members of the public can contact the PSA directly to provide information about services for a number of reasons, including the receipt of PRS promotional material, the receipt of PRS charges, or where PRS has affected a relative or other phone user.

14. Consumers may also contact the PSA to make enquiries about such services.

15. Consumers may also contact the PSA to complain about a service. The PSA considers a complaint to be an expression of dissatisfaction relating to a PRS, indicating some discrepancy between consumer expectations and service delivery or operation.

16. In addition to intelligence received directly through consumer contacts, we may also request information from regulated parties through periodic data reporting (section 6 below).

17. Each piece of information given by consumers, whether it forms part of a complaint or an enquiry, will be logged by the PSA. This intelligence will be analysed to determine trends, potential issues or as evidence of harm occurring within the market and may be considered alongside information held about specific services including registration data, monitoring evidence or other data. Not every contact or complaint will provide evidence of a breach of the Code or lead to regulatory action being taken.

18. Consumers who contact us with an enquiry or complaint about a service are advised to address the matter with the merchant in the first instance. If they have not done so, they will usually be given information about the merchant operating the service which would allow them to do so. If the consumer is unclear about the service that has charged them, we may refer the consumer back to their network operator to establish where the charges originated from.

19. The PSA does not seek information from regulated parties regarding a consumer's engagement with the service in all circumstances. However, where consumer contacts/and or other market intelligence indicates that there is the potential for or actual consumer harm occurring, the PSA may gather additional information to determine whether regulatory action is required. In such cases, the PSA will contact the merchant or other parties in the value chain directly to request information relating to consumers' engagement with the service.

20. In such circumstances, merchants will have the opportunity to investigate and rectify any underlying issues, including providing redress where appropriate. The PSA will take into account whether a merchant has resolved matters with consumers, in conjunction with all other intelligence, when determining whether there is a need to take any regulatory action. However, the resolution of the issue(s) by itself does not prevent the PSA from taking further action.

Monitoring

21. The PSA conducts monitoring of PRS. The PSA may decide to monitor a specific service as a result of complaints received, as a result of reports received from the industry or third-party monitoring companies, as a result of open source intelligence found online, as part of a planned sweep in relation to a particular issue, or for other reasons. In addition, the PSA may change its monitoring policies and strategies from time to time in order to respond to changing technologies and market behaviours.

22. Our monitoring function involves gathering intelligence from a range of regulatory activities, including supervision, engagement and enforcement of the Code. When issues of potential non-compliance are found, this will be documented and will form part our overall market intelligence.

23. If the monitoring highlights a potential issue(s), the PSA may decide to address the matter through its supervision powers or use its engagement and or enforcement powers. In any of these circumstances the PSA would notify the relevant parties within the value chain of the findings of the monitoring prior to taking any further regulatory action. This would provide the parties with visibility of the issue and give them the opportunity to respond and/or address such issue(s).

Intelligence obtained through supervision activities and stakeholder engagement

24. Intelligence may be obtained through stakeholder engagement or supervisory activities conducted by the PSA. Intelligence obtained through either of these routes forms part of the overall intelligence when assessing industry compliance with the Code. Further details about the PSA's approach to supervisory activities and stakeholder engagement can be found in section 6 below.

Third-party intelligence and other enforcement bodies

25. As indicated above, one trigger for seeking further intelligence may be a report from a third-party monitoring company on a particular service(s). In addition, the PSA may decide to take regulatory action based on intelligence shared by other enforcement bodies in the UK and globally.

26. Where such intelligence is received, there may be circumstances where the PSA is unable to disclose this intelligence. This may be due to the confidential or sensitive nature of the intelligence/and or its source.

Industry reports and complaints

27. In order to limit and address consumer harm, providers are encouraged to proactively alert the PSA to any issues regarding its own or third-party services. This is in line with the Integrity Standard set out in 3.1 and the Requirement set out in paragraph 3.1.1 of the Code. Such proactive co-operation will be taken into account by the PSA when considering the most appropriate action to be used to address the harm.

28. Industry members can report any matters relating to Code compliance to the PSA. Any such information will be treated in confidence while initial enquiries are made to understand the issues. Depending on the nature of the information and whether claims made can be further evidenced by reference to service data, complaint information or monitoring reports, there may be a need for industry reports to be used as evidence during an investigation. In this case, the relevant party would normally expect to receive information about the source of the evidence.

29. Whether and what regulatory action is taken as a result of a complaint made by consumers or a member of the industry is dependent on the nature of the intelligence received.

Whistleblowing

30. In addition to industry reports and complaints, the PSA may consider whistleblowing information from an individual that works in or previously worked in the PRS industry and seeks to disclose information about the activities of companies or individuals in the industry and/or raise a concern about wrongdoing, risk or malpractice that they are aware of within such companies through their work.

31. If the individual is a current worker in the area of the provision of electronic communications networks and services with a concern to disclose which falls under the Public Interest Disclosure Act 1998 (PIDA), they should report their concern to Ofcom in the first instance, in order to protect their employment rights. Information regarding the PSA's whistleblowing policy can be found on the PSA's website.

Registration and additional verification data

32. In accordance with Code paragraphs 3.8.1 - 3.8.6, regulated parties across the value chain are required to provide accurate and up-to-date registration data. Such information is essential in establishing intelligence about the market, and therefore the PSA may take enforcement or other regulatory action where inaccurate information has been provided or where there has been a failure to register in accordance with the Code.

33. The PSA will look to undertake robust verification of data supplied. This is to ensure that data received, including as part of Registration, is complete and accurate.

34. Where market intelligence indicates there is an increased potential/or actual consumer harm occurring, the PSA may elect to perform additional verification activity of parties and services in the market beyond the data initially required under Registration.

35. Triggers that could prompt such action include (but not limited to):

- increase in complaints within certain services
- increase of volume of traffic within certain service types
- parties entering the market with new services/or new models of delivering existing service types
- parties with a previous track record/or connection to bad behaviour in the market
- increase of parties entering the market from the same region/locality.

36. As part of the additional verification activity, the PSA may request information from parties within the value chain which includes, but not limited to:

- up to date lists of actively/non-actively billing merchants/services from intermediaries
- up to date lists of actively/non-actively promoting services
- details of the value chain including third parties involved in the provision of the service
- confirmation on policies on customer care
- confirmation of responsible persons as outlined in paragraph 3.8.3 of the code
- up to date details of shortcode/number ranges.

37. Requests for such information is to ensure the PSA has an accurate picture of the parties and the services being provided beyond the initial information provided at Registration. Failure to provide information upon request may be viewed as a breach in accordance with Code paragraph 6.1.6.

Research

38. The PSA will commission research to provide insight both into market issues/trends and consumer behaviour, experience and expectations. This intelligence will be used to support policy development and assist the PSA in working with industry in order improve standards within the market and to best deliver to consumers the protection they expect to enhance their engagement with PRS. Research will be published on the PSA website.

39. Research will feed into the overall intelligence and where it highlights specific issues within the market, the PSA will decide on the best course of regulatory action to be taken.

3. Decision making and referrals

Decision making

40. The decision to take regulatory action will be through the Regulatory Action Committee.

41. The Regulatory Action Committee will convene on a regular basis to consider the market intelligence brought before it and decide whether any regulatory action(s) are required. It may also convene as a result of any matter which requires urgent action.

42. The decision to take regulatory action will be based on consideration of various factors including but not limited to:

- nature of the issue identified:
    - whether it is a potential or live issue
    - scope of the issue (associated with a particular party(ies), service(s), service type or sector)
    - whether harm has occurred or is likely to occur and the seriousness of such harm.
- time, resource and prioritisation. The PSA has published its prioritisation criteria which it will apply to ensure that its limited resources can be used to achieve the greatest regulatory effectiveness.
- whether the action will further PSA's current regulatory approach, and/or whether there are any other strategic reasons to take action which will increase its impact, for example by:
    - improving market behaviour
    - preventing or mitigating the risk of consumer harm
    - increasing consumer awareness of service types/specific practices (including through media exposure) which will be beneficial for the protection and education of consumers and/or increase consumer confidence in the market.
- whether the PSA is best placed to act or whether a referral should be made to another body.

43. The PSA can employ a range of regulatory actions to address issues and potential or actual harm. These include:

- address the issue through advocacy by issuing guidance, best practice information and compliance advice (section 4 below)
- refer the matter to the PSA's Supervision function (section 6)
- refer the matter to the PSA's Engagement and Enforcement function (sections 7 – 9)
- refer the matter to another body.

44. In the event that the PSA decides to take Engagement and Enforcement action, the relevant party(ies) will be notified of this decision. Details of the Engagement and Enforcement procedures are set out in sections 7 – 9.

45. Any decision made by the Regulatory Action Committee will be recorded.

Referrals

46. As well as being referred to the merchant depending on the nature of their complaint or enquiry, a consumer may also be provided with information about other bodies that may be able to assist them. For instance, consumers may be advised to contact the network operator, Ofcom, the Information Commissioner's Office (ICO), Trading Standards, Action Fraud, or an entity providing alternative dispute resolution.

47. Depending on the nature of our concerns, the PSA may choose to refer concerns, and share information, with other enforcement bodies (ensuring compliance with data protection legislation and confidentiality obligations under the Code). Such bodies may include Ofcom, the ICO, the Competition and Markets Authority, Trading Standards, the Financial Conduct Authority, the Advertising Standards Authority, the Gambling Commission, City of London Police, or the Serious Fraud Office. In some cases, the PSA has concluded memoranda of understanding with other regulatory bodies to facilitate such referrals.

48. Any such referral is without prejudice to the PSA's powers to take action under the Code where this is thought necessary. However, in such a case, the PSA will seek to coordinate enforcement action with the other enforcement body so as to avoid any duplication of regulatory effort, where it is practical to do so.

4. Advocacy

Purpose of Advocacy

49. Periodically we will engage in advocacy activity to support and promote good practice in industry to the benefit of consumers. We will offer support to industry by issuing guidance, best practice information and compliance advice where requested. Additional resources will be provided through our publications, including our news, blogs, press releases and research sections of the PSA website.

50. In addition to providing best practice information, we will, where appropriate to do so, highlight examples of bad practice or issues within the market and our expectations of the market in response. This will enable industry to use this information to not only improve consumer protection, but also market behaviour. This in turn will ensure that consumers can continue to engage with PRS with confidence.

Guidance

51. One of the objectives of Code 15 is to make the Code simpler and easier to comply with. Therefore, the purpose of guidance is to provide further clarity to assist PRS providers to comply with Code 15 Standards and Requirements.

52. While guidance will not be binding on providers, evidence of a disregard of guidance will feed into the market intelligence gathered by the PSA. This may lead to the PSA taking further regulatory action as outlined in section 6.

53. Should enforcement action be necessary, the PSA will take into account whether providers have taken account of guidance in considering any alleged breach of the Code and/or the imposition of sanctions. This would mean that attempting to follow guidance could be a mitigating factor; however, conversely, a disregard of guidance may amount to an aggravating factor.

54. However, the PSA will consider the extent to which providers have attempted to comply with the Code by using methods other than those set out in the guidance, and/or the extent to which providers have engaged with us as part of developing any such alternative methods.

Best practice

55. Best practice information should provide industry with examples of industry practice that demonstrate high standards of consumer protection and so give examples that others could usefully follow in seeking to comply with the Code. The PSA will publish best practice examples on the PSA website as well as highlighting examples found within the market. The PSA welcomes suggestions from stakeholders of practices that could be cited as examples of best practice.

Compliance advice

56. Compliance advice may be given as a result of a request made by a regulated party or as result of a sanction from a Tribunal as outlined in Section 16. This is given or granted for a set period of time by the PSA directly to individual providers at any point within the chain of provision of premium rate services. Compliance advice is given by the PSA, following an assessment of the material, that has been supplied by the relevant party requiring the advice.

57. Compliance advice seeks to guide the relevant party's conduct, both present and future, so as to improve the party's knowledge and understanding of Code compliance.

58. Advice provided by the PSA is not binding and compliance with the Code remains the responsibility of the regulated party. A record of the advice is retained and will be taken in determining appropriate regulatory action should there be subsequent alleged breaches of the Code.

5. Tailored approach to regulation

59. The PSA can consider applications for tailored regulation in the form of a proposal by a PRS provider for an alternative approach to achieving compliance with a provision(s) of the Code.

60. Applications for permission for tailored regulation must be made in advance of a service operating. Applications should be made via compliance@psauthority.org.uk and detail the following information:

    - an explanation of the need for tailored regulation
    - the PRS provider's proposal to meet the objective of the Code requirement by other means
    - the scope of the permission being sought
    - any other information that may help the PSA in assessing whether a provider's Code obligation(s) can be met through other means.

61. The PSA will discuss the timings and parameters of the application, including any potential pilots, with the provider on a one-to-one basis.

62. The decision to grant or reject an application for tailored regulation will be based on (but not limited to) the following considerations:

    - the extent to which the PRS provider's proposal meets the intentions of the Code provision(s) by other means
    - the risk, if any, associated with the service type /service in question
    - the provider's compliance record with the current or previous Code(s) or regulatory concerns the PSA might have
    - the need or otherwise for conditions to be attached to the decision to allow an alternative approach.

6. PSA's approach to Supervision

Purpose of Supervision

63. The purpose of Supervision is set out in paragraph 4.2.4 of the Code. In essence, this is to assess compliance with the Code in the PRS market and identify, address and prevent actual and potential non-compliance or harm to consumers.

64. Our approach to Supervision is outlined in paragraph 4.2.2 of the Code. Through an ongoing analysis of market intelligence, we will look to:

    - identify areas that have the potential to cause consumer harm with the view of preventing the harm from occurring
    - identify emerging issues quickly with the view of preventing consumer harm from growing
    - undertake diagnostic or remedial work where we identify common or pervasive issues connected to a number of PRS providers or services.

65. We use sources of intelligence as set out in section 2 above and intelligence gathered as part of supervisory activities (paragraph 4.3 of the Code) to build a picture of the overall market and the parties and services within it. This enables the PSA to monitor compliance with the Code and informs our decision making on whether regulatory action is required.

Supervision committee

66. The role of the Supervision Committee is to determine what supervisory activities are required in order to maintain effective oversight of compliance with the Code. The activities Supervision Committee may decide to utilise are outlined in paragraph 4.3.1 of the Code. Details of specific activities can be found in the *Compliance monitoring methods* section below.

67. The Supervision Committee will be led by the Head of Policy, Communications and Supervision and all decisions will be recorded.

68. When deciding whether and what activity is most appropriate, the PSA will have regard to the following:

    - intelligence about the overall market, regulated parties and the services being offered
    - the nature of any issue(s) and whether it has the potential to cause or is causing actual consumer harm
    - scope of issue(s) – whether it relates to the market as a whole, particular sector, service type or service
    - the number of prs providers the issue(s) relates to, and
    - whether and what further information is required to understand the issue(s).

Engagement with key stakeholders outside of codified regulatory activities

69. Separate to its codified regulatory activities, the PSA will look to meet and have open dialogue with key industry stakeholders. We view this dialogue with industry as a way of proactively ensuring Code compliance as well as a means of sharing intelligence.

70. We will look to hold informal meetings with our key stakeholders on a periodic basis. The frequency of such meetings will be decided between the PSA and the stakeholder. Such meetings will be held by agreement of the stakeholder and on a voluntary basis. The frequency of the meetings will be reviewed as appropriate.

71. We envisage that key stakeholders will include:

- mobile network operators
- intermediary providers
- merchants with a large market share.

72. In preparation for a meeting, we will notify the stakeholder of the agenda in advance. Topics for discussion may include:

- information received through periodic data reports or other intelligence sources
- feedback from codified supervisory activities, including, for example, audits/thematic reviews
- emerging risks/and or known consumer harm
- processes and policies
- complaint volumes and the customer service function
- systems.

73. Meetings may trigger regulatory action, including codified compliance monitoring methods as set out below. A record will be kept of the discussed points as well as any actions flowing from the meeting.

74. In addition to meeting with key stakeholders, the PSA may meet with parties of interest. For example, this may include merchants where the market intelligence indicates there may be a cause for concern, merchants that are introducing new types of services to the market or merchants that delivering services through new models.

75. Where market intelligence highlights issues which have the potential to cause/or have caused consumer harm, the PSA may look to correspond with the relevant parties, outside of periodic stakeholder meetings. This may include the following:

- provision of monitoring reports/intelligence to raise awareness of identified issues
- targeted information gathering as outlined below,

76. Where intelligence/monitoring is shared, the relevant parties are encouraged to proactively take steps to resolve any issues to limit or stop consumer harm. Such action,

however, does not preclude the PSA from taking Engagement or Enforcement action outlined in sections 7 -9 as it deems appropriate.

77. In accordance with the Integrity Standard outlined in 3.1 of the Code, regulated parties are encouraged to proactively alert the PSA to any issues regarding their own or third-party services.

Compliance monitoring methods

78. The PSA may conduct a range of activities to monitor compliance with the Code. These are set out in paragraph 4.3 of the Code.

Periodic data reporting

79. As outlined in paragraph 4.5 of the Code, the PSA may gather intelligence through periodic data reporting.

80. When requesting data, we will do so ensuring that we make the purpose and rationale clear, including why it is reasonable and proportionate. Where there are concerns regarding the provision of data, the PSA is open to dialogue with the relevant parties to address the concerns. For the purposes of paragraph 4.5.1 of the Code, non-exhaustive examples of the types of data and information that we may require and for what reasons we may require them are:

- to assess trends in the market, we may request, but not limited to:
    - revenue (this may be broken down by provider, sector and service)
    - subscriber/user numbers (this may be broken down by sector and service)
    - complaint data (this may be broken down by number of complaints, number of resolutions, refunds issued)
    - demographic of consumers (where available).
- to assess potential non-compliant behaviour within the market, we may request red/yellow cards and suspension data from network and intermediaries. In addition to this, we may request complaint data (this may be broken down by provider, sector, service and/or time taken to resolve).
- to assess whether parties in the value chain are complying with specific Standards, we may request current/updated policies and procedures.
- In order to verify data held within our registration system and to ensure that merchants are registering themselves and their services correctly, we may request details of clients/services from intermediaries.

81. Where data is required, we will notify the relevant party in accordance with paragraph 4.5.2 of the Code. The notification:

- will specify the data and information that must be reported
- may require the reporting to take any form specified in the notice, and
- will set out briefly the reasons why the specified data and information is required.

In addition to the above, the PSA will specify the frequency in which the data must be supplied and any deadline for the provision of the information. If data is required on a periodic basis, we will review the ongoing reporting of this data after a reasonable time period.

82. The data that will be requested is of the type that the PSA would expect should be readily available to the party as part of its normal management information collection. Should the party be unable to provide the requested data, the party should write to the PSA outlining its reasons why. The PSA will work with the party in order to resolve any issues so that the requested/or substitute data can be provided.

83. Barring any difficulties which are discussed and resolved with the PSA, parties should provide data in accordance with the specified timeframes and requirements. Where reporting requirements under paragraph 4.5 or information requested under a direction issued under paragraph 6.1. is not complied with, this amount to a breach of the Code (paragraph 4.3.5) and further action may be taken. In addition, failure to provide data when requested may be viewed as undermining of PRS regulation under paragraph 3.1.3(iii) of the Code.

Audits

84. In accordance with paragraph 4.4 of the Code, the PSA may require a relevant party to submit an audit report. The purpose of the audit report is to help identify any areas of concern and to ensure that parties/and or Services are operating in compliance with identified Standards and Requirements of the Code.

85. Audit reports may be requested where intelligence indicates that there may be issues relating to a party's processes, procedures or activities, which have the potential to/or are causing consumer harm.

86. An audit report may include, but is not limited to, the following:

- due diligence, risk assessment and control
- promotion of the service
- process and/or procedure(s) relating to the consumer sign-up or initial engagement with service
- process and/or procedure(s) relating to the provision of the service
- the billing mechanism
- the support functions relating to the service, e.g. reminder messages, customer service

87. The PSA will give the party written notice of the requirement for the audit report having regard to paragraph 4.3.2 of the Code. The notice will set out the terms of reference for the audit, which will include, but is not limited to:

- the purpose and rationale for requiring the audit to be undertaken, including why it is reasonable and proportionate
- the parameters of the audit
- what will be required from the party being audited
- the frequency of the audit i.e. one off, annually or periodically as specified
- the nominated auditor (if external to the PSA)or a request for the party to confirm who they intend to conduct the audit.

88. Where the party wishes to nominate their own person(s) to conduct the audit, this will be subject to the PSA's approval. Should the PSA not agree with the party's choice to conduct the audit, the PSA will write to the party outlining its reasons. The PSA will require the party to choose an alternative person(s) to conduct the audit or agree to use the auditor nominated by the PSA.

89. While the PSA will consider proposals for alternative persons, the PSA will not enter into protracted discussions on the matter. If no agreement can be reached within ten working days of the notice, then the audit will be conducted by the PSA's nominated auditor.

90. Following a review of the audit report, the PSA will determine whether there is any evidence of non-compliance with the Code or areas of concern. Where such evidence is found, the PSA will determine the best course of action to address any issues found. The PSA will contact the audited party in relation to the findings and confirm what action, if any, will be taken. A record of audit reports will be retained and may be used as part of the overall market intelligence considered by the PSA.

Targeted information gathering

91. On occasions, market intelligence may point to emerging issues which have the potential to cause or has caused consumer harm. In such cases, the PSA may conduct targeted information gathering as outlined in paragraph 4.3.1(d) of the Code.

92. Requests for information may be sent to parties across the value chain to gain a better understanding in relation to the delivery of a service(s) or identified issues. The requests for information will set out:

- purpose and rationale for why the information has been requested, including why it is necessary and proportionate
- information required (and format of information where applicable)
- the deadline for when the information should be provided.

93. Parties are expected to fully co-operate with the PSA during the course of making enquiries and to comply with any requests for information made under Code paragraph 6.1.1 in a timely, straightforward and thorough manner.

94. Information supplied to the PSA must be accurate to the best of the party's knowledge. Where a party fails to co-operate and/or provides false or inaccurate information it is likely to have a negative impact on the PSA's ability to regulate the market in the interests of consumers. Therefore, the PSA may take robust action which may include using its enforcement procedure.

Thematic review

95. During its analysis of compliance within the market, the PSA may identify common or pervasive market-wide issues regarding either non-compliance with the Standards, Requirements and/or other obligation of the Code, or issues that present risk of consumer harm. Where this is the case, the PSA may commission or conduct a thematic review in accordance with paragraph 4.3.1(e) to gain a better understanding of the issues at hand and this will enable the PSA to take regulatory action as required.

96. Following the decision to undertake a thematic review, we will publish a notification of our intention to do so. This will set out the terms of reference for the thematic review and include:

- who the thematic review applies to (this might include):
  - the market as a whole
  - certain sectors of the market
  - certain service types
  - certain PRS providers within the market.

- the purpose, rationale and scope of the review, including why it is reasonable or necessary and proportionate
- the proposed date and timescale for the review
- what we will expect from the relevant parties covered under the review.

97. Where a thematic review is to be conducted by a third party, the PSA will ensure that the person/company commissioned is of suitable skill and experience.

98. Upon completion of the review, we will publish:

- a summary of our findings
- proposed actions following the review e.g. issuing guidance, best practice being issued, engagement/enforcement action.

Skilled person reports

99. The purpose of a skilled person report is to obtain an independent, expert view about a party's process, activities, systems or any other aspect of the provision of PRS. The PSA

may require a skilled persons report where there is intelligence that indicates there is a high risk of/or actual harm to consumers.

100. As outlined in paragraph 4.6 of the Code, this will be suitable for matters that require specific expertise including, but not limited to, issues related to platform security and payment platforms. Further examples of where the PSA may require a skilled person report includes, but is not limited to:

- third-party verification of consumers' consent to be charged
- promotion of the PRS services, for example the role of affiliates
- consumer behaviour.

101. Intelligence which could give rise to the requirement for a skilled person report include, but not limited to:

- evidence of consumers being charged without their consent:
  - through the use of malware
  - through vulnerabilities/weaknesses in the platform
  - due to improper safeguards in place leading to unsolicited charging.

- evidence of misleading, inappropriate or targeted promotions
- intelligence relating to a consumer's experience and engagement with PRS.

102. Where a skilled persons report is required, the PSA will notify the relevant party setting out the purpose of the requirement and why it is reasonable and proportionate. Where the PSA has an appointed person to produce the report, details of this will be included in the notification. Where the party disagrees with the choice of the appointed person (which should be notified within ten working days of notification), the PSA will consider any written representations. The reasons given should be clear and specific and not merely a refusal of the appointed person e.g. specific concerns regarding the expertise of the person producing the report.

103. Where the PSA requires a party to produce a report, the party will be asked to provide details of its nominated person. This will be subject to the PSA's approval, based on a consideration of person's skills and expertise. Where the PSA disagrees with the party's nominated person, the PSA will write to the party outlining its reasons why and request a new nomination or appoint a person to produce the report.

104. Before work commences on the report, the PSA will agree with the party:

- the scope of the report
- access required by the appointed/nominated person
- timescales for the report's completion

105. The relevant party is expected to provide the appointed/nominated person with the required assistance to complete the report. Any obstruction to the completion of the work

may amount to a breach of the Code (paragraph 4.3.5) and may be considered as evasion and/or undermining of PRS regulation under paragraph 3.1.3(iii) of the Code.

Pre-arranged visits

106. In accordance with paragraph 4.3.1(h) of the Code, the PSA may conduct pre-arranged visits (by consent) to the premises of PRS providers.

107. The PSA will undertake such a visit for a specific purpose. This may be prompted by (but not limited to) the following:

- issues emerging through the PSA's supervisory information-gathering activities.
- issues emerging though stakeholder engagement outside of codified regulatory activity
- intelligence highlighting issues relating to a specific party.

108. Following the decision to conduct a pre-arranged visit, the PSA will give the party written notice of its intension to do so. The notice will include:

- the purpose and rationale for the visit
- the proposed time and date of the visit
- the details of the people who will be conducting the visit
- the access and/or information required during the visit, i.e. documents, systems and personnel.

109. Where the party objects to the visit, it will be asked to provide reasons in writing outlining the objections. The objections will be considered and responded to.

110. Where the PSA considers the objection, or parts of the objection to be reasonable, the PSA may propose a revised date, attendees and/or scope for the visit as appropriate or cancel it.

111. On completion of the visit, the PSA will provide the party with a summary note of the visit and any follow-up actions required by or agreed with the party will be detailed.

7. Engagement and Enforcement

Purpose of engagement and enforcement

112. The purpose of the engagement procedure under the Code is to allow the PSA to examine further whether breach(es) of the Code has occurred and to reach a resolution, without the need to impose sanctions; that ensures that any future breaches are remedied, and consumer protection maintained. The engagement processes are designed to resolve any issues in a swift and timely manner.

113. The purpose of enforcement is to ensure that where necessary, providers are held to account and that any poor industry practice is deterred through the imposition of sanctions.

114. As set out in paragraphs 5.1.1 – 5.2 of the Code, the PSA will always ensure that it takes a balanced approach to engagement and enforcement in any case where the PSA considers that a breach of the Code may have occurred. In every case, the PSA will ensure that it only takes the action that it deems necessary to ensure that any apparent breaches are resolved and rectified, consumers are protected, industry standards are upheld and poor practice is deterred.

115. Wherever possible, the PSA will seek to engage with providers to resolve any potential compliance issues that have occurred. However, it is important to note that in some cases, as outlined below in paragraph 136, it will be necessary for the PSA to move straight to enforcement action.

116. In line with paragraph 5.1.3 of the Code, all PRS providers should co-operate fully throughout the period that the PSA is carrying out its engagement and enforcement activities. The PSA expects all PRS providers to be forthcoming in their correspondence with the PSA and to provide any relevant information as quickly as possible, so that any potential concerns can be resolved as soon as possible.

Directions for information

117. During the course of any engagement or enforcement activity, the PSA may direct any PRS provider to disclose any information or documents which are considered to be necessary or proportionate in line with paragraph 6.1 of the Code.

118. For the avoidance of doubt, directions for information may be sent to any PRS provider whom the PSA considers has (or may have) relevant information or documents that would assist the PSA in any engagement and enforcement activity. This means that directions may be sent to parties that the PSA considers as having relevant information but are not the subject of the enforcement or engagement activity.

119. Directions for information may take different formats depending on the information that is being requested. However, in certain cases the PSA may ask for any response to a direction to be provided using a certain format. This will be in a case where having the

information provided in a certain format is likely to enable the PSA to analyse the information requested better.

120. The PSA will set a deadline for any response to a direction. In setting a deadline, the PSA will consider whether the information requested is required urgently (for example in order to consider the imposition of interim measures) and the volume of information that is being requested. In all cases, the PSA will set deadlines that it considers to be fair, and the expectation is that all PRS providers will comply with the deadline for the provision of information.

121. If a PRS provider is unable to provide all of the requested information within the deadline, it should contact the PSA promptly, setting out the reasons as to why it requires an extension (paragraph 6.1.5 of the Code). If a provider is able to provide some, but not all of the information requested by the deadline, it should explain this while providing the information that it can within the deadline.

122. The PSA may agree an extension to the deadline in circumstances where it considers the reasons for the request to be reasonable and where the request is made in good time. While the PSA will consider requests for an extension at any point up to the deadline for a response, where a request for an extension is received very late and is not attributable to genuinely unforeseen circumstances, the PSA will be less likely to agree to any request for an extension. All PRS providers should therefore act promptly when in receipt of a direction for information.

123. PRS providers should be aware that if no response is received to a direction or a direction has only been responded to in part (without any extension having been agreed to by the PSA), this will amount to a breach of the Code in accordance with paragraph 6.1.6. Specifically, the PSA may consider the PRS provider to be in breach of paragraph 6.1.1(b) and/or 6.1.5(a) of the Code.

124. The PSA will treat all information which may be provided in response to a direction or any other request for information (as set out below) as confidential where it relates specifically to the affairs of a particular PRS provider or individual and publication would or may seriously prejudice the interests of the provider or individual.

125. The PSA will only share confidential information with a third party (excluding professional advisors and Ofcom) where the provisions of paragraph 1.6.3 of the Code apply.

126. The PSA will not consider general, undetailed or unspecific reasons of confidentiality, commercial sensitivity or data protection as good reasons for not complying with a direction for information within the deadline. In addition to this, where a PRS provider is unable to comply with a direction as a result of having given an undertaking to a third party which now precludes them from providing the information requested by the PSA, the PRS provider may be considered to be in breach of paragraph 6.1.5(b) of the Code.

Correspondence with PRS providers

127. All PRS providers should be aware that throughout any engagement and enforcement activity, the PSA will correspond with PRS providers using the details that they have provided for the PSA register. PRS providers are responsible for ensuring that any contact details and information is kept up to date in line with paragraph 3.8.6 of the Code. A failure to do this may amount to a breach of the Code of itself and could result in PRS providers not receiving important communications from the PSA.

128. The PSA will send any directions, formal notifications, enquiry letters, warning letters and enforcement notices electronically to the individual(s) within the relevant PRS provider who are registered on the PSA Register as having overall regulatory compliance in respect of PRS in line with paragraph 3.8.3(d) of the Code. Where the PSA's correspondence relates to specific areas, for example DDRAC, the PSA may also send correspondence electronically to the individual(s) who are registered as having specific areas of responsibility and accountability under paragraph 3.8.3 (a)-(c) of the Code. The PSA may also send correspondence to any generic email address for the relevant provider that is registered on the PSA Register.

129. In the event that a PRS provider wishes the PSA to also send correspondence to any other individual within the organisation or a legal representative, it must ensure that it confirms this in writing to the PSA.

130. The PSA will not routinely post hard copies of any correspondence to PRS providers during the engagement and enforcement processes save for the enforcement notice. The PSA will post a copy of the enforcement notice to the relevant provider using a recorded delivery method to the address that is registered on the PSA register in addition to sending a copy of the enforcement notice by email.

131. In relation to enforcement cases which are concerned with the prohibition of an associated individual, the PSA will, in addition to the above, send correspondence to the associated individual directly (even if they are not registered on the PSA register) where that individual's details are known to the PSA.

The Engagement and Enforcement Committee

132. The role of the Engagement and Enforcement Committee is to consider what engagement or enforcement action is necessary for the PSA to take where concerns have arisen about any potential compliance issues.

133. The Engagement and Enforcement Committee may decide to:

- not proceed with an Engagement or Enforcement activity
- issue an enquiry letter in line with paragraphs 5.2.1 - 5.2.2 of the Code
- issue a warning letter in line with paragraphs 5.3.1 – 5.3.5 of the Code
- issue a formal notification in line with paragraphs 5.4.1 and 5.4.2 of the Code.

134. The Engagement and Enforcement Committee will be led by the Head of Engagement and Enforcement and all decisions will be recorded. When making a decision as to whether any engagement or enforcement activity is necessary, the Engagement and Enforcement Committee will consider any relevant information that may be available. This may include, but is not limited to, the following sources of information:

    a. information gathered in the course of any supervisory activity carried out in line with Section 4 of the Code, including any information gathered in the course of any compliance monitoring activity or as part of a thematic review

    b. consumer complaints which have been received by the PSA

    c. any information from the wider premium rate services industry

    d. any relevant information available in the public domain (for example open-sourced consumer complaints and any media articles)

    e. any information referred to the PSA from any other regulatory or public body

    f. information regarding a PRS provider's compliance with sanctions post-adjudication

    g. any other information provided by the relevant party.

135. In deciding which engagement or enforcement activity is required, the Engagement and Enforcement Committee will consider the following factors in the round in line with paragraph 5.1.4 of the Code:

    a. the seriousness of any apparent breach including, but not limited, to whether there is any evidence that any particular category of consumer including vulnerable consumers have been targeted

    b. the gravity of any apparent consumer harm (past or present) and whether any such harm is ongoing

    c. the breach history of the PRS provider(s) concerned (including any sanctions previously imposed)

    d. the extent to which the PRS provider has engaged with the PSA and the likelihood of engagement going forward

    e. whether there is any indication that the PRS provider is likely to dispute that there is a compliance issue

    f. whether there are any other strategic reasons to undertake either enforcement or engagement actions. This may include, but is not limited to, consideration of whether either engagement or enforcement will improve market behaviour, achieve credible deterrence in respect of the industry and improve consumer confidence in the industry.

136. There may be circumstances in which the Engagement and Enforcement Committee will consider that it is proportionate to move straight to the enforcement process through issuing a formal notification. This is likely to be (but not limited to) cases where one or more of the following apply:

    - the gravity of the apparent consumer harm is such that the PSA considers that only enforcement activity would be appropriate and proportionate to address such harm
    - the seriousness of the non-compliance issue suggests that only enforcement action would be sufficient to protect consumers and/or improve market behaviour and improve consumer confidence in the industry
    - the relevant provider has a history of failing to engage with the PSA
    - the relevant provider has a history of non-compliance with the Code
    - for any other reason it is considered appropriate and proportionate for the matter to be placed before a Tribunal or single legally qualified CAP member for determination.

137. The circumstances listed in paragraph 136 above are not exhaustive, and the PSA will consider all of the circumstances in the round.

138. Once the Engagement and Enforcement Committee has decided to take any engagement and enforcement action, the PSA will inform the PRS provider prior to the engagement or formal notification under the Code, and will also copy in the party that is above the PRS provider within the value chain.

Withdrawing an allegation/breach

139. At any stage during the engagement and enforcement processes, the PSA may withdraw an allegation or breach. This will be in circumstances where new evidence has come to light which is capable of undermining the case that a breach has occurred, and the PSA considers that as a result of this the evidence is no longer sufficient to proceed with the breach.

140. Where this happens, the PSA will notify the relevant provider of its decision to discontinue its enquiries regarding the breach. The PSA will also notify the relevant provider whether the discontinuance of its enquiries into the breach will result in any change to the current engagement or enforcement activity that is being undertaken. For example, if a case is being dealt with using the enforcement processes with the intention of the matter being placed before a Tribunal or single legally qualified CAP member, the PSA will consider whether this remains a suitable and proportionate approach.

141. If the withdrawal of a breach or an allegation result in the entirety of an Enforcement case being withdrawn, the PSA will publish a notification on its website that the enforcement case is being withdrawn due to insufficient evidence on which to proceed with the matter.

142. In all cases where an allegation or breach is withdrawn by the PSA, the PSA reserves the right to proceed with the same allegation or breach as part of a new engagement or enforcement activity. However, this will only be considered appropriate in cases where new evidence comes to light which was not available at the time of the decision to withdraw the breach or allegation.

Taking no further action and the prioritisation criteria

143. The PSA will regularly review all matters being dealt with through the engagement or enforcement processes to ensure that the PSA is deploying its resources so as to best protect consumers and/or uphold and improve industry standards.

144. In line with paragraph 5.1.8 of the Code therefore, the PSA may on occasion decide to take no further action in respect of a matter that is being dealt with through the engagement or enforcement processes after having considered the prioritisation criteria.

145. In deciding whether to prioritise an engagement or enforcement activity, the PSA will consider the following prioritisation criteria in the round:

- the likely impact of any engagement or enforcement activity, including:
    - the seriousness of the consumer harm/non-compliance
    - whether the harm/non-compliance is ongoing
    - whether there is a need to prevent a reoccurrence
    - whether particular categories of consumers have been targeted and the need to ensure a deterrence effect
    - whether a PRS provider has already taken steps to correct, remedy or prevent the breaches
    - the likelihood of regulatory action being effective
    - whether the engagement or enforcement activity being undertaken is likely to result in an improvement in market behaviour
    - whether there is a need to increase consumer awareness of a specific service type or practice which could be achieved by taking engagement or enforcement action.
- strategic consideration283s:
    - whether there are any strategic reasons to pursue the case which will increase its impact
    - whether the same strategic considerations are being addressed through other means (such as through the supervisory processes)

- whether the alleged non-compliance fundamentally undermines PSA regulation and needs to be addressed through an engagement or enforcement activity
- whether the PSA is best placed to act or whether a referral should be made to another body

- risk:
  - the likelihood of a successful engagement or enforcement activity
  - whether there is any legal risk in proceeding with the engagement or enforcement activity
  - what the risk is to consumers and/or industry of either taking the case or not taking the case.
- resource implications of taking forward the engagement or enforcement activity.

146. Taking all of the above into account in the round, the PSA will then consider:

    a. Whether the required resources are proportionate when balanced against the impact, strategic reasons and risks of undertaking the engagement or enforcement activity and

    b. Whether the resource required, if deployed elsewhere, would have a greater impact in ensuring consumer protection and/or in upholding industry standards.

147. Where the PSA considers that no further action should be taken in relation to any engagement or enforcement activity, it will notify the relevant provider of its decision and where relevant any other parties within the value chain.

148. In relation to enforcement cases only, where the PSA has previously published details of an open enforcement matter on its website which it is no longer pursuing having applied the prioritisation criteria, it will publish a notification on the website confirming that no further action is being taken, briefly explaining the rationale of the decision.

149. Any decision by the PSA to take no further action as a result of applying the prioritisation criteria is not a decision to withdraw an allegation or breach as a result of evidential considerations. Therefore, the PSA may choose to re-consider a matter or case which it has previously taken no further action in relation to. This will normally be, but is not limited to, circumstances where the PSA receives new information which alters its previous application of the prioritisation criteria.

150. Where the PSA decides that an engagement or enforcement matter should be re-considered, it will notify the relevant provider and set out reasons for the decision to re-consider the matter. In most cases, the PSA will set out the reasons as to why it has decided to re-consider an engagement or enforcement matter.

151. However, there may be occasions where the PSA is unable to provide reasons for its decision to re-consider the matter. This is likely to be where, for example, to do so could

prejudice the PSA's ongoing operations or investigations and/or where providing detailed reasons could breach the PSA's obligations to any third party (see paragraph 5.1.9 of the Code).

8. Engagement with the PSA

Enquiry letters

152. The purpose of the engagement process is to enable the PSA to understand any potential Code compliance issues which may be related to a particular service, service type or the PRS market in general. The aim of engagement is to ensure that any potential breaches are remedied as quickly as possible, thereby maintaining consumer protection without the need for the imposition of sanctions. The PSA therefore encourages all providers to react promptly in respect of any concerns identified to ensure that any issues are resolved.

153. The PSA may begin the engagement process by notifying the relevant provider and the party immediately above them in the value chain that the provider will be subject to engagement activity. In this notification, the PSA will provide a brief summary of the initial concerns identified and indicate whether an enquiry letter or warning letter will follow.

154. The PSA may seek information from a provider or providers by means of an enquiry letter. The purpose of an enquiry letter is to enable the PSA to gather more information in order to understand the nature of the potential Code compliance issue.

155. An enquiry letter will ask providers for any information that the PSA considers to be proportionate and relevant in order to make an assessment as to whether there is a Code compliance issue. The nature of the information requested will vary on a case by case basis, however the information that the PSA may ask providers for by way of an enquiry letter includes, but is not limited, to the following:

    - information about the relevant PRS (for example the dates on which the service commenced operation, confirmation of the numbers and/or shortcodes that are allocated to the service and revenue information)
    - information in relation to the promotion of the service (including for example the channels used for promotion, the user flow for consumer interaction with a promotion)
    - information regarding the contractual arrangements of the provider in relation to the provision of PRS (including contractual arrangements for any payments that may be made across the value chain in respect of the service)
    - information in relation to any complaints regarding the service
    - information regarding the technical platform used by the service and/or operated by a provider
    - information regarding the processes that the provider has in place for example in relation to DDRAC or customer service
    - any information from the provider which they can provide in response to an issue that has come to light as a result of the PSA's compliance monitoring activities and/or as a result of a thematic review or any other supervisory activity

- information in relation to the provider for example whether it is a registered company and in which jurisdiction etc.
- information regarding the parties that are involved in the provision of the service and their roles and responsibilities (with supporting evidence).

156. The PSA will specify a deadline for a response to the enquiry letter that it considers to be proportionate to the nature of the information that has been requested. Typically, this will be between five and ten working days, but will vary depending on the nature and likely volume of the information that has been requested.

157. If a provider needs longer to respond, they should let the PSA know as soon as possible setting out the reasons that they need an extension and suggesting an alternative date by which they will be able to respond. The PSA will consider all extension requests fairly and where possible will seek to work with the provider to agree to an amended deadline if there are circumstances which justify an extension being granted. However, it is unlikely that the PSA will agree to more than one extension for the provision of information unless there are exceptional reasons to do so.

158. In the event that a provider is unable to supply the information requested by the PSA, they should provide detailed reasons for being unable to comply with the request. The PSA will give careful consideration to the reasons given by the provider for not being able to provide the information requested.

159. If no communication is received from the relevant provider and/or the information requested is not provided to the PSA by the deadline agreed without good reason, the PSA will take this into account in deciding on what next steps are appropriate. In addition to this, the failure to respond to any an enquiry letter without good reason may amount to a breach of the Code in line with paragraphs 5.2.5 and 5.1.3 of the Code.

160. Once the PSA is in possession of the information requested by way of an enquiry letter, it may decide that no further information is required, seek further information by way of a second enquiry letter or it may decide that a warning letter should be issued. The PSA may also decide that enforcement action is necessary. Where any further action is warranted, the PSA will inform the relevant provider.

Warning letters

161. The purpose of a warning letter is to enable the PSA and the relevant provider to engage with one another so as to remedy any apparent breaches of the Code without the need for enforcement action to be taken and sanctions to be imposed. As with all engagement processes under the Code, the warning letter process is designed to result in the swift remedy of any breaches identified.

162. Warning letters may be issued by the PSA when it appears that a breach of the Code may have occurred. There is no requirement for the PSA to have issued an enquiry letter or to have received a response to an enquiry letter before issuing a warning letter. However,

the PSA will only issue a warning letter in circumstances where there is enough information to suggest that specific breach(es) of the Code have occurred.

163. Although the contents of a warning letter will vary on a case by case basis, the warning letter will set out the following information:

- an outline of the breaches that the PSA has identified which appear to have occurred
- what corrective action (if any) is required to remedy the breaches; this will normally take the form of an action plan (see below)
- a deadline for a response to the warning letter to indicate whether the provider accepts the action plan or otherwise confirm that other corrective action has been taken (this should be within five working days)
- a deadline for any corrective action to be implemented and/or the actions within the action plan to be implemented
- if appropriate, what evidence the PSA will require in order to satisfy itself that the action plan has been implemented and that any breaches have been remedied
- if applicable, an invoice for the costs associated with formulating the warning letter and any action plan.

164. The PSA may disclose any evidence that it has obtained which it seeks to rely on in support of the breaches with the warning letter. This may include, for example, monitoring evidence or evidence of consumer complaints and any other intelligence sources such as open-sourced complaints. However, the PSA will only disclose evidence where:

- the evidence has not previously been provided to the relevant provider or is not already within the relevant provider's possession, and
- it considers that the provider needs this evidence to properly understand the nature of the breaches that appear to have occurred in order to respond to the warning letter.

165. If a provider needs an extension to respond to a warning letter (to confirm that it accepts that a breach has occurred and/or that it accepts the proposed action plan) then it must request an extension from the PSA as soon as possible setting out the reasons as to why an extension is required. The PSA will consider the request and the reasons for it, and will respond to either confirm the extension, suggest an alternative date or to reject the extension request.

166. While the PSA is keen to work with providers in a fair and proportionate manner to remedy any potential breaches, the purpose of the engagement Process is to ensure that breaches are remedied as swiftly as possible so as to ensure consumer protection and Code compliance. In light of this, the PSA may reject an extension request in circumstances where the relevant provider has not provided any details as to why they

require an extension request and/or where there is a suggestion that a provider has not acted promptly. The PSA will not agree to more than one extension request to respond to a warning letter unless there are exceptional reasons to do so.

167. Where the relevant provider fails to respond to a warning letter (to indicate whether it accepts the corrective action or action plan) at all or within the agreed timeframe, the PSA will consider whether the case should be dealt with using the enforcement processes outlined below, in line with paragraph 5.3.3(a) of the Code.

Action plans

168. In line with paragraph 5.3.2 of the Code, where the PSA requires corrective action to be taken in order to remedy any potential breaches, the PSA will normally specify the actions to be taken in an action plan which will be included with the warning letter.

169. An action plan will include a set of clear, specific actions that need be taken by the provider in order to remedy the breach. The PSA's action plan will also set out the date by which it expects the actions to be implemented by.

170. Where the relevant provider agrees with the action plan, it should respond to the PSA in writing, confirming that it agrees to the action plan and any deadline specified for implementation.

171. If the relevant provider disagrees with any part of the proposed action plan, including the actions to be taken and/or the deadline for implementation of the actions that are required, the provider will need to inform the PSA of its disagreement in writing no later than five working days after it receives the warning letter and proposed action plan.

172. The relevant provider should set out any reasons that it has for not agreeing to the action plan and/or the deadline for implementation. It should also provide any information which it proposes to rely on to support its response to the PSA.

173. The PSA will consider any representations that have been made by relevant provider and any further information that it provides. This may lead to the PSA proposing an alternative action plan or amending the deadline for implementation of any actions.

174. Wherever possible, the PSA will work with a provider to try to agree an action plan. However, the PSA will only propose an alternative action plan in circumstances where it considers that the amended actions are still sufficient to remedy the breach and where an amended deadline for implementation is unlikely to have any significant detrimental impact on consumers.

175. If the relevant provider disputes the terms of the action plan on the basis that they do not agree that any particular breach has occurred, the PSA will consider any evidence submitted by the relevant provider and assess whether there is still sufficient evidence to maintain that the breach has occurred.

176. If the PSA agrees that the additional evidence submitted by the relevant provider is sufficient to show that the disputed breach has not occurred, then the PSA may choose to withdraw the breach and amend the action plan so as to take out reference to that breach.

177. In circumstances where the relevant provider disputes that a breach has occurred, but the PSA considers having reviewed any additional evidence submitted, that a breach has occurred the PSA may choose to place the matter before a Tribunal or single legally qualified CAP member using the enforcement processes outlined below in line with paragraph 5.3.3 of the Code. The PSA will normally do this in circumstances where the nature of the disputed breach is serious and/or material to the case overall and the dispute means that no action plan can be agreed.

178. Once the parties have agreed to the terms of an action plan, the relevant provider will need to demonstrate that it has implemented the action plan to the satisfaction of the PSA prior to the agreed deadline. In order to do this the relevant provider should confirm in writing to the PSA that it has implemented the actions within the action plan and send in evidence to support this.

179. The evidence which is required to show that the action plan has been implemented will depend on the nature of the breaches and the action plan, however this may include evidence of amended promotions for a service, evidence that consumers have been refunded and/or unsubscribed from a service where relevant or evidence of enhanced and amended processes, for example in relation to DDRAC.

180. The PSA may also undertake checks to ensure that any actions have been implemented (for example the PSA may carry out further monitoring) of a service.

181. In the event that the provider fails to provide sufficient evidence to demonstrate that it has implemented any of the actions agreed to within the action plan within the agreed timeframe, the PSA will contact the provider in writing to confirm that the provider has not adhered to the terms of the action plan. The relevant provider will be given 5 working days within which to make any representations as to why they have not complied with the action plan with the agreed timeframe.

182. The PSA will consider any representations from the relevant provider that have been made. However, if no response is received or the PSA is of the view that upon reading the representations from the relevant provider, it will not be imminently in a position to implement the actions agreed to within the action plan to the satisfaction of the PSA, the PSA will consider using its enforcement processes as outlined below in line with paragraph 5.3.3.

Warning letters without an action plan

183. On occasion, the PSA may send a provider a warning letter without an action plan. This will normally be used in cases where an action plan is unlikely to be appropriate or practicable such as where the PSA has evidence that the non-compliance or harm has already been remedied or the relevant service is no longer operational.

184. For the avoidance of doubt the relevant provider will still be required to respond to the warning letter within five working days to confirm that it accepts that a breach may have occurred and explain how the harm or non-compliance has already been fully addressed, or to confirm the position regarding its continued operation within the PRS market and/or the position regarding the continued operation of the service.

185. In the event that the relevant provider requires an extension to respond to the warning letter, paragraphs 165 - 166 above apply. If no response is received to the warning letter within the agreed timeframe (and there has been no request for an extension agreed), the PSA will consider (in line with paragraph 5.3.3(a) of the Code) whether the case should be dealt with using the enforcement processes set out below.

186. The PSA will carry out checks to ensure that any information supplied by the relevant provider is accurate. In the event that the PSA discovers through its intelligence sources that any information provided is inaccurate, this could lead to enforcement action.

Retention and use of warning letters in enforcement proceedings

187. In line with paragraph 5.3.4 of the Code, the PSA will retain a copy of all warning letters and action plans that it has issued.

188. In the event that any future enforcement action is taken, which results in a case against the relevant provider or any connected person being placed before the Tribunal or single legally qualified CAP member, the PSA may present evidence of any warning letter or an action plan that was previously issued. The PSA is likely to do this where the warning letter or action plan is relevant to either the breaches which are the subject of the current enforcement action and/or where the PSA considers that the warning letter or action plan is relevant information for the Tribunal or single legally qualified CAP member to consider in relation to the previous compliance history of the relevant provider.

189. In any case which has been placed before a Tribunal of single qualified CAP member as a result of the one of the reasons set out in paragraph 5.3.3 of the Code (failure to respond to the warning letter; failure to demonstrate compliance with an action plan; lack of agreement on an action plan or where the relevant provider does not accept that a breach has occurred), the PSA will place any correspondence between the parties regarding the warning letter and/or action plan before the Tribunal or single qualified CAP member.

Publication of warning letters

190. In line with paragraph 5.3.5 of the Code, the PSA will publish warning letters/extracts of warning letters on cases where it is necessary and proportionate to do so in order to prevent or reduce potential or actual harm to consumers. For the avoidance of doubt, this can include circumstances where the PSA considers that publication is necessary in order to uphold industry standards that support consumer protection and to act as a credible deterrence to non-compliance with the Code.

191. The PSA will consider whether it is necessary to publish the warning letter in full to achieve the overarching regulatory aims of improving market behaviour and raising consumer awareness. However, the PSA will first consider whether publishing extracts of a warning letter would be sufficient to meet these aims. The PSA will not publish any confidential details contained within a warning letter.

192. Examples of when the PSA may publish a warning letter or extract of one include, but are not limited to, circumstances where:

- there have been complaints from consumers regarding services operated by the relevant provider
- the breaches identified in the warning letter appear to have caused or have the potential to cause serious consumer harm
- the breaches identified relate to potential compliance issues of a novel or unusual nature and publication is therefore required in order to increase consumer awareness
- the warning letter and/or the agreed action plan contains remedial actions which could have an impact on consumers (for example where parties have agreed that consumers should be refunded)
- there are other compelling public interest and protection reasons for publication.

193. If the PSA is of the view that it is necessary and proportionate to publish a warning letter or an extract of a warning letter it will follow the notification and representation process set out in paragraphs 5.3.5(a) - (d) of the Code.

194. As set out at paragraph 5.3.5(a) of the Code, the PSA will notify the relevant provider that it wishes to publish the warning letter or an extract of the warning letter. The PSA will set out why it considers publication to be necessary and proportionate and will also confirm whether it intends to publish the warning letter in full. In cases where the PSA is only proposing to publish extracts of the warning letter, it will provide a draft of the material to be published.

195. The relevant provider will be given an opportunity to make representations regarding publication. In most cases, the PSA will aim to give the relevant provider five working days within which to respond to the PSA regarding publication, however this may be extended to ten working days if additional time is required by the relevant provider. Only in rare cases where there is a need for expediency due to reasons of consumer protection, will the relevant provider be given the minimum of two working days to make representations. If no representations are received within the deadline, the PSA will proceed to publish the warning letter or extracts of the warning letter.

196. If the relevant provider objects to the publication of the warning letter as a whole or extracts of the warning letter being published, it should ensure that it confirms its objection to the PSA in writing within the deadline. Relevant providers should also set out

the reasons for objecting to publication including whether any specific prejudice will be caused.

197. The PSA will consider all representations that have been made and will ensure that it weighs up any potential prejudice to a relevant provider with the need to ensure consumer protection (including the need to uphold industry standards). This means that while a relevant provider may object to publication, the PSA may nonetheless decide to publish the warning letter in full (or to publish extracts of the warning letter).

198. Once the PSA has considered the representations of the relevant provider, it will confirm to the relevant provider what, if any material, it wishes to publish and the date of publication. The PSA's current policy is to publish warning letters (or the relevant extract) for a period of three years on its website.

9. PSA's approach to Enforcement

Formal notifications

199. The enforcement processes outlined in this section are applicable in circumstances where the Engagement and Enforcement Committee, applying the criteria set out above at paragraph 135, is of the view that only enforcement action would be sufficient in the circumstances.

200. In addition to this, a matter may be dealt with using the enforcement processes where one of the circumstances listed at paragraph 5.3.3 of the Code occurred during the engagement process and the PSA considers that the matter should be placed before a Tribunal or single legally qualified CAP member.

201. Enforcement action may also be required in respect of any issues which have arisen as a result of a previous adjudication. This includes enforcement action in respect of any breach of sanction matter under paragraph 5.8.9 of the Code and enforcement action as a result of a recommendation by the Tribunal that it is minded to prohibit an associated individual in line with Code paragraph 5.8.5(f) or 5.8.5(g).

202. Once the decision has been taken to deal with a matter using the enforcement processes, the relevant provider will be sent a formal notification. The purpose of the formal notification is to put the provider on notice that an apparent breach(es) of the Code has occurred and could lead to the matter being placed before a Tribunal or single legally qualified CAP member.

203. The formal notification will contain the following information:

- a brief summary of the apparent breaches that the PSA has identified
- a summary of the reasons for the PSA's decision to deal with the matter using the enforcement processes outlined in this section
- an indicative timescale for the investigation which may be subject to change.

204. Where appropriate, the PSA may also disclose any evidence which it may rely on in support of the breach such as evidence of monitoring, consumer complaints (with the appropriate redactions). For the avoidance of doubt, the PSA is under no obligation to disclose such evidence at this point but may do so in circumstances where it has not previously disclosed such evidence to the relevant provider and/or where it considers that any disclosure would assist the relevant provider in understanding the nature of the breaches identified.

205. While there is no obligation on relevant providers to respond to the formal notification, the PSA would encourage all relevant providers to submit any information that they would like the PSA to consider as part of the investigation as soon as possible, including any initial response to the identified apparent breaches and/or any other evidence that they consider to be relevant.

206. In some cases, the PSA will send out a direction for information with the formal notification. In such cases, the PSA will ensure that any direction is clearly marked as such and that a deadline is given to respond to the direction. Where this happens, the relevant provider will be obligated to respond to the direction in line with paragraphs 117 - 126.

207. Once a formal notification has been sent to the relevant party and the party immediately above the relevant provider in the value chain is notified that a formal notification has been sent, the PSA will publish details of the enforcement case on its website. This will include the name of the PRS provider and the date on which the enforcement action began. The PSA will also notify the party immediately above the relevant provider within the value chain.

Enforcement notices

208. The PSA will keep the relevant provider reasonably informed on the timescales for the investigation, particularly in circumstances where there is likely to be significant change to the indicative timescale.

209. Upon the conclusion of the investigation, the PSA may serve an enforcement notice on the relevant provider. The purpose of the enforcement notice is to provide the relevant provider with full details of the PSA's case against it. In line with paragraph 5.4.4 of the Code, all enforcement notices will contain the following information:

- the breaches that the PSA alleges have occurred and a summary of the evidence which the PSA proposes to rely on in order to prove any alleged breach
- the sanctions which the PSA considers to be appropriate and proportionate to the breaches that it alleges have occurred including any mitigating and/or aggravating factors that the PSA has taken into account
- all evidence that has been gathered in the course of the investigation. For the avoidance of doubt this may include any information that has been gathered as part of the PSA's supervisory processes and/or engagement processes which is relevant to the alleged breaches and/or the proposed sanctions
- whether the PSA considers that the case is suitable for a single legally qualified CAP member or full Tribunal (please refer to section 13 for further details on this).

210. The PSA will specify a deadline for the relevant provider to respond to the enforcement notice. In most cases this will be ten working days, however the PSA may, in line with paragraph 5.4.5 of the Code, specify a shorter period for response. In circumstances where a case is considered to be more complex, the PSA may specify a longer time for the relevant provider to respond, however this period of time will be no longer than 20 working days.

211. In order to ensure that the case is progressed expeditiously, responses to the enforcement notice should normally contain the following information from the relevant provider:

- whether the breaches are admitted or denied
- whether the relevant provider agrees with the proposed sanction and if not, what alternative sanction they consider to be proportionate or appropriate
- any information which the relevant provider wishes to rely on in support of its case which has not been previously submitted to the PSA
- whether the relevant provider agrees with any recommendation made by the PSA for the case to be heard by a single legally qualified CAP member or full Tribunal, or instead wishes to request an oral hearing (such request to be made in line with paragraphs 5.7.6 – 5.7.9 of the Code)
- if no oral hearing is being requested, confirmation of whether the relevant provider wishes to attend the paper-based Tribunal. If the relevant provider wishes to attend the paper-based Tribunal, they should return a completed informal representation form indicating their availability to attend a paper-based Tribunal within the three month period from the date of the enforcement notice.

212. If a provider is unable to respond within the specified timeframe, it should let the PSA know as soon as possible, setting out reasons as to why it requires an extension, with a suggested alternative date for a response that is no longer than 20 working days permitted by the Code.

213. The PSA will consider any application for an extension from the relevant provider however, it is important to note that the PSA is not under any obligation to agree to an extension. In making the decision as to whether to grant a request or not, the PSA will take into account the reasons given for the requested extension by the relevant provider. Requests for extensions that are made very shortly before the deadline and/or as a result of the relevant provider's failure to act promptly are unlikely to be agreed. More than one extension request is also not likely to be agreed to by the PSA.

214. If no response is received within the specified period in the enforcement notice (or where an extension has been agreed no response is received in by the PSA by the amended deadline) the PSA will proceed to schedule a paper-based Tribunal on the assumption that the relevant provider does not wish to respond.

215. The PSA will carefully consider any response received by the relevant provider, including any further information that it has submitted. In the event that the relevant provider submits information which needs any further investigation by the PSA, the PSA will write to the relevant provider confirming that it is undertaking further enquiries. The PSA will only conduct further enquiries at this stage in circumstances where the information submitted by the relevant provider raises a new matter which has the potential to affect the breaches raised by the PSA and/or would have a material effect on the sanctions being recommended by the PSA.

216. The PSA will disclose any information obtained as a result of any further enquires no less than 10 working days before any paper-based Tribunal is due to take place.

10. Role of the PSA's Investigation Oversight Panel

217. The Investigation Oversight Panel ("IOP") is made up of the Executive Directors of the PSA. Although the General Counsel will not routinely attend IOP meetings, there may be occasions where it is considered necessary for the General Counsel to attend.

218. The IOP acts as a group providing oversight and quality assurance of certain engagement and enforcement activities. As part of its role, the IOP may endorse the approach taken by the Engagement and Enforcement Team, or it may suggest an alternative course of action. It is not however the role of the IOP to make decisions in respect of any engagement or enforcement activity.

219. The activities which the IOP will provide oversight and quality assurance of include:

- any proposed interim measure applications
- any proposed enforcement notices
- any proposed settlement agreements.

220. All IOP meetings will take place in private, and the discussions that take place during the course of any IOP meeting (whether that meeting is held in person or held administratively) will be considered as private and confidential.

221. The IOP will normally convene a meeting to discuss any matter which it needs to consider. As a minimum, the IOP will consist of two Executive Directors of the PSA. Also present at any IOP meeting will be the Head of Engagement and Enforcement and/or the Engagement and Enforcement Manager, members of the Engagement and Enforcement Team who have had involvement with the matter being considered, the in-house counsel who has provided legal support in relation to the matter and a member of the secretariat team who will take minutes of the meeting. On occasion other PSA staff may attend the meeting where they have had previous involvement in a matter or otherwise wish to observe.

222. On occasion, the IOP may consider a matter administratively, without the need for a full meeting to take place. This is only likely to be suitable in matters which are not complex and where there is unlikely to be any significant divergence of opinion. In practice, this will normally include (but is not limited to) enforcement notices for matters such as a breach of sanction or the prohibition of an associated individual that is likely to be uncontested.

223. In such cases, the PSA will circulate any documents for the IOPs consideration and ask members of the IOP whether they are content to deal with the matter administratively. If all members of the IOP agree that the matter is suitable for consideration administratively, any feedback or comments that the IOP have regarding the matter being considered will be circulated via email internally.

11. Interim measures during investigations

224. Interim measures include a range of powers set out in the Code which ensure security for fines and administrative charges and also seek to protect consumers from serious harm where necessary, prior to the conclusion of any engagement and enforcement activity. These include the options to impose a withhold of revenues across a value chain (which may be retained by the network operator or intermediary provider or paid over to the PSA) or suspend services pending a Tribunal hearing (or until any variation or withdrawal of interim measures is made by a Tribunal following an application for a review of the measures).

225. The PSA can apply for interim measures at any time during the PSA's enquiries or engagement with the relevant party when it appears to the PSA that a breach of the Code has taken place.

226. Before seeking to rely on any interim measures, the PSA (including the IOP), taking a balanced approach, will consider the following (where relevant):

- the nature and severity of the breaches or harm to consumers being investigated (including whether or not there is a risk that such breach or harm would not be effectively remedied without such interim measures) and any need for urgent action
- the potential impact flowing from the apparent breaches to both consumers and the relevant PRS provider, including likely fine amounts that may be imposed as a sanction
- what information is available relating to the financial status of the relevant party and its capacity and/or willingness to meet its responsibilities under the Code.

227. Interim measures will normally be imposed through a decision of the Tribunal. However, interim measures may be agreed by the parties without the involvement of a Tribunal. Any settlement that is reached on interim measures between the parties will be binding and have the same effect as if they were imposed by a Tribunal.

228. Where interim measures are imposed by a Tribunal, or where an agreement on interim measures is reached between the parties, the facts relating to the case and the terms of the agreement that have been reached, will be published on the website following the conclusion of any substantive case and as an addendum to the final adjudication report. This includes any adjudication by consent for interim measures which has been reached during the course of a pre-oral hearing process.

229. If the case is discontinued and does not progress to a final substantive hearing, a notification that interim measures were imposed and have since been released will be published together with any notification that the matter has been discontinued. The notification will include any relevant Tribunal decision in cases where the interim measures were imposed by a Tribunal.

Failure to provide financial information to the PSA

230. The PSA may direct any PRS provider to disclose information or documents for the purposes of engagement and enforcement under Code paragraph 6.1 where it is considered to be necessary and proportionate. The information that the PSA may direct the PRS provider to disclose may include any financial information about the PRS provider and any relevant PRS. This information may be used to assess whether any interim measures are necessary.

231. Where the relevant party refuses to provide the requested financial information by the deadline provided by the PSA, and it appears to the PSA that a breach of the Code has taken place, the PSA is likely to conclude that this failure to provide financial information demonstrates an unwillingness to comply with any sanction that may be imposed by a Tribunal pursuant to Code paragraphs 5.8.5(d), (i) or (j).

232. The PSA will always consider the reasons put forward for any refusal to provide the financial information by the relevant party, but in the absence of any compelling reason, and when it appears to the PSA that a breach of the Code has taken place, it will proceed to Tribunal on the basis that the refusal is indicative that the relevant party is unwilling to comply with any financial sanction(s). For the avoidance of doubt, any refusal to provide financial information because it will reveal personal data of other individuals, will not be regarded by the PSA as a valid reason for refusing to comply with a request for financial information. This is because disclosing such information in response to a direction under the Code is necessary for compliance with a legal obligation to which the relevant party is subject and is therefore permitted under the law.

233. Other reasons for refusing to comply with a direction, such as the relevant party's assertion that the information cannot be disclosed because of its commercial sensitivity, will ordinarily be rejected by the PSA and a Tribunal will be scheduled if the PSA considers that the test for interim measures set out in the Code is met. Any confidential information requested by the PSA will be handled in line with paragraph 1.6 of the Code. In the absence of any compelling reason provided by the relevant party regarding its refusal to provide the financial evidence, the PSA will submit to the Tribunal that any such refusal to provide the evidence under direction is indicative that the relevant party will not comply with any refund sanction, fine sanction or administrative charge that may be imposed at a substantive hearing.

234. Where the PSA decides to schedule a Tribunal following the relevant party's refusal to provide financial evidence in contravention of a direction, the relevant party's right to make representations at the Tribunal in writing and/or orally, and/or seek a review of any interim measures imposed under Code paragraph 5.6.8 will be unaffected.

Withholds

235. The PSA will seek to use its power to withhold service revenue at any time during the PSA's engagement or enforcement with a relevant PRS provider when it appears that a breach of the Code has taken place and the PSA considers that the relevant party will not be able or willing to pay such refunds, administrative charges and/or financial penalties it

estimates that a Tribunal or a single legally qualified CAP member may impose in due course. The estimate of sanctions is not binding on the Tribunal or a single legally qualified CAP member that hears the substantive case. They will determine appropriate and proportionate sanctions based on the case information and any oral representations made to them when they hear the case.

236. During the time that the PSA is making enquiries or engaging with a PRS provider, the PSA will take a balanced approach to the imposition of interim measures using the general criteria at paragraph 226, and further specific factors, which may include the following:

- evidence to suggest that the company was incorporated to generate non-compliant revenue
- evidence to suggest that the PRS provider has insufficient funds available to pay any likely fine and/or refund sanction and/or administrative costs
- history of non-compliance with sanctions imposed, including previous history of a separate PRS provider where that provider and the current provider have the same sole director or a common director
- level of co-operation by the PRS provider
- evidence that the provider has sought to dissolve the company (such dissolution either having been stopped or restored by the PSA)
- whether the PRS provider is based in a country/territory where the domestic rules of that country/territory enables companies to avoid public visibility of their financial affairs
- whether the PRS provider has an adverse credit rating or history and what the reasons are for the adverse rating
- whether the PRS provider has failed to respond to requests for financial information or stated that it is unwilling to supply such information
- whether the PRS provider has been barred in other jurisdictions and if so, what the reasons were for such barring
- whether there is an absence of safeguards and/or controls in relation to the management of the PRS provider (such as a sole trader or partnership) which increases the risk that the PRS provider would be unwilling to comply with any likely sanction or administrative charge
- whether there are any directors or other associated individuals within a PRS provider who have previously been involved in non-payment of fines/administrative charges and refunds
- whether there is any evidence of refunds having already been paid to consumers, or not

- whether there is any evidence of fines and/or other sanctions having been previously paid or complied with
- whether the risk of non-compliance with sanctions can be remedied without the imposition of the withhold
- whether the potential impact of the recommended withhold on the PRS provider can be fairly balanced against the assessment of the nature and severity of the apparent breaches and harm and/or potential harm
- any other relevant factors that are specific to the case and any responses given by the PRS provider.

237. The PSA may seek relevant information for these purposes, including published financial data in respect of the relevant party, details of revenue payment dates, and whether there are any sums available to be withheld.

238. Where the assessment indicates that the criteria for a withhold may be fulfilled, the PSA will draft an interim enforcement notice and refer the matter to the IOP, who will convene a meeting in accordance with the procedure set out at paragraphs 221 - 223 to consider the PSA's recommendations.

239. The assessment will be based on the information known to the PSA at the time. Where credible information is not made available to the PSA, a negative inference may be drawn where it is reasonable to do so.

240. If the IOP considers that a withhold direction is appropriate, the PSA will (unless there are public interest grounds to the contrary) use reasonable endeavours to notify the relevant party of its initial findings and confirm the amount of the proposed withhold. The PSA will also invite that party to make written representations in response to the PSA's proposed application within a timescale that is reasonable, taking into account the urgency of the matter. This timescale will normally be no less than two and no longer than seven working days.

241. In order to carry any weight, any representations must be supported by evidence which is sufficient to confirm that the provider is willing and able to meet any sanctions that may be imposed, or administrative charges that may be invoiced. The PSA anticipates that to support such representations it will be necessary as a minimum for providers to supply up-to-date evidence of the following:

    - the provider's current cash and asset position (including any overdraft facility or similar)
    - evidence of projected income and outgoings, including evidence of the date payments that are due
    - evidence of the sources and amounts of all recent and projected income, and
    - evidence of any refunds given to date.

242. In order to be considered, such representations and evidence must be provided by the deadline set by the PSA. The PSA may vary this deadline upon request, provided that a response would still be received by the PSA no later than two weeks before the next known outpayment date.

243. The relevant party may also agree to a mutually satisfactory withhold direction with the PSA. Where the relevant provider consents to the terms of a withhold, the PSA and the relevant party can agree the appropriate interim measure(s) without the involvement from a Tribunal, as set out at paragraphs 227 – 229 above. This simplified procedure will reduce the potential administrative charge.

244. Where an agreement cannot be reached between the parties, the PSA's assessment, the interim enforcement notice, and the relevant party's response to that notice (or where there is no response, evidence of the attempts made to serve the documents) will be provided to the Tribunal. Where the application for a withhold is being made on notice, the PSA will also notify the relevant party of the date and time of the Tribunal and indicate whether the Tribunal is taking place either in person or remotely. The PSA will also inform the relevant party that, with the Tribunal's permission, it can attend the paper-based hearing to make oral representations to clarify any matter. For more details about oral representations, please see section 13 below.

245. The Tribunal will decide whether the general criteria in Code paragraph 5.6.1 are satisfied to warrant the imposition of a withhold, on the basis of the evidence presented to it. The Tribunal will first need to consider whether it appears that there have been breaches of the Code. The Tribunal considering the matter at this interim stage in the proceedings, will consider the nature of the breaches and the submissions made by both the PSA and the relevant party and decide whether there is a good arguable case that there have been breaches of the Code.

246. Where the Tribunal agrees there is a good arguable case in respect of the breaches at the interim stage, it will then consider, on a balance of probabilities, whether a relevant party cannot or will not comply with any sanction that may be imposed by a Tribunal pursuant to Code paragraphs 5.8.5(d), (i) or (j). The Tribunal's decision that there is a good arguable case in respect of the breaches at the interim stage should not be regarded as the final substantive decision in relation to any breach.

247. When considering whether or not to impose a withhold, the Tribunal will have regard to the general criteria listed at paragraph 226 where relevant, and the further specific factors set out at paragraph 236 and will have regard to the principle of proportionality. In considering proportionality, the Tribunal will consider whether the withhold is suitable and necessary to achieve a legitimate aim and is the least onerous way of doing so in the circumstances. A withhold direction is unlikely to be proportionate where for instance it was unlimited in amount.

248. The Tribunal will set out its findings and reasons in writing, and these will be provided to the PSA and to the relevant party. Upon a withhold being directed (the decision being

reached unanimously), the Executive will immediately issue the withhold direction to any relevant parties in the value chain.

249. Where the Tribunal has imposed a withhold, or the parties have reached agreement in respect of a withhold, the PSA can direct a network operator or any intermediary provider to retain any payment or proportion of such payment under Code paragraph 5.6.3(b), and/or direct a network operator or intermediary provider to pay over to the PSA any monies subject to a withhold direction, under Code paragraph 5.6.3(c).

250. The PSA will seek under Code paragraph 5.6.3(c), payment to itself of any monies retained by a network operator or intermediary provider in any of the following circumstances:

- where there is a danger of the monies dissipating
- where there is a lack of cooperation from the parties within the value chain. For instance, the PSA will consider any non-compliance with Code paragraphs such as 5.6.3(a) and/or 6.1.
- any other circumstances where the PSA deems it is appropriate for it to retain the monies itself.

Suspension of service pending investigation and/or remedial action

251. At any stage of the engagement and enforcement process where it appears to the PSA that an apparent breach of the Code has taken place, which is causing serious harm or presents a serious risk of harm to consumers or the general public and requires urgent suspension of part or all of the service, it may seek such suspension pending the conclusion of any engagement or enforcement activity.

252. Urgent suspension will be deemed necessary where such harm is likely to continue (e.g. because the provider cannot be contacted or has failed to amend the service sufficiently such as to remove or significantly reduce the harm) and/or separate or additional serious harm is likely to be triggered as a result of such harm continuing, before the substantive matter can be determined by a Tribunal or single legally qualified CAP member or addressed through the settlement process. In such cases a Tribunal may, as an urgent interim remedy, bar access to the service in question, either fully or partially.

253. Where the PSA's assessment indicates that the criteria for a suspension may be fulfilled, the PSA will refer the matter to the IOP, who will convene a meeting in accordance with the procedure set out above at paragraphs 221 – 223 above to consider the PSA's recommendations.

254. If the IOP agrees with the PSA's recommendation for an application for a suspension, the PSA will provide evidence of the seriousness and urgency of the case, the background information obtained during the initial investigation and an explanation of potential breaches to the Tribunal, plus any response supplied by the provider (or where there is no response, evidence of the attempts made to serve the documents on the provider).

255. Prior to presenting the matter to the Tribunal, the PSA will (unless there are important public interest reasons to the contrary) use reasonable endeavours to notify the party under investigation of its initial findings and invite that party to make representations to the PSA within a timescale which is reasonable, considering the urgency of the matter. This timescale will normally be no less than one working day. Where the application for a suspension is being made on notice, the PSA will also notify the relevant party of the time and date of the Tribunal and indicate whether the Tribunal is taking place either remotely or in person. The PSA will also indicate that, with the Tribunal's permission, the relevant party can attend the paper-based hearing to make oral representations to clarify any matter. For more detail about oral representations, please see section 13.

256. The relevant party can also agree a mutually satisfactory suspension direction with the PSA. Where a relevant party consents to the terms of a suspension, it will not be necessary to put the matter before the Tribunal for consideration. Any settlement on any interim measures that is reached between the parties will be binding and have the same effect if they were imposed by a Tribunal. This will reduce the administrative charge.

257. It is also open to a relevant party, in response to the interim enforcement notice, to suggest other corrective action which may be equally as effective in addressing the serious harm (and any risk of serious harm) as a service suspension. The PSA will not consider such suggestions as acceptable unless they, as a minimum, fully and clearly address the apparent breach and the harm (or risk of harm) which have been identified immediately and provide for a robust mechanism through which the PSA can verify that the proposed steps are being or have been taken. Note that where a relevant provider identifies actions which would mitigate harm, the PSA would not expect a relevant party to delay putting such steps into effect until they obtain the PSA's response to their proposal.

258. Where a suspension direction or other corrective action cannot be agreed, the matter (including any representations from the relevant party) will be considered by the Tribunal. The Tribunal will first need to consider whether it appears that there have been breaches of the Code. The Tribunal considering the matter, at this interim stage in the proceedings, will consider the nature of the breaches and the submissions made by both the PSA and the relevant party and decide whether there is a good arguable case that there have been breaches of the Code.

259. Where the Tribunal is satisfied that there is a good arguable case in respect of one or more of the breaches at the interim application stage, it will then consider, on a balance of probabilities, whether the apparent breach is causing serious harm or presents a serious risk of harm to consumers or the general public and requires corrective action. For the avoidance of doubt, any decision by the Tribunal that there is a good arguable case in respect of one or more of the breaches does not amount to a final substantive decision in relation to any breach.

260. When considering whether to impose a suspension, the Tribunal will have regard to the general criteria listed at paragraph 226 above where relevant and will have regard to the principle of proportionality. If the Tribunal (reaching its decision unanimously) directs that

a suspension or other corrective action be imposed, directions will be issued to take immediate action. This may include: directing the relevant party to suspend part or all of the service immediately or take other corrective action, directing network operators or intermediary providers to bar access to the relevant service, and publication of the fact that a suspension has been ordered.

"Without notice" procedure

261. The PSA may impose interim measures without notice to a relevant party. This will be in cases:

    - where it has not been possible to notify the relevant party prior to convening the Tribunal (for example as a result of the failure of the relevant provider to maintain up to date contact details on the PSA registration system, and/or

    - where the PSA considers that it is not appropriate to notify the relevant party on public interest grounds prior to convening the Tribunal. Some examples of "public interest grounds" are set out in paragraph 262 below.

262. The following is a non-exhaustive list of examples of circumstances that may constitute "public interest grounds":

    - potential breach of Code paragraph 3.7 (the Standard for Prevention of harm and offence), where consumers have been seriously harmed or are at risk of serious harm and/or consumers are being threatened, and the PSA reasonably believes that notifying the PRS provider before directions to suspend the service are issued will either (a) exacerbate the harm or the possible extent of that harm; or (b) cause or allow the serious harm to occur while awaiting the PRS provider's response

    - potential breach of Code paragraph 3.5 (the Vulnerability Standard) which the PSA reasonably believes will result in serious and irremediable harm to such consumers while awaiting the relevant party's response

    - potential breach of Code paragraph 3.3 (the Fairness Standard) where there has been charging without consent or a missed call scam (also known as 'Wangiri' phone calls) on a sufficiently widespread scale that the PSA reasonably believes that serious, widespread and irremediable financial detriment would occur to consumers while awaiting the relevant party's response

    - where related activity is under investigation by law enforcement agencies (including the police or other regulators) and the PSA reasonably believes that prior notification to the relevant party would prejudice the investigation of criminal or regulatory offences

    - where serious harm (or a law enforcement investigation) is occurring and the PSA reasonably believes that notification and/or allowing the relevant party time to respond to the allegations prior to direction of a withhold will result in relevant PRS revenue necessary to provide consumer redress and meet other regulatory

sanctions being dissipated (note that in this case the PSA will consider all information available to it regarding the financial and corporate status of the relevant party, the amount held by the intermediary, and the dates on which such payments are due)

- where the criteria for interim measures are fulfilled and the relevant party cannot be identified however the PSA considers that the harm cannot be effectively addressed otherwise than through use of interim measures. This may include cases where there is reason to believe that the relevant party is aware of an investigation but has been deliberately evading contact.

In such cases, the PSA will use reasonable endeavours to:

- provide the Tribunal with all facts material to its consideration of interim measures including any material which it considers might reasonably have been relied upon by the relevant party, and
- inform the relevant party, as soon as is reasonably possible after the Tribunal's decision, that its service appears to be in breach of the Code, that interim measures have been imposed by the CAT, and of the availability of the right to a review under paragraph 5.6.8 of the Code.

Proceeding with investigations

263. After the Tribunal has made a decision on interim measures, or an '"interim consent order" has been agreed by the parties, the PSA will normally proceed with its notification and enforcement process under paragraph 5.4 of the Code.

264. As stated at paragraph 225 above, interim measures may be considered at any time during the PSA's engagement or enforcement activity in relation to a relevant PRS provider. New information that comes to light will prompt a new assessment by the PSA.

Release of interim measures

265. Due to developments in a case, the Engagement and Enforcement Team may form the view that any interim measures are no longer justified or are not justified to the extent currently in place. Examples may include where the PSA holds satisfactory evidence that the issues giving rise to a suspension have been comprehensively resolved and remedied in full.

266. In such a case, the Engagement and Enforcement Team will notify the relevant party and the IOP of its intention to revoke or amend the directions. Where the relevant party and the IOP confirms agreement to the proposal, a revised interim consent order will be agreed between the PSA and the relevant party. It will not be necessary for the interim consent order to go before a Tribunal as the agreement reached between the parties through a paper-based process will be binding and have the same effect as if they were imposed by a Tribunal.

267. As stated at paragraph 228 above, where an agreement on interim measures is reached between the parties, the facts relating to the case and the terms of the agreement that have been reached will be published on the website following the conclusion of the substantive case and as an addendum to the final adjudication report. In the event that a case does not progress to a substantive hearing, a notification stating that interim measures were applied through settlement and have since been released, and that the case has been discontinued, will be published.

Review of interim measures

268. At any time prior to a decision being made under paragraph 5.7.21 on the alleged breaches placed before the Tribunal or single legally qualified CAP member, the relevant party may apply to the PSA for an urgent review of the interim measure(s) by a differently constituted Tribunal. A relevant party may only seek such a review where:

    - it has not been possible or appropriate to issue an interim enforcement notice notifying the relevant party of the application for interim measures prior to their imposition, and/or

    - further information comes to light suggesting that interim measures should not have been imposed or are no longer appropriate. Such information may include, for example, robust evidence that the issue which gave rise to the need for the interim measure has now been fully resolved, or evidence that a relevant provider was not reasonably able to obtain prior to the imposition of interim measures. Providers should act promptly in bringing all relevant information and evidence to the PSA's attention.

269. The application for review must be made in writing, must include any supporting evidence and must set out:

    - the grounds on which the relevant party considers that the interim measure(s) should not have been imposed, and/or

    - the grounds on which the relevant party considers that interim measure(s) are no longer appropriate.

270. In order to prevent the Tribunal being presented with reviews which impose unnecessary burdens on the PSA's regulatory regime (including costs burdens), the PSA has the power under Code paragraph 5.6.8 to make a referral to the Chair of the CAP (or by another legally qualified member of the CAP where the Chair is unavailable or has sat on the original Tribunal) for a ruling that a review request is "frivolous or vexatious". This is most likely to occur if a relevant party has recently had a review request refused by a Tribunal, and the PSA is of the view that paragraph 5.6.8 of the Code is not satisfied in respect of the relevant party's application for a review.

271. Where the PSA makes such a referral, a relevant party will be entitled to make written representations for presentation to the Chair of the CAP or another legally qualified member of the CAP. While a referral of a review request or any requirement for further

information pauses the timescale for determination of the review as set out at paragraph 5.6.12, the PSA still intends to treat applications for reviews as urgent, and so normally a relevant party will not be given more than two working days in which to provide additional written representations addressing the PSA's concerns about the application for review being frivolous or vexatious.

272. A review request will be deemed "frivolous" by the Chair of CAP (or other legally qualified CAP member asked to consider the application) if it has no reasonable chance of succeeding. This may be because the requirements of Code paragraph 5.6.8 are not satisfied or because there is no reasonable prospect of the arguments presented resulting in the interim measures being varied.

273. A review request will be deemed "vexatious" if it is a manifestly unjustified, inappropriate or improper use of the procedure. Examples include where the review seeks to argue matters which have already been determined by a Tribunal without presenting relevant new evidence, or the review appears to be primarily intended to subject the PSA to inconvenience, harassment or expense.

274. Where such a referral by the PSA is upheld by the Chair of the CAP, the relevant party may still be liable in due course for the administrative costs incurred in respect of the review request and referral. In addition, subsequent Tribunals will be informed of the ruling of the Chair (or other legally qualified CAP member asked to consider the application). For this reason, the PSA encourages providers to ensure that requests for reviews are carefully considered and supported by sufficient relevant evidence.

275. A differently constituted Tribunal will consider the review of interim measures within five working days of receipt of an application for a review and will determine whether interim measure(s) should continue pending completion of the investigation of the case, or whether the interim measure(s) should be varied or withdrawn. The Tribunal's determination will involve consideration of the further information and an assessment of the requirement for interim measures based on the considerations above at paragraphs 244 - 246 and/or 257 - 259 as appropriate.

276. The relevant party or the PSA may make oral representations to clarify any matter for the Tribunal. Such representations can be requested by the relevant party, the PSA or the Tribunal. In light of the required timescales for the review procedure, the PSA will not reschedule the Tribunal to accommodate a party's unavailability, and such representations may be limited to attending the hearing virtually through a conference video platform.

12. Settlements

277. At any stage after commencement of engagement or enforcement under paragraphs 5.2 - 5.4 of the Code, but before the matter is first considered by a Tribunal, it may enter into discussions with the PSA in order to try to reach a settlement.

278. The settlement process is a voluntary process for resolving a regulatory investigation which leads to a formal, legally binding regulatory decision which involves acceptance by the relevant party that it has breached one or more requirements of the Code.

279. For more details on how settlements work in relation to interim measures (where no oral hearing has been requested) please refer to section 11 above.

Process for settlement of enforcement matters (where no oral hearing has been requested)

280. Once the relevant party has been served with a formal notification (indicating the commencement of enforcement activity) that party may approach the PSA with a proposal for settlement at any time up until the case has been placed before a Tribunal or single legally qualified CAP member). This process does not apply where an oral hearing has been requested in line with paragraph 5.7.6 of the Code.

281. In the event that the party under investigation approaches the PSA prior to the issuing of any enforcement notice (but after receipt of formal notification), the PSA will provide an indication of the provisional sanctions that it would recommend are imposed. The PSA will also provide access to any key documents that is relying on where appropriate in order to assist the party under investigation with any proposal for settlement. In the event that the PSA for any reason is of the view that it needs to investigate the matter further before it is in a position to give an indication in respect of sanction, it will notify the relevant party.

282. Where the relevant party is considering a settlement proposal, the PSA encourages the relevant party to make any initial approach as soon as possible. The earlier that a settlement proposal is agreed, the greater the discount that the PSA may be able to apply in respect of any financial penalty that it is recommending.

283. Any discount in respect of a financial penalty that is being recommended will be applied on a case by case basis. However, as an indication, the PSA would expect the discounts to be generally as set out below:

    - up to 30% where a successful settlement process is commenced after a formal notification is issued but before the relevant party is issued with an enforcement notice
    - up to 20% where a successful settlement process is commenced after the enforcement notice is issued but prior to the relevant party formally responding to it
    - up to 10% where a successful settlement process is commenced after the enforcement notice is issued and after the relevant party had formally responded to it.

284. Following any initial approach, the relevant party will need to submit a formal written settlement proposal. The settlement proposal should contain the following information in order for the PSA to properly consider the proposal:

- a clear and unequivocal statement setting out which breaches are accepted and on what basis
- if any breaches are not accepted, a clear statement as to why any breach is not accepted with supporting evidence to support any assertions that have been made
- a statement which sets out the sanctions which the provider under investigation considers to be suitable (including where relevant the level of any financial penalty taking into account any proposed discount for settlement) with any supporting evidence in mitigation if relevant
- an acceptance by the party under investigation that, if successful, the settlement will result in a formal and published finding consisting of a statement of facts and evidence and consent order. In the case of interim measures an acceptance that publication of the statement of fact and consent order will take place after the substantive matter has concluded and an adjudication report or warning letter has been published.
- an acceptance that by the relevant party that if the settlement process is successful, it will pay any financial penalty and any administrative fees within a specified time frame of 30 days from the date that the settlement process is concluded including any administrative fees incurred by the PSA.

285. The PSA will consider all settlement proposals that contain the required information. However, in the event that a proposal for settlement is missing any of the information at paragraph 284 above, the PSA will not consider the proposal any further without the additional information and will notify the relevant party accordingly.

286. In assessing whether a proposal for settlement is suitable the PSA will consider the following criteria:

a. whether the proposed settlement terms are sufficient to address the PSA's concerns and in particular prevent any future consumer harm, and

b. whether the proposed settlement terms are sufficient to secure a satisfactory regulatory outcome, in particular consumer protection, credible deterrence and maintaining and upholding standards for industry.

287. In considering the criteria above, the PSA may also take into account other factors such as likely procedural efficiencies and resource savings that can be achieved through settlement and the conduct of the party under investigation, for example the extent to which the provider has co-operated with the investigation.

288. After an initial assessment of the suitability of the settlement proposal by the Engagement and Enforcement Team is undertaken, the PSA will seek the views of the IOP. The IOP will

consider the settlement proposal in line with the criteria and the factors set out above and will either endorse the proposal or provide a suggested alternative course of action.

289. Where the PSA (after having sought the views of the IOP) considers that the settlement proposal is not sufficient, but that an alternative settlement could be reached, the PSA may correspond with the relevant party in order to set out any alternative proposal. However, the PSA is not under any obligation to do so, and it will only correspond with the relevant party where it considers there to be a realistic prospect of settlement being reached.

290. For the avoidance of doubt, the settlement process is not a negotiation, and the PSA will not enter into any general discussions about the merits of pursing any of the alleged breaches or the appropriateness of any proposed sanctions.

291. In the event that the discussions regarding a proposed settlement become unnecessarily prolonged, for example as a result of the failure of the relevant party to provide information or in circumstances where the PSA is of the view that no settlement is likely to be reached, the PSA may withdraw from any further settlement discussions. This will result in the case reverting to the normal enforcement process.

292. The PSA will notify the relevant party of its intention to withdraw from the settlement process in writing and will provide the relevant party with an opportunity to respond before it reverts to the normal Enforcement process.

293. If the proposal for settlement is agreed in principle by the PSA and the relevant party, the PSA will confirm this in writing to the relevant party. The PSA will then proceed to draft a statement of facts and evidence which sets out brief details of the breaches, evidence and sanctions that have agreed upon by the parties. In addition to this, the PSA will also draft a consent order setting out the terms of the settlement that has been agreed.

294. The statement of fact and the consent order will be sent to the relevant party. The relevant party will have the opportunity to comment on the statement of fact and consent order and suggest any amendments. However, in the event that this leads to any substantial dispute regarding the settlement, the PSA may withdraw from the settlement process. However, before doing so the PSA will inform the relevant party of its intention to withdraw from the settlement process in order to allow the relevant party to comment further.

295. Once any amendments to the statement of facts and evidence or consent order have been agreed, the relevant party will need to sign the consent order and also provide written confirmation that it wishes to proceed with the settlement.

296. Once the PSA has received this written confirmation and the signed consent order, it will be considered as legally binding in line with paragraph 5.5.2 of the Code. The PSA will proceed to sign the consent order and will confirm in writing to the relevant party that the settlement process is now complete.

297. In line with paragraph 5.5.2 of the Code, the breaches that have been agreed and the sanctions which have been imposed using the settlement process will have the same effect as though they had been upheld and imposed by a Tribunal.

298. The PSA will then proceed to publish the consent order and accompanying statement of facts and evidence on its website.

299. In the event that the settlement process is unsuccessful for any reason, the case will revert to the normal enforcement process.

300. Where a Tribunal or single legally qualified CAP member is convened to adjudicate on a case where settlement has failed, it will not be provided with any detail as to the settlement discussions or any of the correspondence between the parties relating to it. If there is a need to explain the reason for any delay in a case proceeding, the Tribunal may be advised that there were ongoing discussions between the parties to resolve the matter which led to the delay.

301. However, any additional documentary evidence provided during the settlement process will however be retained by the PSA and may be taken into account for the purposes of deciding on the appropriate enforcement route.

Adjudication by consent process

302. Under paragraph 5.5.1 of the Code, the process for settlement is different in circumstances where an oral hearing has been requested in line with paragraph 5.7.6(a) of the Code. In any cases where this has occurred, the settlement process followed will be the adjudication by consent process as outlined in this section.

303. At any stage after an oral hearing has been requested but before the matter is determined by the Tribunal, the relevant party can approach the PSA with a written settlement proposal.

304. Settlement proposals under the adjudication by consent process can relate to one or more of the following in line with paragraph 5.5.3 of the Code:

- any interim measures to be adopted
- any admissions concerning the alleged breaches, and/or
- any sanctions that might be imposed by the Tribunal.

305. While the PSA encourages adjudication by consent process, as this process can only be triggered after an oral hearing has been requested, the PSA will already have spent significant time and resource on investigating the case fully and is likely to have incurred further costs following the request for an oral hearing. The PSA will therefore only be minded to agree to a reduction in any proposed financial penalty where such a reduction is proportionate to the nature of the breaches being raised.

306. Such discussions will take place during the course of the pre-oral hearing process and as a result of any case management directions issued by the Chair of the Tribunal. These discussions will usually be conducted on a "without prejudice" basis.

307. Notwithstanding the use of without prejudice discussions the PSA would expect the relevant party to set out or confirm:

- whether the relevant party accepts or denies the breaches, the reasons for any admissions or denials together with any supporting evidence
- the sanctions that the relevant party would accept including any evidence of mitigation which the relevant party wishes to rely on
- in the case of an adjudication by consent for interim measures only (i.e. focussed on the imposition, or continued imposition, of interim measures prior to determination of the substantive case by the Tribunal), the interim measures that the relevant party would agree to with any supporting evidence and a commitment to take any immediate action in line with those measures
- an acceptance by the party under investigation that, if successful, the adjudication by consent order setting out the upheld breaches and sanctions imposed will be published together with a statement of facts and evidence. In the case of interim measures, an acceptance that the interim measures adjudication by consent will be published with any final substantive adjudication report.
- an acceptance by the party under investigation that if the settlement process is successful, it will pay any financial penalty and administrative fees within a specified time frame of 30 days from the date that the settlement process concludes including any administrative fees incurred by the PSA.

308. In the event that the PSA agrees to settle, it will confirm this in writing to the relevant party. The PSA will also proceed to draft the consent order and a statement of facts and evidence which will be sent to the relevant party to review. For substantive cases, the statement of facts and evidence will set out brief details of the breaches, evidence and sanctions that have agreed upon by the parties.

309. For adjudication by consent cases in respect of interim measures only, the statement of facts and evidence will set out the suspected breaches, evidence and interim measures that have been agreed between the parties.

310. Once the parties have agreed the statement of facts and evidence, the relevant party will need to sign the consent order and confirm in writing that it wishes for the statement of fact and consent order to be placed before a Tribunal or where appropriate a single legally qualified CAP member.

311. The PSA will proceed to sign the consent order and will place the consent order and statement of fact before the Tribunal or single legally qualified CAP member for consideration. For the avoidance of doubt, the Tribunal or the single legally qualified CAP member will consider the matter on the papers.

312. The PSA reserves the right at any stage of the adjudication by consent process to withdraw from the process in the event that discussions regarding the terms of the adjudication by consent become unnecessarily prolonged and settlement is not likely to be reached or where the relevant party does not provide information required in order for the adjudication by consent to progress. However, before doing so, the PSA will confirm this in writing to the

relevant party and take into account any response that may be given. In the event that the parties cannot reach agreement, the case will continue through the oral hearing process.

Approval of adjudications by consent by a Tribunal

313. In line with paragraph 5.5.4 of the Code the adjudication by consent will then be considered by a Tribunal, which will approve the settlement unless there is good reason not to do so. The Tribunal considering the adjudication by consent will convene to consider the adjudication by consent on the papers.

314. Once the Tribunal has approved and signed the consent order the agreement will become legally binding. The PSA will then proceed to publish the consent order and statement of facts and evidence on its website. In the case of interim measures, the consent order and any statement of facts and evidence will only be published once the substantive matter has concluded, and the final adjudication report is published.

315. Although it is likely to be rare, good reasons for which a Tribunal or single legally qualified CAP member may decide not to approve an adjudication by consent will include the following:

- the Tribunal considers the adjudication by consent to be wholly inadequate in addressing any harm caused and/or preventing future consumer harm or risk of harm, and/or
- the Tribunal or single legally qualified CAP member considers that the interim measures or breaches which have been agreed and/or the sanctions that have been imposed are wholly disproportionate (either through being too lenient or too severe)
- in the case of interim measures, the Tribunal considers that the terms of the adjudication by consent are insufficient to prevent ongoing serious harm or serious risk of harm (in relation to suspension directions) and/or the terms of the adjudication by consent are insufficient to ensure the relevant party's compliance with any financial sanctions that may be imposed (in relation to withhold directions).

316. In the event that the Tribunal is of the view that an adjudication by consent should not be approved, its approach in line with paragraph 5.5.4 of the Code will be to vary, add or substitute any of the terms of the adjudication by consent as it sees fit rather than reject the adjudication by consent outright.

317. The Tribunal will then adjourn its consideration of the case until such time that the views of both the PSA and the relevant party have been obtained and considered before making a final decision in respect of the case. In the event that the relevant party fails to respond to any suggested variation/amendment or substitution by the Tribunal within ten days, the Tribunal will be reconvened.

318. In order to seek views, the Panel Secretary will contact the relevant party and the Enforcement Team at the PSA in writing setting out the Tribunal's proposed, amended terms for the adjudication by consent along with a brief rationale for the proposed amendment

and/or substitution. Both parties will be asked to submit written representations on the proposed amendments put forward by the Tribunal.

319. Once the views of both parties have been obtained, the Tribunal will re-convene to consider the amended terms. While the Tribunal will consider the representations by the parties, it will not be bound by them and may impose the amended terms if it considers that the amended terms are fair and proportionate notwithstanding whether the parties agree to the amended terms or not.

320. The Tribunal will provide full reasons for its decision to amend the adjudication by consent. In this scenario, the Tribunal's reasoned decision and the original statement of facts and evidence, will be published on the PSA's website. The Tribunal's decision will be final.

321. However, in the event that either party does not agree with the Tribunal's decision to amend, vary or substitute the adjudication, that party may apply for a review of that decision in line with Code paragraph 5.10.1 or Code paragraph 5.6.8 if the amendments, variation or substitutions related to interim measures. Any review hearing under paragraph 5.10.1 will be considered by a differently constituted Tribunal.

322. In the event that an adjudication by consent is unsuccessful as a result of the parties being unable to reach agreement, any future Tribunal convened to consider the oral hearing will not be provided with any detail as to the settlement discussions or any of the correspondence between the parties relating to it. If there emerges a need to explain the reason for any delay (for example in relation to compliance with any case management directions issued), the Chair of the Tribunal may be advised that ongoing discussions between the parties to resolve the matter led to the delay. However, the parties should seek to avoid any delays in complying with case management directions and should instead seek leave to amend the directions accordingly.

13. Adjudications by the PSA Code Adjudications Tribunal (CAT) or a single legally qualified CAP member

323. Where a referral or notification is made by the PSA pursuant to Code paragraphs 5.4.7, 5.4.8 and/or 5.6, a Tribunal of three members including at least one legally qualified member or a single legally qualified CAP member (except in relation to paragraph 5.6), will be appointed from the CAP to consider the matter. A legally qualified Tribunal member will be appointed as the Chair of the Tribunal.

324. The Tribunal or single legally qualified CAP member (as applicable) will reach a decision as to whether the Code has been breached by the relevant party on the basis of the evidence presented and the representations made before it.

325. Adjudications involve the analysis and assessment of facts and evidence gathered (from the PSA, the relevant party and any third party) during an investigation as well as any breaches and any sanctions recommended. Adjudications may take the form of a paper-based hearing or an oral hearing.

Preparation of the bundle and first listing of hearings

326. The PSA will prepare a bundle of documents relating to the case, which includes the breaches raised by the PSA with supporting evidence and any responses and evidence sent in by the relevant party and/or other parties in the value chain. The bundle will also include revenue information and a schedule of administrative charges, which sets out the costs incurred by the PSA up to the point at which the Tribunal bundle is fully compiled. Further costs may be incurred between the compilation of the bundle and the hearing and where this occurs a revised schedule will be available at the hearing.

327. The bundle, including the enforcement notice and any responses from relevant parties, will be presented to three Tribunal members selected from the Code Adjudication Panel, or a single legally qualified CAP member as applicable. This will usually happen seven to 14 working days in advance of the Tribunal depending on the complexity of the case and the volume of material, so that members will have time to read the papers prior to the hearing.

328. Copies of the evidence in the bundle will have been provided to the relevant party in alleged breach of the Code over the course of the investigation. The Tribunal bundle will be made available in electronic format for the relevant party, and a hard copy is available at the hearing for any party making any representations where the hearing is taking place in person.

329. Ordinarily, the entirety of the documentation to be relied on for the paper-based procedure should be provided by the date specified in the enforcement notice. However, in cases where in its response to the enforcement notice, the relevant party raises a matter which has not previously been investigated by the PSA, the PSA may undertake appropriate investigations and will allow the relevant party the opportunity to respond to the outcome of these investigations in writing prior to the date of the hearing. Both the

PSA's findings and any response made by the relevant party will be supplied to the Tribunal as an addendum to the bundle.

330. If the relevant party wishes to apply for an oral hearing it must do so within ten working days of receiving an enforcement notice or from the publication of a decision (where a review is sought) or notice of a Tribunal's intention to impose a prohibition under Code paragraph 5.7.6(b). If no application is received in this time, the paper-based hearing will be used. Where an extension to respond to an enforcement notice is granted by the PSA beyond the standard ten working days, the extension deadline for responding to the enforcement notice will also be the deadline for requesting an oral hearing. However, in all cases this will be no longer than 20 working days from the issuing of the enforcement notice.

331. In order to apply for an oral hearing, the relevant party must clearly set out its case in line with paragraph 5.7.9 of the Code, including where relevant why the relevant party is of the view that there are serious and complex issues to be determined and why a fair determination would not be possible without an oral hearing.

332. Where either party submits that it wishes to use the oral hearing procedure within the allocated timeframe, the Chair of the Tribunal constituted to deal with the matter on the papers, or where no Tribunal has been constituted, the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has been involved in any previous proceedings relating to the case) will then determine whether or not to grant the requested oral hearing in accordance with the criteria outlined at paragraph 5.7.6 of the Code.

Paper based hearings

333. The paper-based hearing is the most efficient and expeditious means of reaching a decision in respect of:

- whether the breaches should be upheld on the balance of probabilities in light of the evidence presented by the parties or the facts alleged found proved, and
- where any breaches are upheld, the potential sanctions to be imposed, if any, based on an assessment of the case in the round.

334. While paper-based hearings focus on the documentary evidence gathered during the investigation and any written representations submitted by the relevant provider, there is an opportunity for the relevant provider to make oral representations to a Tribunal, at the paper based hearing. Any oral representations will be considered by the Tribunal as part of the decision-making process. However, neither party may make oral representations where the matter is being considered by a single legally qualified CAP member.

Single legally qualified CAP member

335. In suitable cases it may be appropriate for a single legally qualified Code Adjudication Panel decision maker to adjudicate on a matter. Having the option for a single decision maker to decide paper-based hearings simplifies and speeds up the enforcement process

as well as reduces any administrative charges that may be payable by the relevant party. A single legally qualified CAP member's decision can be reviewed under Code paragraph 5.10.

336. The PSA will indicate whether it considers that any matter may be suitable for consideration by a single legally qualified CAP member within the enforcement notice. Following the issue of an enforcement notice and receipt of the relevant party's response, (or lack of a response within the allotted deadline), the PSA will decide whether a matter is suitable for adjudication by a single legally qualified CAP member by considering the case severity and/or its complexity.

337. A single legally qualified CAP member may impose any combination of the sanctions set out in paragraphs 5.8.5(a) - (d) and 5.8.5(i). The types of cases where the PSA would decide to use a single legally qualified CAP member include, but are not limited to, those that are more administrative in nature, such as a failure to keep registration information up to date, or a failure to comply with a sanction, and/or failure to pay an administrative charge where a prohibition order is not being sought.

338. As there is no opportunity for oral representations to be made to the single legally qualified CAP member, a relevant party who intends to make oral representations at the paper-based hearing, may request that the case is dealt with by a Tribunal instead when responding to the enforcement notice.

339. The PSA will consider the suitability of a single legally qualified CAP member on a case on a case-by-case basis. When considering whether a case is suitable for determination by a single legally qualified CAP member, the PSA will have in mind the following non-exhaustive criteria:

    - the nature of the proceedings and whether there is any agreement between the parties
    - the complexity and seriousness of the case
    - the sanctions and/or sanction levels that are likely to be imposed in respect of the apparent breaches. Where a case involves apparent breaches that are likely to attract a total fine in excess of £250,000, the PSA will not consider it to be suitable for a single legally qualified CAP member hearing (see section 16 on sanctions for further details on applicable fine levels).

Whether the relevant party has indicated that it would like to make oral representations and/or likelihood of there being any need for, oral representations

- any evidence including expert evidence that suggests that the issues are more serious than originally understood
- whether there are any other relevant considerations that make the matter suitable.

340. The PSA will confirm to the relevant party prior to scheduling the matter for a hearing that it is of the view that it is appropriate for a single legally qualified CAP member to determine the case. Should the relevant party raise any objections or challenges to the proposed course of action, the PSA will take these into account and decide whether it remains appropriate for the matter to be heard in this way.

341. When considering a matter, the single legally qualified CAP member may instruct that a matter is referred to a full Tribunal for final consideration. This will be in circumstances where the single legally qualified CAP member is of the view that due to the severity of the breaches a higher sanction should be imposed, but the single legally qualified CAP member is not permitted to impose those sanctions under paragraph 5.8.3 of the Code.

342. Should this occur, the single legally qualified CAP member will adjourn the matter and will provide reasons for the decision to refer the matter to a full Tribunal. The PSA will provide any relevant provider with the reasons and will then proceed to schedule the matter for consideration before a fully constituted Tribunal.

Service and proceeding in absence

343. As a preliminary issue, the Tribunal or the single legally qualified CAP member (as applicable), will consider whether the enforcement notice and notice of the proceedings have been properly served on the relevant party, except in circumstances where the relevant party is present at the paper-based hearing before a full Tribunal in order to make oral representations.

344. In considering whether service has been effective, the Tribunal or single legally qualified CAP member will first consider whether the enforcement notification has been properly served on the relevant party. It will then consider whether the relevant party has been given notice of the date and time of the hearing and notified about the format of the Tribunal, i.e., whether the hearing will be conducted in person or conducted remotely using a video conferencing service, and whether the hearing will be in front of a single legally qualified CAP member or a Tribunal. The PSA will need to demonstrate that it has used reasonable endeavours to deliver the enforcement notification and that it has subsequently given notification of the time and date and format of the Tribunal to the relevant party.

345. The following process gives an example of what is likely to constitute reasonable endeavours:

- sending the enforcement notification to the registered email address(es) the relevant parties has entered on the PSA register. The PSA will endeavour to obtain a delivery and read receipt.

- posting the enforcement notice to the registered address the relevant party has entered on the PSA register via first class signed-for delivery, or equivalent, and/or on an associated individual (where, for example, enforcement action is being taken against an individual)

- calling the relevant party using the registered contact numbers the PSA has on its register to check that they have received the communication (leaving a message where it is an available option).

346. A record of all means used to deliver the communication and all attempts to contact the relevant party will be maintained and will be provided to the Tribunal or single legally qualified CAP member for evidential purposes.

347. The PSA will contact all parties using the contact details that have been provided by relevant providers on the PSA registration system. It is the responsibility of the relevant party to ensure that it registers and maintains the correct registration details on the PSA's registration system in line with paragraph 3.8.6 of the Code.

Deciding whether to proceed in absence

348. If the Tribunal, or single legally qualified CAP member, is satisfied on the issue of service, it must then decide whether to proceed in the provider's absence, having regard to all the circumstances of which the Tribunal or single legally qualified CAP member is aware.

349. Tribunal members have an obligation to ensure that hearings are conducted properly, fairly and in accordance with good practice and the law. Each case must therefore be dealt with in the most expeditious manner compatible with the interests of justice and in accordance with the provisions of the Human Rights Act 1998. This is relevant to the case as a whole, as well as to the discrete issue of whether it is fair to proceed in the relevant provider's absence.

350. A paper-based hearing may proceed in the absence of the relevant party provided the single legally qualified CAP member or Tribunal is satisfied that it is fair to proceed in the absence of the relevant party. In considering whether it is fair to proceed, the single legally qualified CAP member will consider the following non-exhaustive list:

- whether there is any good cause for the relevant provider's absence including whether they are content for the hearing to proceed without them
- whether there is any indication that adjourning the matter would secure the attendance of the relevant provider.

351. The case will be determined by the single legally qualified CAP member or Tribunal as it sees fits in the absence of the relevant party where it is appropriate to do so, having considered fairness and the rights of the parties. The single legally qualified CAP member or Tribunal must also avoid drawing any improper conclusions from the absence of the provider. It must not treat the relevant party's absence on its own as an admission that a breach or breaches are well founded, though it will generally be the case that where the provider has deliberately failed to engage with the PSA this will be considered an aggravating factor. If the single legally qualified CAP member or Tribunal decides that a hearing should take place in the absence of the relevant party, the decision reached and the reasons for doing so should be clearly recorded.

Postponements and Adjournments

352. A relevant party may apply for a postponement or an adjournment at any time in advance of the hearing. The PSA may also apply for an adjournment at any time in advance of the hearing. Applications for postponements or adjournments should be made promptly and in writing where possible. Where the Tribunal bundle (referred to in paragraph 326 above) has not yet been provided to the three Tribunal members selected from the Code Adjudication Panel or a single legally qualified CAP member, any application by a relevant party for a change to the date and/or time of the scheduled hearing will amount to an application for a postponement. Applications for a postponement will be dealt with administratively by the Code Adjudication Panel Secretary as a listing matter. Once the Tribunal bundle has been provided to the CAP member(s) any application for a for a change to the date and/or time of the scheduled hearing by a relevant party or the PSA will amount to an application for an adjournment and will be considered by the selected Chair of the Tribunal or single legally qualified CAP member.

353. Where the PSA seeks an adjournment, it will seek the relevant party's view as soon as possible, and provide the Chair of the Tribunal or single legally qualified CAP member with the relevant party's response, if there is any. Where the relevant party is seeking an adjournment, the PSA will notify the relevant party as to whether it objects or not and the reasons for this. A copy of this correspondence and any further response from the relevant party will be provided to the Chair of the Tribunal or the single legally qualified CAP member.

354. The PSA anticipates that granting of adjournments will be exceptional. Delays caused by a party's own failure to act promptly (for instance, in seeking information or professional advice) or unavailability of a particular individual during a response period, will not ordinarily justify an adjournment. An adjournment will only be considered reasonable in circumstances where it is due to factors beyond the reasonable control of the parties and as a result, the Tribunal or single legally qualified CAP member would be unable to fairly adjudicate on the issues before it.

355. Where a party can satisfy the Chair of the Tribunal or single legally qualified CAP member that the circumstances justify an adjournment, the Chair of the Tribunal or single legally qualified CAP member may grant it. The Chair of the Tribunal or single legally qualified CAP member may issue directions upon an adjournment as they see fit in order to ensure that the case is ready to be heard as soon as is possible.

Oral representations based on the papers

356. In any case where an enforcement notice or an interim enforcement notice has been issued by the PSA under paragraphs 5.4.4 or 5.6.4(a), or a review is sought under paragraph 5.10.1, the relevant party can elect to attend the paper-based hearing to make oral representations to the Tribunal on the day of the hearing. Oral representations are not available for single legally qualified CAP member hearings.

357. Where a case is to be determined by a single legally qualified CAP member in accordance with paragraph 5.4.8 and the relevant party wishes to make oral representations, it may request that the case is dealt with by a Tribunal instead to enable such representations. Such a request will be considered at first instance by the PSA. The PSA will take into account the non-exhaustive considerations mentioned above in paragraph 339 as well as whether it is fair in the circumstances of the specific case to proceed without taking into account oral representations, in order to determine whether a Tribunal should be constituted.

358. In all hearings, apart from those scheduled before a single legally qualified CAP member, it is also possible for the relevant party and the relevant members of the PSA who conducted the investigation to join the hearing remotely by video or telephone using Microsoft Teams or another suitable means of teleconference. Where the relevant party chooses to participate remotely, test calls between a member of the PSA and the relevant party may be conducted prior to the hearing upon the relevant party's request to ensure that any technical difficulties are resolved in advance and participants can engage fully in the process. Every effort will be made to ensure that the usual requirements for a fair hearing will be met, notwithstanding the fact that the hearing is taking place remotely.

359. Oral representations offer a chance for the relevant party to clarify to the Tribunal in person the facts of the case and the response that it has submitted within the papers. It is also the Tribunal's opportunity to explore and ask questions to gain a fuller understanding of the issues involved and of the actions of the parties concerned. Due to the nature of the clarification that may be useful to the Tribunal, it is preferable for a director or employee with direct knowledge of the promotion and operation of services, or alternatively a person responsible for compliance with the Code, to attend.

360. Oral representations at a paper-based hearing should not be confused with an oral hearing. Oral representations are an opportunity for the relevant party to provide any further explanation of their case, particularly to emphasise those parts that it considers important to highlight to the Tribunal and to clarify any factual issues that remain unclear. The relevant party can also use the opportunity to clarify its observations or submissions (or make submissions if not previously done) on the breaches and sanctions recommended by the PSA.

361. Adducing new evidence will not normally be permitted during the course of oral representations at a paper-based hearing. However, the Tribunal will have the discretion to permit such evidence subject to the requirements of relevance and fairness. Where significant and /or voluminous new evidence is considered admissible by the Tribunal at this stage the Tribunal should also consider whether an adjournment of the hearing is necessary. Where the decision to adjourn the hearing is made for this reason, this may result in additional administrative costs being incurred by the relevant party responsible for adducing the new evidence at this stage of the proceedings.

362. Oral representations at a paper-based hearing are not expected to exceed 30 minutes. However, where a relevant party is of the view that it needs more time to make such representations, the relevant party should make this clear within its response to the

enforcement notice, including an explanation of why more time is needed, and specifying the time period requested for representations. Upon receipt of an application from the relevant party, the Clerk to the hearing may extend the time allowed for oral representations by a further 15 minutes to 45 minutes in total. For any request for an extension period exceeding 15 minutes (45 minutes in total), the PSA will forward the request to the Chair of the Tribunal who will, prior to the hearing, decide on the appropriate length of time to be allocated for such representations.

363. Whether a relevant party has requested an opportunity to make oral representations or not, the Tribunal may have questions for the PSA arising from the evidence submitted. Prior to the Tribunal's adjudication, the Tribunal may require the PSA staff member with conduct of the investigation to attend in order to clarify the evidence gathered or submitted during the investigation.

364. The Tribunal may ask both the person attending the Tribunal on behalf of the relevant provider questions to clarify their representations and or to clarify any evidence which the relevant provider may have submitted. The Tribunal may also ask the PSA questions which seek to clarify the PSA's case. In the event that new evidence is introduced by the relevant party during oral representations, the Tribunal will also provide the PSA with an opportunity to respond to that evidence. Any oral representations made by the relevant party and any questioning of either the relevant provider or the PSA by the Tribunal should take place in front of all of the parties to the case. Once the oral representations have been made, both the PSA and the relevant party will leave the hearing and the Tribunal will commence its deliberations.

365. Where a relevant party is legally represented and requests that they are accompanied by their legal representative at the paper-based hearing, generally this will be permitted by the Tribunal. As soon as the PSA receives notification that a relevant party's legal representative intends to attend the paper-based hearing, either to make oral representations on the relevant party's behalf or to observe, the PSA will forward the request to the Chair of the Tribunal who will decide whether to allow the legal representative to attend the hearing and/or to make representations. Any oral representations that are given by the legal representative on behalf of a provider will not be considered as evidence and the representations should normally not last longer than 30 minutes, in line with the normal process for informal representations as set out above.

366. If the relevant party wishes to be accompanied by an individual of their choice, other than a legal representative, then this will be permitted at the discretion of the Chair of the Tribunal. The PSA will forward such a request to the Chair of the Tribunal in advance of the hearing who will decide whether to allow that individual's attendance at the forthcoming hearing. Should the Chair of the Tribunal permit the individual's attendance at the paper-based hearing, such an individual will only be able to address the Tribunal with the Tribunal's permission.

~~367. A relevant party subject to investigation and/or the PSA may make an application for the oral representations to be recorded and made available after the hearing. Applications must set out the reasons for the request and can be made up until the day of the hearing.~~

~~The Chair of the Tribunal will determine the application before the scheduled hearing commences. The Tribunal may of its own volition consider it necessary or appropriate for the oral representations to be recorded, and where this is the case, the Chair of the Tribunal will seek and consider the views of the parties before any recording commences.~~

To be deleted and replaced by:
A video recording will be made of all paper-based hearings at which oral representations are made. A transcript of the video recording will be prepared and checked for accuracy by the Clerk to the Tribunal and/or the Legal Chair of the Tribunal. Recordings and transcripts may be made available to the Relevant Party on request.

Determinations on the papers

368. When making an adjudication, the Tribunal or the single legally qualified CAP member will examine the facts and the evidence presented in the case report and any written submissions from the parties before them. The Tribunal will also consider any oral representations that were made by the parties. The Tribunal or single legally qualified CAP member will determine whether any breaches raised by the PSA have been established on a balance of probabilities. Where a Tribunal is sitting, it is not necessary for all three members to have a unanimous view, it will be sufficient for a determination to be made by a majority view.

369. The Tribunal or single decision maker will consider the reasons given by the PSA for alleging that the breach has occurred, referring to any evidence that it considers relevant. They will consider any response given by a relevant party and examine the information supplied by network operators and/or intermediary providers, referring to any evidence that it considers relevant. They will expect the PSA to have made all reasonable enquiries for information and evidence held by the network operators, intermediary providers and/or merchant providers during the course of its investigation.

370. Where breaches are disputed, the legal burden of proof in relation to those breaches remains with the PSA. However, where a provider makes its own assertion of fact the evidential burden of proof (i.e. sufficiency of the evidence) in relation to that assertion will rest with the provider. The Tribunal or single decision maker will examine the evidence using the standard of proof applicable with civil law cases: that is on the "balance of probabilities".

371. Where breaches are admitted, the Tribunal or single legally qualified CAP member will consider the facts, assess the PSA's interpretation of the Code and consider the relevant provider's admissions. If the Tribunal or single legally qualified CAP member is of the view that the relevant party's admission is unequivocal as to the facts, it will uphold the breach.

372. In all other cases, the Tribunal or single decision maker will consider the written submissions made by both parties and, in the case of the Tribunal only, will consider any oral representations made by the parties, and consider whether it is more likely than not that the breach has occurred. This does not mean that they weigh up one set of submissions against the other; rather, they consider all the submissions, and the evidence in support of them, to determine if it is more likely than not that the alleged breach has

occurred. The admission of late or further evidence shall be a matter for the Tribunal or single decision maker, subject to the requirements of relevance and fairness.

373. Tribunals and the single legally qualified CAP member are supported by a clerk and the panel secretary. The clerk assists with procedures and the consistent application of the PSA's sanctions policy and takes a record of the matters discussed and decided, and assists in drafting full written decisions. The clerk also maintains a databank of key decisions affecting the interpretation of the Code, to ensure there is consistency in the approach taken by Tribunals and single decision makers. The panel secretary provides administrative support to the Tribunal but plays no part in the adjudicatory process.

Expert evidence on the papers

374. In their response to the enforcement notice, a relevant party may include written evidence from an expert (either internal or external), including technical evidence and evidence from an auditor or skilled person. Where such evidence is provided, in order for a Tribunal, or the single legally qualified CAP Member, to give weight to the evidence it should as a minimum fulfil the following criteria:

- the expert's relevant qualifications and present employer should be stated
- the expert should list what material they have been supplied with and relied upon for the purposes of giving their view
- where the expert is of the view that a technical matter was the cause of a breach, the expert should give full details of the known ways in which such a technical matter might arise. The relevant party's evidence should provide factual details which support the explanation(s) offered and set out any remedial or investigative steps undertaken in respect of the technical matter
- where there is a range of opinion on the matters dealt with in the report, the expert should summarise the range of opinions; and give reasons for their own opinion
- the expert should make it clear when a question or issue falls outside their expertise; or when they are not able to reach a definite opinion, for example because they have insufficient information
- the expert should state who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision, and
- the report should contain a statement that the expert is aware of these requirements.

375. Where the expert evidence submitted by either party gives rise to an issue which is significant, and in the PSA or relevant party's view cannot properly be resolved by the Tribunal or single decision maker simply by reading the relevant party's evidence and the PSA's evidence, either party (or both) may consider it appropriate to exercise the right to

request that the case is determined through an oral hearing rather than a paper-based hearing. Any such request must be made within the prescribed timescales. In addition, the expert evidence might reveal that the issues are potentially too serious to be dealt with by a single legally qualified CAP member, and that a fully constituted Tribunal should be convened instead.

14. Oral hearings

376. Instead of a case being determined on the papers, it is possible in certain circumstances to request that the matter be determined by way of an oral hearing. Oral hearings perform the same function as a paper-based hearing and serve to reach a determination on:

    - whether the breaches or facts alleged have been found proved on the balance of probabilities considering all of the evidence, and
    - where breaches are upheld, the potential sanctions to be imposed, if any, based on an assessment of each breach and the case in the round.

377. Oral hearings can be requested by either the relevant party or the PSA when an enforcement notice has been issued by the PSA under Code paragraph 5.4.4, and a decision has not yet been made by a Tribunal in respect of that enforcement notice.

378. Oral hearings can also be requested where the relevant party wishes to seek a review of any determination made by a Tribunal under Code paragraph 5.10.1, and a review has not previously been carried out in respect of that determination. In addition, under Code paragraph 5.10.7, the Tribunal may, of its own motion, decide to convene an oral hearing.

379. In both of these situations, it is important to note that oral hearings can only be requested where there are serious and complex issues to be determined. As such, there is no general or automatic right to an oral hearing. Within any written application for an oral hearing, the relevant party or the PSA, must explain why there are serious and complex issues to be determined and why a fair determination would not be possible without an oral hearing.

380. The Chair of the Tribunal constituted to deal with the matter on the papers or, where no Tribunal has been constituted, the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has been involved in any previous proceedings relating to the case) will then determine whether or not to grant the requested oral hearing.

381. An oral hearing may also be required by an associated individual where a Tribunal is minded to impose a prohibition under Code paragraphs 5.8.5(f) and 5.8.5(g) either following the PSA's recommendation or by its own volition. In these circumstances the associated individual has an automatic right to an oral hearing providing that the oral hearing is applied for in line with paragraph 5.7.8 of the Code.

382. Oral hearings should be sought as soon as possible following the issue of an enforcement notice or publication of a Tribunal decision (where a review is sought) or notice of the Tribunal's intention to impose a prohibition under Code paragraph 5.7.6(b).

383. It is important for a relevant party or associated individual to seek an oral hearing swiftly to ensure that any issues in the market can be resolved quickly, effectively and fairly, and an appropriate regulatory outcome can be achieved as quickly as possible. For this reason, a decision as to whether an oral hearing is required must be made (by way of an application by the relevant party) within ten working days from issuing the enforcement notice or publication of a Tribunal decision or notice of the Tribunal's intention to impose a prohibition under Code paragraph 5.7.6(b), subject to any extensions or directions issued by the PSA altering the period of response to the enforcement notice (up to a maximum of 20 working days (Code paragraph 5.4.5)).

384. If an oral hearing is granted, the PSA will give the relevant party reasonable notice of the date listed. The relevant party is entitled to appear at the oral hearing in person and make representations, or to instruct a representative to do so on its behalf. The PSA will attend the oral hearing to present its case and may instruct a representative to act on its behalf.

385. If an oral hearing is not granted, a written determination outlining the reasons given by the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has been involved in any previous proceedings relating to the case) will be provided to the relevant party and the PSA.

386. In the case of a review under paragraph 5.10.7 of the Code, as noted above, it is possible for the Tribunal of its own motion to decide to convene an oral hearing. The Tribunal will determine that it is appropriate to hold an oral hearing where it considers the matter is serious and/or complex and it is not possible to understand the issues or reach a fair determination without convening an oral hearing. The Tribunal will have regard to the fact that a relevant party found to be in breach of the Code and/or subject to sanctions may be invoiced for the administrative and legal costs of work undertaken by the PSA. These costs are likely to be significantly higher where the oral hearing procedure route is used.

387. Non-exhaustive examples of the type of circumstances where a Tribunal might decide to convene an oral hearing in respect of a review are:

- the issues to be determined are serious and/or complex such that they cannot be properly understood without oral evidence from witnesses
- there are serious issues of credibility that need to be explored further through oral evidence and examination
- the Tribunal considers that it is otherwise in the interests of justice or fairness to convene an oral hearing as opposed to dealing with the matter on the papers.

Pre-hearing process

388. Paragraphs 5.7.6 to 5.7.19 of the Code set out the key requirements relating to the convening of oral hearings. While the PSA will arrange the hearing and carry out the

administration of the process, responsibility for ensuring (through the use of effective case management directions) an efficient and effective process resides with the Chair of the Tribunal. Any concerns that due process is not being followed can be set out in writing to the Chair of the Tribunal, who on considering those submissions may make directions in accordance with the powers outlined in the Code.

389. The Chair of the Tribunal will establish a clear timeline for the oral hearing using directions in accordance with Code paragraph 5.7.11, setting a date for the hearing to suit all parties, and indicating clear milestones for:

- the exchange of statements of case
- the admission of facts before the hearing
- the disclosure of documents
- the provision of expert reports
- the exchange of witness statements
- the preparation of agreed bundles of documents
- the submission and exchange of outline arguments
- the imposition of any interim measures (including the provision of security for the administrative charges of the PSA)
- the date by which the respondent must be notified in writing of the listing of the oral hearing
- the date by which the respondent must inform the PSA in writing of whether they intend to appear in person at the hearing, and the name of any person who will be representing them at the hearing.

Any application for the hearing to be held in public should also be made at this stage.

390. The Chair of the Tribunal may convene a case management conference for the purpose of providing directions or may deal with directions by correspondence or phone, as they see fit.

Failure to cooperate on the part of the relevant party

391. Where the oral hearing is initiated by the relevant party and that party causes undue delay or otherwise is not cooperative with regard to the pre-hearing case management directions, the PSA may ask the Chair of the Tribunal to give directions for an expedited disposal of the case, and/or to strike out the relevant party's case in accordance with Code paragraph 5.7.17. Such a request will be copied to the relevant party. Where the Chair of the Tribunal considers that such an order ought to be made, the relevant party will be invited to make any final representations in writing within five working days. This is to

avoid any further undue delay to the process. The expedited hearing will then take place based on the papers where possible to do so.

The oral hearing

392. The hearing begins with short introductory remarks from representatives of both the PSA and the relevant party. The former will outline the background of the case, the agreed facts and where any central disputes arise. The representative for the relevant party may provide an overview of the disputed facts and an outline of the defence.

393. In respect of alleged breaches of the Code, the PSA shall outline the grounds of the case, and call such witnesses and refer to such documents as it is entitled to do.

394. The relevant party shall then be entitled to respond to the case put by the PSA and to call such witnesses or present any written statements or other documents as he is entitled to do.

395. A witness in person may be cross-examined. A witness who has been cross-examined may be re-examined. The Chair of the Tribunal may question any witness at any time and may invite questions from the other Tribunal members.

396. The representative for the PSA shall then be entitled to address the Tribunal. The representative for the relevant party shall be entitled to reply and will make the final submissions to the Tribunal.

Expert representations

397. Where the case is proceeding by way of oral hearing, the Chair may give directions in respect of expert evidence. Such directions may include, but are not limited to:

    - directions to allow each party to rely on specified expert evidence
    - directions to allow each party to put written questions to the other party's expert, with responses to be supplied by a specified deadline, and/or
    - directions to require the experts to convene to discuss the issues, in order for them to produce a written statement which clarifies the extent of the agreement between them; the points of (and short reasons for) any disagreement; the action, if any, which may be taken to resolve any outstanding points of disagreement; and any further material issues not raised and the extent to which these issues are agreed.

398. Experts will give evidence at the hearing in the same way as other witnesses, subject to any directions previously made by the Chair of the CAT requiring their evidence to be given in another way or otherwise limiting their evidence.

15. Assessing potential breaches and imposing sanctions

The purpose of imposing sanctions

399. Sanctions may only be applied in cases where a Tribunal or a single legally qualified CAP member has determined that a network operator, intermediary provider, or merchant provider has conducted its business, or operated a service, in breach of one or more standards or requirements set out in the Code.

400. Each case is decided on its own merits and sanctions applied may vary depending on the Tribunal's or single legally qualified CAP member's analysis of impact and culpability, service revenue data, actual or potential consumer harm and any mitigating and/or aggravating factors. Some, or all, of the sanctions can be applied in any case, depending on the circumstances. The CAT will take into consideration the principles of good regulation when imposing sanctions: that any regulation, or indeed any action to enforce regulations, should be transparent, accountable, proportionate, consistent and targeted.

401. When applying sanctions, the Tribunal or single legally qualified CAP member will be guided by:

- the need to protect consumers and build consumer confidence in the premium rate services market (including the need for any harm caused to be remedied where this is practicable)
- the need to ensure as far as is possible that the breach of the Code in question will not be repeated by the party in breach, or others in the industry
- the need to ensure as far as possible that the party in breach does not benefit from that non-compliant conduct
- the need to maintain high standards of compliance within the industry to ensure due diligence, good regulation and confidence inthe industry is maintained
- the need for sanctions to be appropriate and to be targeted at the point in the value-chain that is most likely to ensure continued compliance with the Code
- the degree of responsibility for provision of the service in breach, or for managing the provider of such a service
- the fair distribution of responsibility for consumer protection and Code compliance across the value chain

- the need to ensure sanctions are proportionate having regard to the desire to achieve compliant innovation in the market, and
- the need to provide clarity and regulatory certainty as to the way the offending service, and services of a similar nature, should be delivered in future.

Sanction-setting process

Establish breach severity	Initial assessment of sanctions	Final assessment of sanctions (proportionality)
Assess seriousness category for each breach by reference to: - the descriptors, and - the factors (these assist in interpreting the descriptors) and any factors listed in the stage 3 column that are directly relevant to the breach.	Set initial/indicative sanctions: 1. Consider appropriate sanctions, except fine. Sanctions can relate to specific breaches (e.g. remedy consent to charge breach) or to all breaches combined (e.g. bar on a service or compliance advice requirements). 2. Consider need for fine (based on seriousness rating of breaches and impact of other sanctions, e.g. bars and refunds), and if so, what level of fine should be applied to all the breaches* or as applied to each breach - up to the maximum for each seriousness rating.	Consider the following in relation to the breaches or case: 1. Aggravating (including breach history) and mitigating factors - revenue generated (identifying relevance to breaches – e.g. revenue may not be relevant to failure to register or providing misleading info to PSA) - overall case seriousness as a result of breaches and factors above - need to remove financial benefit made through the breaches and/or need to deter future commission of those breaches - impact of the totality of sanctions on the provider balanced against achieving sanctions objective ("striking fair balance"). 2. Adjust fines up or down for each breach as appropriate, giving the adjustment figures for each breach (as relevant) 3. Adjust any other proposed sanction as appropriate (and state the adjustment).

*Where there is an early view achieved that the seriousness of the breaches combined will justify a fine of £250,000 or below, a fine need not be applied to each breach. Instead, a single fine of £250,000 or under for all breaches should be set.

Establishing whether breaches have occurred

402. The provisions of the Code will be interpreted by reference to the common usage of words written in the Code. The Tribunal or single legally qualified CAP member may also make reference to any definitions found in section D1 of the Code and any Guidance published, from time to time, by the PSA. The Tribunal or single legally qualified CAP member will establish whether a breach of the Code has occurred in line with the process and considerations set out at paragraphs 368 – 372 above.

403. The Tribunal or single legally qualified CAP member will determine each breach separately, and when it has made a decision, it will declare a breach either "upheld" or "not upheld".

404. Where the Tribunal or single legally qualified CAP member considers that a breach is proven but substantially overlaps with another upheld breach raised in enforcement notice, the Tribunal or single legally qualified CAP member will make a determination to this effect, which will be reflected in the sanctions imposed.

Establishing the severity of the breaches

405. If the Tribunal or single legally qualified CAP member determines that a breach has occurred, it can apply a range of sanctions depending on the seriousness with which it regards the breaches and taking all relevant circumstances into account. The Tribunal or single legally qualified CAP member must have regard to these Supporting Procedures when considering the seriousness of the breaches and determining which sanctions (if any) to impose (Code paragraph 5.8.5). The Tribunal or single legally qualified CAP member is not bound by the PSA's recommendations and may impose different sanctions, or sanctions at a higher or lower level than those recommended by the PSA. However, not all sanctions are available to a single legally qualified CAP member to impose as set out in paragraph 5.8.3 of the Code.

406. The severity level of the individual breaches and the case as a whole are assessed on a four-step scale:

- minor
- significant
- serious
- very serious.

407. The PSA considers any breach of the Code to warrant attention and remedial action so as to improve compliance standards. Severity levels associated with particular service characteristics may vary from case to case, depending on the circumstances.

Descriptors of seriousness

408. In deciding which level of severity is most appropriate, the Tribunal or single legally qualified CAP member will consider the descriptors set out below. The Tribunal or single legally qualified CAP member will consider factors relevant to the four categories that follow to assess which seriousness category a breach falls into:

    A. the impact (or potential impact) of the breach

    B. the nature of the breach

    C. whether the breach was deliberate or reckless

    D. whether the breach was negligent.

409. Factors relevant to A. (the impact of a breach) may include:

    - the financial harm or risk of financial harm to consumers and the level of actual or potential financial gain as a result of the breach
    - the impact or potential impact on the average consumer's ability to make a free and informed transactional decision and/or the impact on the enforcement of the Code in order to protect the interests of consumers and other industry participants
    - the extent of other harm, distress or inconvenience caused to consumers, and the potential for further consumer harm, including any effect on children or others who may be in a position of vulnerability where a breach of the vulnerability standard at paragraph 3.5 is upheld. Where a breach of the Code appears to have a significant impact on people in a position of vulnerability, the severity level given to the case overall is likely to be "serious" or "very serious", depending on the facts of the case.
    - the potential for loss of confidence by consumers in premium rate services in general.

410. Factors relevant to B. (the nature of a breach) - the term "nature" focuses on the circumstance in which the breach occurred and has regard to the underlying need for relevant rules and provisions. Such factors may include:

    - the purpose for which the specific regulatory standards and requirements, or Guidance that were not complied with were created
    - the frequency and duration of the breach
    - the adequacy of the business systems and controls as put in place by the relevant party, their development, operation and maintenance
    - whether senior management was aware or should have been aware of the breach

- the extent to which the service is able, through its design and operation, to deliver its purported value to consumers.

411. Factors indicating C. (a breach was deliberate or reckless) may include:

- the breach was intentional, in that it or its consequences, were intended or foreseen
- the breach was reckless, in that the relevant party was aware of the risk that its actions could result in a breach or in consequences that amount to a breach, and took such action regardless
- the revenue of the relevant party was generated largely or solely as a result of the breach
- the relevant party has failed to properly implement compliance advice provided by the PSA, and/or there has been a failure to respond to an enquiry letter without good reason and/or to there has been a failure to comply with the terms of an action plan as set out in a warning letter
- the action or inaction resulting in the breach was not in accordance with the relevant party's internal procedures
- the breach was committed in such a way as to avoid or reduce the likelihood of detection
- those responsible were influenced to commit the breach because they thought it might not be detected or punished.

412. Factors indicating D. (a breach was negligent) may include:

- the relevant party gave due consideration to its relevant obligations under the Code but failed to realise that its action or inaction would result in a breach
- the relevant party appreciated that their action or inaction might result in a breach and took reasonable steps to mitigate that risk but failed to meet the requirements under the Code
- the relevant party gave due consideration to its relevant obligations under the Code but the oversight, internal procedures, standards and/or controls it provided as a result were insufficient to prevent the breach.

Descriptions to be considered in establishing the seriousness of the breach

413. The Tribunal or single legally qualified CAP member will consider each breach that it has upheld and allocate a provisional severity rating for each breach, using the four categories set out within paragraph 408. In doing so, the Tribunal or single legally qualified CAP member will also be guided by the descriptors set out below and the factors set out above. These descriptors and factors are non-exhaustive and are not

binding on the Tribunal or single legally qualified CAP member, but are to support its assessment and serve as an aid to consistency. The Tribunal or single legally qualified CAP member will consider the descriptors and factors in the round. The descriptors should not be considered a tick box exercise. Where a Tribunal or single legally qualified CAP member considers, for example, four descriptors from the "minor" category to be appropriate and two descriptors from the "very serious" category, the breach can still be determined to be very serious by taking everything into account in the round as the following paragraph explains in further detail.

414. This section sets out a number of descriptors for each severity level. They are a set of factors that are more likely to be present, either alone or in combination, in cases of each level of seriousness. It is not necessary for all the listed descriptors to be present for a case to fall into a particular category of seriousness. They are intended to assist the Tribunal or single legally qualified CAP member in adopting a broad consistency of approach when assessing seriousness and are not binding on the CAT. In some cases, descriptors from more than one level of seriousness may apply and the facts of the case may, in some respects, fit more than one category of seriousness. The decision as to severity is ultimately left to the discretion of the Tribunal or single legally qualified CAP member following consideration of the facts, the context of the particular case and the impact and nature of the breaches.

415. The PSA considers that a breach of the regulatory standards and requirements as set out in Part 3 of the Code or the responsibilities and obligations in Part 6 of the Code may directly and/or indirectly affect consumers. For example, where a network operator or intermediary provider fails to meet its responsibility to conduct due diligence or undertake adequate risk assessment and control of merchant providers, that breach of the Code may indirectly impact on consumers when non-compliant services are permitted access to the network and consumers are harmed as a result. Evidence of any indirect impact on consumers may be presented to a Tribunal or single legally qualified CAP member when addressing breaches of standards and requirements under Section 3 or responsibilities and obligations in Section Six of the Code.

***Minor* descriptors:**

Scale	The breach directly or indirectly affected a limited number of, or no consumers. and/or
Consumer confidence	The breach is likely to have had little or no detrimental effect on consumer confidence in premium rate services. and/or
Cost to consumers	The cost incurred by consumers may be minimal. and/or
Revenue	The breach has the potential to generate only limited revenue streams. and/or
Value	The service is capable of providing the purported value to consumers and is designed to provide a legitimate product or service. and/or
Intent	The breach was committed inadvertently. and/or
Scope	The breach was an isolated incident and there is no evidence that it demonstrates a wider problem at the relevant party. and/or
Repeated	The breach was not repeated. and/or
Duration	The breach was of a short duration. and/or
Offence/vulnerability	The service has limited potential to cause distress or offence, or limited potential to take advantage of a consumer who is in a position of vulnerability.

*These cases involve breaches that are likely to be addressed through engagement via a warning letter. However, a CAT is free to assess the facts of each case and judge the matter to be "minor" where appropriate. The CAT may reduce the level of administrative charges in cases where it determines "minor" breaches could have been dealt with by other means.

***Significant* descriptors:**

Scale	The breach directly or indirectly affected a significant number of consumers. and/or
Consumer confidence	The breach is likely to have caused, or has the potential to cause, a drop in consumer confidence in premium rate services. and/or
Cost to consumers	The cost incurred by consumers is likely to be of significance to consumers. and/or
Revenue	The breach has the potential to generate inflated revenues for the service. and/or
Value	The service has some scope or ability to deliver the purported value to consumers. and/or
Intent	The breach was committed negligently. and/or
Scope	The breach may not be an isolated incident and may indicate a wider problem at the relevant party. and/or
Repeated	The breach was not repeated. and/or
Duration	The breach was of significant duration. and/or
Offence/vulnerability	The service has potential to cause distress or offence, or the potential to take advantage of a consumer who is in a position of vulnerability.

***Serious* descriptors:**

Scale	The breach directly or indirectly affected a high number of consumers. and/or
Consumer confidence	The breach has damaged consumer confidence in premium rate services. and/or
Cost to consumers	The cost incurred by consumers may be high. and/or
Revenue	The breach is likely to have generated higher revenues, as a result of the breaches. and/or
Value	The service has very limited or no scope or ability to provide the purported value to consumers. and/or
Intent	The breach was committed intentionally or recklessly. and/or
Scope	The breach indicates a wider problem in the procedures and controls of the relevant party. and/or
Repeated	The breach was repeated. and/or
Duration	The breach was of a substantial duration. and/or
Offence/vulnerability	The service is likely to cause distress or offence, or likely to take advantage of a consumer who is in a position of vulnerability.

***Very serious* descriptors:**

Scale	The effect of the breach was widespread and/or affected all users of the Service. and/or
Consumer confidence	The breach has severely damaged consumer confidence in premium rate services. and/or
Cost to consumers	Consumers have incurred a very high cost, or a cost for a service that has provided little or no value, or the service has the potential to cause consumers to incur such costs. and/or
Revenue	The service was designed with the specific purpose of generating higher revenues through deliberately misleading, deceptive or unfair practices. and/or
Value	The service is incapable of providing the purported or any value to consumers. and/or
Intent	The breach was committed intentionally or recklessly and/ or demonstrates a fundamental disregard for the requirements of the Code. and/or
Scope	The breach demonstrates a systemic issue with the procedures and controls of the relevant party. and/or
Repeated	The breach was repeated. and/or
Duration	The breach was of a very lengthy duration and/or is still continuing. and/or
Offence/vulnerability	The service has caused distress or offence or has taken advantage of a consumer who is in a position of vulnerability.

Setting sanctions

Initial indication on appropriate sanctions

416. The Tribunal or single legally qualified CAP member will then indicate what sanctions it considers appropriate from the range available. Where a fine sanction is considered appropriate, they will indicate what the starting fine amount should be.

Proportionality adjustment: factors considered

417. The Tribunal or single legally qualified CAP member will then apply its mind to proportionality and consider various factors that may impact on the initial assessment of appropriate sanctions, including where relevant the following:

A. Aggravation and mitigation

418. The Tribunal or single legally qualified CAP member will consider any aggravating and mitigating factors. There may be factors that are relevant to the breaches raised or they may be relevant to the general conduct of the relevant party and the case as a whole. Where the factor goes to the breach or to one or more of the breaches themselves , the Tribunal or single legally qualified CAP member will consider whether it is appropriate to adjust the severity rating of the upheld breach(es) or the level of sanctions at the indicative sanctioning stage to reflect the relevant aggravating or mitigating factors.

419. Where there are multiple breaches, the Tribunal or single legally qualified CAP member may find that certain aggravating or mitigating factors are of relevance to all of the breaches. Where it is the latter, the Tribunal or single legally qualified CAP member may, at the proportionality consideration stage, consider adjusting some or all of the sanctions that were set at the indicative sanctions stage as it deems appropriate in order to reflect the non-breach related aggravating and mitigating factors and achieve sanctioning objectives that are also proportionate at the final sanctioning stage. The Tribunal or single legally qualified CAP member may find supplementary aggravating and/or mitigating factors in addition to those advanced by the parties.

420. Where there are factors of aggravation and mitigation considered together, these may be balanced by the Tribunal or single legally qualified CAP member. Any adjustment to the overall assessment of the case must ensure the final decision remains proportionate to the overall impact and detriment caused, or potentially caused, to consumers and/or regulatory enforcement.

Aggravation

421. The following provides a non-exhaustive list of factors which may warrant an increase in the severity level and the sanctions to be imposed (aggravation):

- failure to follow available Guidance, or failing to take appropriate alternative steps, which, had it been followed, would have meant the breach was unlikely to have occurred

- continuation of the breach after relevant parties have become aware of the breach, or have been notified of the breach by the PSA
- the fact that the breaches occurred after a prior notice has been given to industry, such as the publication of a compliance update or an adjudication, in respect of similar services or issues
- the harm occurred following the supply of compliance advice to a provider where that advice has not been fully implemented
- any past record of the party, or of a relevant director, being found in breach may be considered relevant:
    - for breaches of the same nature
    - for any other breaches of the Code
- failure to fully co-operate with the investigation, including falsified, delayed or incomplete responses to information requests, which fail to meet the level expected by the PSA (see section 7 above).

Mitigation

422. The following provides a non-exhaustive list of factors which may warrant a decrease in the severity level and the sanctions to be imposed (mitigation):

- some, or all, of the breaches were caused, or contributed to, by circumstances beyond the control of the party in breach, except where they could reasonably have been prevented by meeting the standards and requirements set out in Part 3 of the Code or the responsibilities and obligations in Section 6 of the Code. For the avoidance of doubt, circumstances beyond the control of the party in breach do not include circumstances where other parties are engaged to promote or operate services on behalf of the party in breach.
- the network operator, intermediary provider, or merchant provider has taken steps in advance to identify and mitigate against the impact of external factors and risks that might result in the breach, and has notified the PSA of this action, and/or had sought compliance advice prior to launching the service
- the network operator, intermediary provider, or merchant provider has taken steps to end the breach in question and to remedy the consequences of the breach in a timely fashion, potentially reducing the level of consumer harm arising from the initial breach(es)
- the network operator, intermediary provider, or merchant provider has adopted a proactive approach to refunding users, including complainants, which is effective in relieving some consumer harm arising from the breach(es)

- the network operator, intermediary provider, or merchant provider has proactively engaged with the PSA in a manner that goes beyond the level of co-operation that is generally expected. Network operators, intermediary providers, or merchant providers who voluntarily provide information before it is requested, and/or who fully respond to requests for information far in advance of any specified deadline may be considered to have engaged in a manner that goes beyond the expected levels of cooperation.

- the network operator, intermediary provider, or merchant provider has taken action to ensure that the risks of such a breach reoccurring are minimised (including through a review and overhaul of its internal systems, where necessary) and that any detriment caused to consumers has been remedied

- the network operator, intermediary provider, or merchant provider has, in the course of corresponding with the PSA, admitted one or more of the alleged breaches raised against it.

423. Having decided on any applicable aggravating and mitigating factors, the Tribunal or single legally qualified CAP member must seek to reach a final assessment that is proportionate, ensures that compliance standards and behaviour remain high and that consumers are protected in the future. Sanctions ought to be set at an appropriate level, taking into account any aggravation or mitigation considered to have impacted the initial severity level of the breaches themselves.

B. Revenue

424. The Tribunal or single legally qualified CAP member will then consider the relevant revenue generated by theservice.

425. The Tribunal or single legally qualified CAP member will consider to what extent the level of revenue received by the relevant party was generated or potentially generated by the non-compliant conduct, and to what extent the revenue adequately reflects the measure of potential consumer or regulatory harm. As with aggravating and mitigating factors, revenue may be relevant to either specific breaches or to the case as a whole and therefore the considerations set out in paragraphs 418 and 420 above will also apply. The PSA will provide evidence to the Tribunal or single legally qualified CAP member to assist in any assessment of revenue. A relevant party should provide evidence in support of any argument by it, that the revenue was generated other than by the non-compliant conduct and that the Tribunal or single legally qualified CAP member should therefore not take it into account. In such circumstances, the relevant party should ensure they provide a clear breakdown of revenue by service and/or duration, with supporting evidence.

C. Overall case seriousness

426. Having decided on applicable aggravating and mitigating factors and any revenue flowing or potentially flowing from the breaches, the Tribunal or single legally qualified CAP member will decide the overall seriousness of the case. They will seek to reach an

overall assessment which is reasonable and proportionate, taking into account all the circumstances of the case.

D. Deterrence

427. The Tribunal or single legally qualified CAP member will consider the need to:

    a. ensure that a party is not seen to benefit financially from a breach of the Code, and

    b. achieve credible deterrence.

428. The Tribunal or single legally qualified CAP member will consider the relevant revenue and turn to consider whether the sanctions or range of provisional sanctions either alone or in combination are sufficient to reduce or eliminate the financial gain attributable to the breaches. A relevant factor for consideration will be whether penalties should be set at levels which, having regard to that revenue, will have an impact on the relevant party that deters it from misconduct in future and which provides signals to other providers that misconduct by them would result in penalties having a similar impact.

429. The Tribunal or single legally qualified CAP member will consider whether it is appropriate to uplift any financial penalty or combination of financial penalties to ensure that a provider does not profit from a breach of the Code. The Tribunal or single legally qualified CAP member will impose penalties that are appropriate and proportionate, taking into account all the circumstances of the case.

430. Where an investigation has been lengthy and as a result, relevant service revenue has been generated over a prolonged period, a Tribunal or single legally qualified CAP member has discretion to take only part of this revenue into account (though the Tribunal or single legally qualified CAP member may consider it an aggravating factor if a provider has continued a breach after it should reasonably have been aware of it). Conversely, where a service has only been in operation for a short time, a fine in the amount of the service revenue may not be sufficient to reflect the seriousness of the case (though the Tribunal or single legally qualified CAP member may consider it a mitigating factor where this is because a provider has pro-actively remedied the breach).

431. The Tribunal or single legally qualified CAP member will also consider the range of initial sanctions determined and whether they are sufficient, either alone or in combination, to deter future non-compliance by the provider in breach or by others. Where it is considered necessary and proportionate to do so, the Tribunal or single legally qualified CAP member may also uplift any financial penalty or combination of financial penalties in order to achieve the aim of deterrence. Similarly, it will consider whether any non-financial penalties indicated at the initial stage should be altered or strengthened in order to have greater deterrent effect. Some of the factors the Tribunal or single legally qualified CAP member may consider in determining whether it is necessary to achieve deterrence are:

- the provider already has a breach history and/or similar concerns have previously been raised with the provider. This may include concerns that have been raised with the relevant provider as part of any supervisory process, any engagement activity or through any previous enforcement cases (including those where a decision was made to take no further action.
- sanctions previously imposed in respect of similar non-compliance have failed to achieve any improvement in the relevant standards of compliance of industry
- there is a risk of similar non-compliance in the future by the party in breach or by other members of industry in the absence of a sufficient deterrent
- the sanction is too small to meet the objective of deterrence.

E. Totality of sanctions

432. The Tribunal or single legally qualified CAP member will then consider the effect of the sanctions decided individually and in combination and whether they are proportionate, taking into account the assessments made at all other stages above. The Tribunal or single legally qualified CAP member will decide the appropriate proportionality adjustments, if any, to be made to the initial sanctions assessment taking into account the outcomes of the assessments made at A. to E.

16. Sanctions

The range of sanctions available – paragraph 5.8 of the Code

433. The PSA has a range of sanctions which the Tribunal or single legally qualified CAP member can impose. These are set out at Code paragraph 5.8.5. The different sanctions enable the Tribunal or single qualified CAP member to impose sanctions that will achieve any desired regulatory outcome.

434. The Tribunal should be mindful of the overall impact a combination of sanctions (e.g. the fine, barring and refund provision sanctions) may have upon a service and/or the relevant party. The single legally qualified CAP member should also be mindful of the overall impact of sanctions although, however, it is not within its power to impose a prohibition, but there may be other case specific facts that both the single legally qualified CAP member and the Tribunal should take into account. For example, the relevant party may also already have incurred costs in taking remedial action on a voluntary basis. When imposing a combination of sanctions, the Tribunal or single legally qualified CAP will take into consideration all relevant circumstances and seek to ensure sanctions are appropriate and proportionate in all the circumstances.

435. The Tribunal or single legally qualified CAP member may give consideration to the sanctions imposed in previous adjudications for similar breaches of a similar severity rating. However, the Tribunal and single legally qualified CAP member is not bound by any previous adjudication and the sanctions imposed will depend on the particular facts of each case. The Tribunal or single legally qualified CAP member may therefore depart from the approach taken in previous cases. As such, the Tribunal or single legally qualified CAP member will not regard the amounts of previously imposed financial penalties as placing upper thresholds on the amount of any penalty. The key focus of the Tribunal or single legally qualified CAP member is to follow due process when determining effective sanctions in the case before them and to ensure that any sanction imposed is both appropriate and proportionate in the circumstances.

Formal reprimand and/or warning

436. These are distinct sanctions available to the Tribunal or single legally qualified CAP member. A formal reprimand is a severe reproof or rebuke. This is an indication of wrongdoing that usually warrants immediate and effective action by the relevant party in breach and potentially those associated with the provision of the service across the value chain.

437. A warning involves the declaration of words of caution, giving notice of concerns regarding a relevant party's conduct. This may involve a description of the object of concern and a call to act promptly, so as to avoid similar problems in the future. To ignore such a sanction may result in current, or future, services being investigated and higher penalties, if there are further adjudications against a relevant party.

Remedy the breach

438. Any breach, from "minor" to "very serious", will usually require some attention from the party in breach, and remedial action will be necessary in order to improve compliance standards. However, the Tribunal or single legally qualified CAP member can specifically require the relevant party to remedy the breach. Such an order may be made in any cases where there is any doubt that a breach has been fully and permanently remedied. It is likely to be especially relevant where there has been reluctance to make changes evidenced during the investigation. Where a relevant party has demonstrated an unwillingness or failure to understand how to comply with its obligations, the Tribunal or single legally qualified CAP may direct how the relevant party is to remedy the breach. In imposing a remedy the breach sanction, a Tribunal or single legally qualified CAP member will usually require a relevant party to provide evidence to the satisfaction of the PSA that a breach has been remedied.

439. Where this sanction is imposed, it is likely that some further inquiries will be necessary to make sure remedial action has been taken, and the service(s) are operating in compliance with the Code. It is in the relevant party's best interests to remedy breaches at the earliest opportunity after they have been identified, and providers should keep records of remedial steps taken, including evidence of their impact.

440. Where this sanction is imposed, the PSA is likely to initiate a new investigation raising a further breach (for non-compliance with a sanction) in the following situations:

- the relevant party explicitly refuses to take any steps to remedy the breaches
- there is evidence suggesting remedial action has not been taken, regardless of statements to the contrary being made by the provider, or
- there is a lack of evidence that remedial steps have been adequately implemented within a reasonable period of time (which may have been specified by the Tribunal or single legally qualified CAP member).

441. Depending on the nature of the breach and the immediacy of the required remedy, this sanction may be imposed alongside prohibitions or a bar on the service to give adequate time for remedial action to be taken or ensure that such action is taken promptly, while preventing the occurrence of any ongoing consumer harm.

Compliance advice and prior permission

442. Where a Tribunal or single legally qualified CAP member has concerns relating to potential consumer harm arising from the service, or similar services in future, it has the power to order a relevant party in breach to pursue and implement compliance advice (as set out in paragraph 5.8.5(c), or seek prior permission to operate a service from the PSA. Prior permission may be imposed in order to ensure current and future services are not operated, or launched, in a manner that is non-compliant with the Code.

443. Note that certain types of premium rate services may be more broadly considered by the PSA to pose a greater risk of harm to users because of their content; examples include live chat and gambling. These services must comply with Standards and Requirements in Section 3 of the Code. Separately, the PSA has the power to require specific services to seek written prior permission from the PSA before they operate, which may set further service-specific conditions on network operators, intermediary and merchant providers.

Compliance audit

444. A compliance audit is a thorough examination to a prescribed standard, by an independent party agreed by the PSA, of the internal procedures a network operator or intermediary provider or merchant provider has in place to ensure that it complies with its obligations under the Code. The PSA will usually require the independent party conducting the audit to be both competent and independent and they must normally be accredited and/or experienced in relevant auditing. All costs incurred in respect of the audit will be the responsibility of the party in breach.

445. Such standards will be set on a case-by-case basis, however, in every case the PSA considers that an audit will supply, as a minimum, comprehensive details of what evidence of the current status of the relevant party was examined by the auditor, the auditor's conclusions on the root causes of the breaches established by the PSA, and a comprehensive list of the auditor's recommendations to the relevant party. This will enable the PSA to establish if the audit was done to the required standard.

446. The compliance audit is intended to identify and address issues that may have led to non-compliance in the past and pre-empt future compliance issues to protect consumers. The sanction may be considered appropriate to use in cases where there is a breach history, or where there is evidence that the business systems adopted by the party in breach contributed to the non-compliance demonstrated within a service.

447. The definition and scope of the audit will vary on a case-by-case basis. The Tribunal, where it decides to impose an audit sanction, will generally look to set the broad parameters of the audit but will require the precise terms to be set by the PSA in a proportionate and targeted manner and through liaison with the provider. An audit may for example consider due diligence undertaken when a network operator or intermediary provider is making commercial arrangements for the provision of premium rate services, access to

telecommunications networks, or the technology required to operate premium rate services for the benefit of consumers. It may also consider staff training and a Network operator, intermediary provider, or merchant provider's understanding of the Code, as well as the development of new services and their compliant operation and promotion.

448. An audit can provide verification of compliance standards through a review of objectives, for example compliance with required processes, assessment of how successfully processes have been implemented, judgment on the effectiveness of achieving any define target levels, and provision of evidence concerning reduction and elimination of problem areas. An audit may not only report non-compliance and corrective actions, but also highlight areas of good practice and provide evidence of compliance to enable the organisation being audited to positively change their working practices as a result and achieve improvements.

449. The audit must be completed to the satisfaction of the PSA and must be sufficient to address the breaches of the Code identified by the Tribunal. Any recommendations must be implemented within a period specified by the PSA. Where remedial steps have been, or are being taken as a result of the audit, any breaches of the Code identified by the audit will normally be resolved without further investigation being necessary. However, a failure to follow any recommendation contained in the audit report without the prior approval of the PSA may be treated as a further breach of the Code in itself.

Barring of numbers and/or services

450. The Tribunal has the ability to impose bars on a network operator, intermediary provider or merchant provider. These can relate either to number ranges on which the service operates, and/or particular service types, and can be applied to some, or all, of the number ranges and/or service types, depending on the severity of the breach. The length of any bar is determined by the seriousness of the breach and all other relevant factors particular to the case. A bar may be imposed not only to prevent ongoing harm but may also be imposed as a sanction which is intended to deter future non-compliance, provided it is proportionate to do so.

451. A bar must be imposed for a defined period of time. This may be given in days, months or years; or it may be defined according to a specific action that the relevant party must do, such as taking remedial action, making a service compliant, or payment of an outstanding invoice for a fine or administrative charge owed to the PSA.

452. A bar may be particularly appropriate where there is any risk that the same type of harm may be ongoing or may re-occur, for instance, in the case of a subscription service where a serious or very serious breach has taken place that potentially affected consumers who are already subscribed to the service (not limited to those who have complained to the PSA). A Tribunal may take the view that a bar is appropriate in order to prevent the risk of those other subscribers being further impacted (e.g. being billed again before the breach is remedied). In such circumstances, a bar is likely to be imposed at least until the party provides evidence to the PSA that it has implemented compliance advice (e.g. to

unsubscribe consumers for whom it does not hold adequate evidence of consent) so that there is no risk of further harm to existing subscribers.

Prohibitions

453. The Tribunal may restrict the business operations of a relevant party for a defined period, so as to address consumer harm and give time to enable effective improvement to services. The Tribunal may also impose a prohibition where this is considered as necessary in order to achieve credible deterrence as a result of the nature of the non-compliant services that the relevant provider or associated individual has operated or permitted to operate. There are three different types of prohibition:

- prohibition from any involvement in specified types of service (paragraph 5.8.5(f))
- prohibition from any involvement in all premium rate services (paragraph 5.8.5(g))
- prohibition from contracting with any specified party registered with the PSA (paragraph 5.8.5(h)).

454. The first two prohibitions are only applicable in cases where the relevant provider and/or the associated individual have been found to have been knowingly involved in a serious breach, or series of breaches, and/or failed to take reasonable steps to prevent such breaches of the Code. The severity of the cases, and in particular the number of repeated breaches of the Code, may impact on the Tribunal's decision as to the extent of the prohibition.

455. The third prohibition focuses on the relationship between two or more contracting parties in the premium rate value chain. Under the Code, registration is an important obligation for all relevant members of the industry, which is designed to aid the exercise of due diligence responsibilities and to improve compliance standards. Where these standards drop, and relevant parties are found in breach of the Code, the Tribunal may consider it appropriate to prohibit a relevant party from contracting with any specified registered parties (or any parties that ought to be registered).

456. Each prohibition must be imposed for a defined period of time. This may be given in days, months or years. Alternatively, it may be defined according to a specific action that the relevant party must do, such as to complete a compliance audit under a separate sanction imposed in accordance with paragraph 5.8.5(k) of the Code.

Prohibiting an associated individual

457. In determining whether an individual should be prohibited from providing or having any involvement in specified types of PRS or promotion, or all types of PRS or promotion, for a defined period under paragraph 5.8.5(f) or 5.8.5(g) of the Code, the Tribunal will first consider whether the individual is an associated individual in line with paragraph D2.6

of the Code. If so, it must then be established that the associated individual was knowingly involved in a serious breach or a series of breaches of the Code, and/or failed to take reasonable steps to prevent such breaches.

458. If the test detailed above is satisfied an associated individual may be prohibited by way of a sanction imposed by a Tribunal under paragraphs 5.8.5(f) or 5.8.5(g) of the Code. However, before a decision on imposition of a prohibition sanction can be made in relation to associated individuals, the PSA is required to follow the procedure set out in paragraph 5.8.12 of the Code.

459. As part of the substantive case or breach of sanction case against a relevant party, the PSA may make a recommendation to the Tribunal to prohibit an associated individual, which (assuming a Tribunal is so inclined) would then lead to the notification process under paragraph 5.8.12 of the Code. It is also open for the Tribunal to be inclined of its own volition to prohibit an associated individual, even where the PSA has not recommended to the Tribunal that it should make such a prohibition.

460. In determining whether it is appropriate for a Tribunal of its own volition, or by way of recommendation from the PSA, to prohibit an associated individual who has been knowingly involved in a serious breach or a series of breaches of the Code, and/or failed to take reasonable steps to prevent such breaches, the following factors will be considered :

- the extent to which it was an individual (as opposed to an organisational) failure that led to the breaches in the substantive case;
- whether the individual failure was deliberate, reckless or negligent;
- the level of engagement that the individual has had with the PSA;
- the level of insight and remorse the individual has demonstrated in response to the non-compliance and/or consumer harm;
- the risk of the individual being involved in future non-compliant behaviour
- the individual's previous history of involvement in non-compliant activity.
- the nature and seriousness of the breach.

However, this is a non-exhaustive list. The Tribunal and the PSA may take other relevant factors into consideration and will adopt a balanced approach. This may therefore result in a decision not to recommend a prohibition even in cases where the factors detailed above are present. The decision is determined on a case-by-case basis.

461. The Tribunal (whether of its own volition or following a recommendation from the PSA) must be satisfied that there is a prima facie case against the associated individual before making a decision to be minded to prohibit the individual under paragraphs 5.8.5(f) or 5.8.5(g) of the Code. This means that the Tribunal considers that on the face of it there appears to be sufficient evidence that an associated individual has been or may have been knowingly involved in a serious breach or a series of breaches and/or has failed to

take reasonable steps to prevent such breaches. Knowing involvement refers to evidence suggesting that the associated individual knew directly or indirectly, or it would have otherwise been obvious to the individual (for example, from their position or role in the business or specific relationship with others in relevant roles or positions), that the breach or series of breaches was/were occurring.

462. If the Tribunal is satisfied that sufficient prima facie evidence exists to indicate that an associated individual has been or may have been knowingly involved in a serious breach or a series of breaches and/or has failed to take reasonable steps to prevent such breaches and considers that it may be appropriate to prohibit the individual, taking into consideration the factors detailed in paragraph 460 above, then the PSA will notify the individual in writing in accordance with Code paragraph 5.8.12 (“the Notification").

463. Where the PSA has recommended that a Tribunal should prohibit an associated individual it should notify the Tribunal at the earliest opportunity if it considers, following further review of evidence, including any response from the relevant party and/or the associated individual, that the Tribunal should no longer be inclined to prohibit the associated individual. The PSA will always notify the relevant party and/or the associated individual of any decision by the Tribunal to no longer pursue imposition of a prohibition sanction.

464. A single legally qualified CAP member is not empowered to make a decision to prohibit an associated individual. Where a single legally qualified CAP member considers that a prohibition under paragraphs 5.8.5(f) or 5.8.5(g) may be appropriate, the single legally qualified CAP member should instruct that the case is dealt with by a Tribunal instead in accordance with paragraph 5.4.9 of the Code.

465. The following process gives an example of what is likely to constitute reasonable attempts to notify the individual concerned and the relevant party:

- sending the Notification to the registered email address(es) the relevant party has entered on the PSA register for both the relevant party and the associated individual. The PSA will endeavour to obtain a delivery and read receipt.
- posting the Notification to the registered address the relevant party has entered on the PSA register via first class signed-for delivery, or equivalent, and an associated individual where required
- although paragraph 5.8.12 of the Code says that the individual concerned and the relevant party should be notified in writing, it is good practice for the PSA to call the individual concerned and the relevant party using the primary contact number(s) the PSA has on its register to check that they have received the communication (leaving a message where it is an available option)
- where the Tribunal is to be paper based, informing the individual concerned of the time and date of the Tribunal as well as providing instructions on whether the Tribunal will take place remotely or in person.

466. A record of all means used to deliver the communication and all attempts to contact the relevant party will be maintained and provided to the Tribunal for evidential purposes.

467. PRS providers are reminded that they are responsible for ensuring that any contact details and information is kept up to date in line with paragraph 3.8.6 of the Code. A failure to do this may amount to a breach of the Code in itself.

468. The relevant party and individual will be provided with the Notification in line with paragraph 5.8.12 of the Code which will include the Tribunal's reasoning for wishing to impose a prohibition, together with any relevant documents and other evidence considered by the Tribunal, to the extent that they are not already in the possession of the relevant party and individual. A report containing the above, together with any written response from the relevant party and/or the associated individual will be placed before a Tribunal to determine the matter. If the associated individual wishes for the matter to be dealt with instead by way of an oral hearing, they should request such a hearing within ten working days of receiving the Notification containing the Tribunal's reasoning and relevant evidence.

469. Where an oral hearing has not been requested the associated individual and/or the relevant party will be given an opportunity to make representations in person, which may include making them remotely, prior to any decision being taken by the Tribunal to impose the sanctions under Code paragraphs 5.8.5(f) or 5.8.5(g).

470. Where the associated individual is not present to make oral representations, a Tribunal hearing the matter at a paper-based hearing will first decide as whether the PSA has made all reasonable attempts to notify the individual concerned and the relevant party in writing. Part of this consideration will include ensuring that the PSA has informed the associated individual and the relevant party of their right to submit a written response and of their right attend to make oral representations to the Tribunal in person, including over telephone or other suitable conference platforms. In addition to this all associated individuals or relevant providers should be informed of their right to request an oral hearing under paragraph 5.7.6(b). The Tribunal will also check that the PSA has made reasonable attempts to notify the associated individual and the relevant party of the time and date of the hearing and whether it is to be conducted in person or virtually via Microsoft Teams or other conference platform.

471. Where an individual requests an oral hearing, the Tribunal will follow the oral hearing process in section 14 of the Procedures, but it will equally need to establish that the requirements in paragraph 5.8.12 of the Code have been complied with by the PSA before proceeding with the case.

472. In deciding whether to prohibit an associated individual, a Tribunal will need to satisfy itself that the individual is indeed an associated individual. An associated individual is defined at Code paragraph D.2.6 and means: (a) any sole trader, partner or director or

manager of a PRS provider; (b) any person with significant influence or control over a PRS provider; (c) any person having day-to-day responsibility for the conduct of a PRS provider's relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act; or (d) any member of a class of individuals designated and published by the PSA.

473. Where the Tribunal is satisfied that the individual is an associated individual, it will then consider whether the associated individual had been knowingly involved in a serious breach or series of breaches. Knowing involvement refers to evidence suggesting that the associated individual knew, directly or indirectly, that the breach or series of breaches were occurring (see the full definition provided at paragraph 461 above) and/or the failure of the associated individual to take reasonable steps to prevent such breaches of the Code. Knowing involvement and/or a failure to take reasonable steps will need to be established on a balance of probabilities.

Fines

474. Fines serve a dual purpose in that they remove some, or all, of the benefit or profit made from the non-compliant service(s) and equally serve as a strong deterrent against future non-compliant activity being initiated by the relevant party in breach, or by other members of industry intent on operating similar services.

475. Fines should not be considered as the principal way of securing compliance with the Code. Tribunals and the single legally qualified CAP member will seek to ensure that any risk of ongoing non-compliance is addressed through its other sanctioning powers so far as is possible, before considering whether the use of a fine is needed to ensure that a company does not profit from a breach, and that future non-compliant activity is deterred, thereby protecting consumers from such harm reoccurring.

476. A Tribunal or the single legally qualified CAP member may consider using a refund sanction in conjunction with a proportionate fine to address the harm caused, establishing a further deterrent and seeking redress for consumers directly affected by the breaches upheld.

477. Fines may be imposed up to £250,000 per breach (as is permitted by law). The bands of case seriousness and the usual levels of fines they may attract at the indicative sanctions stage are:

Minor:	up to £10,000 per breach
Significant:	up to £75,000 per breach
Serious:	up to £150,000 per breach
Very serious:	up to £250,000 per breach

478. For the purposes of paragraph 5.8.3 of the Code a single legally qualified CAP member may impose a total fine in any given case up to a maximum of £250,000. This may be in respect of all breaches upheld in a case or where a case has only one breach or one breach upheld. Where a single legally qualified CAP member considers that a fine in excess of £250,000 may be appropriate, the single legally qualified CAP member should instruct that the case is dealt with by a Tribunal instead, in accordance with paragraph 5.4.9 of the Code.

479. The Tribunal or the single legally qualified CAP member may adjust any or all of the indicative sanctions previously set at the proportionality stage, having taken into account any non-breach related aggravation and mitigation or revenue generated, and any need to remove the financial benefit from the breach and/or the need to achieve credible deterrence. Where a Tribunal or the single legally qualified CAP member chooses to adjust the sanctions, it will explain its decision.

480. In determining whether a fine should be applied (having considered other sanctions first), the Tribunal or the single legally qualified CAP member will have regard to the principles set out in the sanction-setting process. The level of any penalty must be sufficient (observing the respective maximum fine levels for Tribunals and single legally qualified CAP members) to achieve the appropriate impact on the regulated body at an organisational level. The level of the fine should take into account the likely impact on the provider and ensure that the sanctioning objectives of ensuring credible deterrence, upholding industry standards and ensuring that no party is seen to profit from any failure to comply with the Code are met.

481. A relevant factor in securing this objective of deterrence is the revenue generated by the service subject to the financial penalty. Any financial penalty should be set at level, which having regard to the revenue generated, has the impact of deterring the relevant party from any future non-compliance. Any financial penalty should also be sufficient to ensure that any other providers and the wider industry are also deterred from engaging in any similar non-compliant activity. In determining the level of fine the Tribunal or the single legally qualified CAP member may consider to what extent the level of revenue received by the provider was or may have been generated by the non-compliant conduct and to what extent the revenue reflects the measure of potential consumer or regulatory harm and detriment.

482. It may be appropriate for the Tribunal or the single legally qualified CAP member to set the fine at or above the level of revenue received by the provider as a result of the non-compliant conduct where the Tribunal or the single legally qualified CAP member is of the view that this is necessary to ensure that a provider does not profit from a breach of the Code, and/or to adequately deter providers from serious non-compliance with the Code. In doing so, the Tribunal or the single legally qualified CAP member will be aware that the number of complaints received by the PSA is not necessarily indicative of the full scale of the impact of any breaches, and that loss or impact for consumers may be higher than the actual service revenue obtained by the merchant provider.

483. The intention is to achieve the sanctioning objectives set out in the sanction-setting process diagram, not to establish a direct linear relationship between the revenue of a service and the level of the penalty. While a service with a larger revenue might face a larger penalty in absolute terms, a service with a smaller revenue may be subject to a penalty which is larger as a proportion of its revenue, for example. The Tribunal or the single legally qualified CAP member will impose the penalty which is appropriate and proportionate, taking into account all the circumstances of the case in the round together with the objective of deterrence.

484. The PSA will provide evidence to the Tribunal or the single legally qualified CAP member with regard to revenue that has been generated by the non-compliant conduct. A relevant party should provide evidence in support of any argument that the revenue was generated other than by the non-compliant conduct and that the Tribunal or the single legally qualified CAP member should therefore not take it into account. In these circumstances, the relevant party should ensure they provide a clear breakdown of revenue by service and/or duration, with supporting evidence. Notwithstanding this, where the Tribunal or the single legally qualified CAP member considers that the measure of consumer or regulatory harm is greater than the level of revenue received by the relevant party, it may impose a fine in excess of the revenue received.

485. Where an investigation has been lengthy and as a result relevant service revenue has been generated over a prolonged period, a Tribunal or the single legally qualified CAP member has the discretion to take only part of the revenue into account (although the Tribunal or the single legally qualified CAP member may consider it an aggravating factor if a provider has continued a breach after it should reasonably have been aware of it). Conversely, where a service has only been in operation for a short time, a fine in the amount of the service revenue may not be sufficient to reflect the seriousness of the case (though the Tribunal or the single legally qualified CAP member may consider it a mitigating factor where this is because a provider has pro-actively remedied the breach).

486. The Tribunal or the single legally qualified CAP member is not bound by previous financial penalties it has imposed and previously imposed financial penalties should not be seen as placing upper thresholds on the amounts of financial penalties they may impose. The Tribunal or the single legally qualified CAP member may also reduce a financial penalty to take into account any proof of genuine financial hardship which has been supplied by a relevant party, as long as this is proportionate in also meeting the objectives of sanctioning.

487. Where there is more than one breach of the Code upheld by a Tribunal (not a single legally qualified CAP member), and the Tribunal is of the view that in order to ensure that its sanctions are effective, it is necessary to fine a provider more than £250,000, the Tribunal may fine a provider up to £250,000 per breach. Where this approach is taken, the Tribunal will indicate the fine it would impose in this case for each breach. The Tribunal may then adjust the cumulative fine imposed on a *pro rata* basis where such an adjustment is necessary to ensure a proportionate outcome (for instance, a downward adjustment may

be where the Tribunal identifies that there is an overlap in the mischief addressed by a number of breaches, or where the fine far exceeds the provider's revenue). An upward adjustment should never result in a fine for any single breach exceeding £250,000.

Refunds – including refund directions under paragraph 5.9 of the Code

488. Where a service has operated in breach of the Code and the breach has had an impact on consumers, the PSA expects a provider to consider making refunds directly to affected consumers. This sanction may be used to restore consumers to the position they would have been in, had the breaches not occurred or the service in breach had not operated. The refund sanctions available may be imposed in any case, regardless of whether it relates to breaches of standards or requirements of the Code. A refund sanction may have regard to consumers who are either directly, or indirectly, affected by a Network operator, intermediary provider or merchant provider's breach of the Code.

489. Paragraph 3.4.12 of the Code states "*where refunds are provided to consumers, they must be provided promptly and using a method that is easily accessible for each consumer*". This applies in relation to refunds made following dialogue with consumers, engagement with the PSA or following an order by a Tribunal or the single legally qualified CAP member as a sanction under Code paragraph 5.8.5.

490. To ensure refunds are made to each consumer in an easily accessible way, providers are expected to consider the size of refund when deciding on a refund method. Any refund process must not act as a barrier to consumer redress, either by placing any unreasonable burden on the consumer when making a claim, or by making receipt of the refund so difficult that it deters consumers from completing the process.

491. A Tribunal or the single legally qualified CAP member may consider it appropriate to make a general order for refunds to either all or any specified group of consumers under Code paragraph 5.8.5(i), for example, when:

- an identifiable (and possibly excessive) financial detriment to consumers has occurred
- consumers were either deceived or misled through recklessness or wilful intent, or through negligence
- the product or service was not supplied, or was of unsatisfactory quality
- the marketing or promotional material misled consumers into purchasing. This would include promotional material that stated a lower price than the amount the consumer is actually charged, or suggested that a service was free, when it was not.

492. Under Code paragraph 5.8.5(j), a universal refund will require the provider to issue a refund to all (or any specified group of) consumers who have used the service, even where they have not made a complaint. This sanction will only be used in circumstances where the service has failed to provide any purported value, and/or there has been very serious

consumer harm or unreasonable offence has been caused to the general public, or a very serious breach of the Code has occurred. Universal refunds can only be imposed by a Tribunal.

493. Providing refunds to consumers in appropriate cases is important in resolving non-compliance. It is recognised at paragraph 5.9 of the Code that monies may be retained by different parties in the value chain, such as the network operator or intermediary provider. In order that refunds are awarded appropriately and without delay, systems need to be established so that relevant parties can assist in the provision of refunds from revenue retained by a network operator or intermediary provider in response to a PSA direction ("a retention"), as defined in paragraph 5.9.1 of the Code.

494. The PSA can intervene where relevant parties fail to pay refunds promptly in response to a Tribunal or the single legally qualified CAP member sanction, and it will do so in accordance with paragraph 5.9.2 of the Code. A direction will be sent to the network operator or intermediary provider ordering it to make the refund payments. The relevant party will be responsible for any associated administrative costs. In relation to the obligation to make refunds on behalf of a party in breach, there is a six-month limitation period set in paragraph 5.9.4 of the Code. This period runs from the completion of the adjudication process, provided that any reasonable time for any reviews has also passed.

495. Refund sanctions are payable before fines or any administrative charge due to the PSA. Paragraph 5.9.5 of the Code makes it clear that monies outstanding, because of the failure of the relevant party to pay a fine or administrative charge to the PSA, may be paid out of funds from a retention; however, this will only be ordered in a direction once refunds are made or the six-month limitation period has passed.

Suspension of sanctions

496. The Tribunal or single legally qualified CAP member may direct that a sanction it imposes is suspended and provide that the sanction will only come into force upon certain events occurring. If a Tribunal is of the view that the imposition of a sanction is appropriate, there is unlikely to be any reason to delay the imposition of that sanction. However, in certain exceptional circumstances, the Tribunal may consider this course of action. One example of when this could be appropriate is where the relevant party is already in the process of taking steps to remedy a breach and the Tribunal considers that it may be appropriate to suspend the imposition of a particular sanction in order to allow the relevant party time to do so.

Administrative charges

497. The PSA's policy is to ensure that, where resources and costs are incurred through investigating network operators, intermediary providers or merchants providers in breach of the Code, these costs are met by those parties, rather than from the general industry levy.

498. For these reasons, all relevant parties found to be in breach of the Code can expect to be invoiced for the administrative and legal costs of the work undertaken by the PSA. Where prohibition proceedings are brought against associated individuals arising from the imposition of sanctions against a provider found to be in breach of the Code, administrative charges related to such proceedings will be imposed on the relevant provider, rather thanthe associated individual, unless the individual is also the relevant provider (i.e. acting as a sole-trader).

499. The charges related to this activity are revised regularly and published by the PSA. In cases where it has been determined that one or more breaches have occurred, the Tribunal or single legally qualified CAP member will make a recommendation to the PSA for the administrative charge to be imposed on the network operator, intermediary provider or merchant provider. This may be imposed on a full cost recovery basis or, exceptionally, on a percentage basis, where circumstances justify this. Examples of the latter include where the Tribunal or the single legally qualified CAP member has not upheld a major part of the case brought by the PSA.

500. The PSA will give due consideration to that recommendation when using its discretion to invoice a network operator, intermediary provider or a merchant provider, for administrative costs in relevant cases.

17. Post-adjudications

Reviews of Tribunal/single legally qualified CAP member decisions

501. Any determination made by a Tribunal or single legally qualified CAP member may be reviewed by a Review Tribunal in accordance with paragraph 5.10 of the Code, save for where an adjudication by consent has been approved by a Tribunal under Code paragraph 5.5.4. Reviews may be requested by either the party found in breach of the Code, or by the PSA.

502. Paragraph 5.10.3 of the Code provides time limits for when requests are to be made. In ordinary circumstances, the request must be submitted within ten working days of the publication of the relevant determination and must include all relevant supporting information and/or evidence.

503. A review may be requested after this deadline in exceptional circumstances but should still be initiated as soon as possible in those circumstances. If an application for a review is brought after the deadline has expired, the relevant party must explain in its request the exceptional circumstances for its delay and provide any available evidence to show why it was not possible to make the request any earlier. Although there is no definition of what constitutes exceptional circumstances, this will ordinarily be taken to mean that the application for a review is out of time as a result of circumstances that were beyond the reasonable control of the relevant party and that there is evidence to support this.

504. Where a request for a review is out of time, the review application will nonetheless be referred to the Chair of the CAP (or other legally qualified Chair where appropriate) for determination as to whether the application should be considered notwithstanding that it is out of time.

505. An application for review must not be frivolous. Paragraph 5.10.2 of the Code sets out the grounds for review. A determination made by the original Tribunal or single decision-maker may be reviewed on one or more of the following grounds:

- the determination was based on a material error of fact
- the determination was based on an error of law
- the Tribunal or single legally qualified CAP member reached an unjust determination due to a material error of process in respect of procedures set out in the Code and/or Procedures published by the PSA from time to time, and/or
- the Tribunal or single legally qualified CAP member came to a determination that no reasonable person could have reached.

506. When setting out their grounds of review, the PSA recommends that:

- the applicant identifies their grounds of review clearly and provides all their evidence in support of the ground(s)
- where new evidence or arguments are produced, the applicant explains why the evidence or arguments were not provided to the original Tribunal or single legally qualified CAP member and indicate the reasons why the Review Tribunal should review the decision in light of it.

507. Applications will be presented to the Chair of the CAP (or another legally qualified member of the CAP where the Chair is unavailable or has sat on the original Tribunal) in accordance with paragraph 5.10.4 of the Code . The Chair will consider the grounds, together with any written submissions the PSA has provided in response (which will also be sent to the applicant), and decide whether a review of some, or all, of the original adjudication is merited. If the application is merited, a date for the review will be fixed as soon as is practicable.

508. Applications for review do not automatically suspend the sanctions imposed. In many cases, it may not be appropriate for sanctions to be suspended and any invoices, or other requests associated with sanctions, must be met by the relevant party. If the relevant party wishes the sanctions to be suspended, either wholly or partially, it must make an application in writing for suspension, along with its request for a review. This will be presented to the Chair of the CAP (or other legally qualified member of the CAP) in accordance with paragraph 5.10.6 of the Code. Unless there are exceptional reasons in the particular case to grant the suspension, the Chair will only suspend sanctions if a review has been granted, and the Chair is satisfied, upon receipt of written grounds and robust evidence provided by the relevant party, that undue hardship would result from not granting the suspension and that there would be no significant risk of public harm in granting it. If the sanctions are not suspended, they must be complied with. The review may be stayed if the sanctions are not complied with.

509. Upon the review request being authorised by the Chair of the CAP, whether in full or in part, arrangements will be made for the review to be considered promptly on the papers or, where applied for, by way of an oral hearing in accordance with paragraph 5.10.7 of the Code as appropriate. When permitting a review, the Chair of the CAP may also give directions for the parties to follow if they wish to adduce further evidence, as they consider appropriate. Only evidence which is relevant to the permitted review ground(s) will be allowed.

510. Where the Tribunal conducts the review on the papers it may, at its sole discretion, invite the relevant party or the PSA to make oral representations to clarify any matter. As explained above in section 13, oral representations are an opportunity for the relevant provider or associated individual to provide any further explanation of their case and to clarify any factual issues that remain unclear. Oral representations should not be confused with the giving of oral evidence in the context of an oral hearing. Any legal representatives that are in attendance at the paper-based hearing

will not be permitted to make legal arguments and/or give evidence but will generally be permitted to address the Tribunal to provide a brief explanation and clarification about the relevant party's case.

511. The hearing will not be a full re-hearing of the original case and will be limited to the matters which the Chair of the CAP has confirmed, in accordance with paragraph 5.10.2 of the Code, may be pursued. Accordingly, the Tribunal may decline to hear further evidence or re-examine evidence previously submitted to a Tribunal, where the evidence is not relevant to the permitted grounds of review.

Review of administrative charges

512. Pursuant to Code paragraph 5.11.5, a relevant party may also apply for a review of the level of the administrative charge invoiced to it following any determination of breaches by the Tribunal and/or single decision maker.

513. A relevant party can either do this jointly with a challenge to the determination itself, or without challenging the determination itself, on grounds that the charge is excessive. Where a relevant party wishes to challenge both the determination and the administrative charge it must make it clear in its review request.

514. Any request for a review of the administrative charges without challenging the determination itself must be made within ten working days of receiving the relevant invoice from the PSA following publication of the decision.

515. All reviews of administrative charges, whether or not accompanied by a challenge to the determination itself, will be determined by the Chair of the CAP (or other legally qualified member) and not a Tribunal (although any accompanying requests for a review of the determination itself, where granted by the Chair of the CAP, will still proceed to a Tribunal).

Publication of Tribunal and single legally qualified CAP member decisions

516. The PSA seeks to perform its regulatory function in an open, transparent and proportionate manner. All Tribunal and single legally qualified CAP member decisions will therefore be published on the PSA's website in accordance with paragraph 5.7.23 of the Code, which states that all decisions, whether reached through a determination on the papers or an oral hearing, and whether interim or final, will be published by the PSA and may identify any relevant party or associated individual, and/or any other PRS provider involved in the provision and/or promotion of the PRS. Paragraph 5.7.24 of the Code further clarifies that the decision will be published on the PSA's website, and in any other manner that the PSA considers appropriate and proportionate. Therefore, in addition, to publishing the decision on the PSA website, information on adjudications and settlements will also be included

in the PSA registration scheme (please see below for further information on the PSA registration scheme).

517. The usual format of a full adjudication report on the PSA website will be as follows:

- the date of the Tribunal or single legally qualified CAP member hearing
- a description of the service
- the key facts leading to the PSA's raising of potential breaches and aggravating or mitigating factors
- the submissions from the responding network operator, intermediary provider or merchant provider
- whether the breaches were upheld or not
- any relevant revenue information to assist the reader of the decision in understanding the scale of the market issues identified, the severity of the case, or the rationale for imposing sanctions
- the decision of the Tribunal/single legally qualified CAP member and sanctions imposed, and
- any other key information associated with the investigation.

518. The PSA will usually notify the relevant party found to be in breach (and any other relevant network operator, intermediary provider or merchant provider, as appropriate) of the decision at the beginning of the second working week following the date of the hearing. This is called the *informal notification*.

519. The written decision will usually be published two weeks after the hearing on the PSA website. It will be provided to the relevant party prior to publication (and any other relevant network operator, intermediary provider or merchant provider, as appropriate). This is called the *formal notification*.

Publication of settlement agreements

520. Where a settlement has been reached either by way of an adjudication by consent, or between the parties themselves without the agreement of a Tribunal, the consent order and the accompanying statement of facts will be published in the same way as any other adjudication. The accompanying statement of facts will typically include:

- a description of the service
- the key facts and evidence leading to the PSA raising potential breaches and aggravating or mitigating factors
- the submissions from the relevant party
- any relevant revenue information
- sanctions agreed including any discount agreed, and
- any other key information associated with the investigation.

Publication of interim measure decisions

521. Interim measure decisions will be published at the conclusion of the substantive case. Where a case does not progress to a substantive hearing and is instead discontinued, a notification that interim measures were applied for, and the case subsequently discontinued together with the relevant interim measures Tribunal decision (i.e. where interim measures were not agreed through settlement without a Tribunal) will be published on the PSA website.

522. Interim measure decisions on cases that lead to substantive hearings, will be appended and referred to in the final adjudication decision.

523. Interim measures that are agreed through the settlement process and result in a final substantive hearing, will also be appended and referred to in the final adjudication decision.

Rationale for publication of decisions and settlement agreements

524. Publishing adjudications and settlement agreements serves as an incentive to improve compliance standards across the industry, as a deterrent against the adoption of non-compliant service models or promotional material and assists in providing clarity in the interpretation of the Code.

525. As well as being a deterrent factor, publishing previous adjudications may offer additional guidance to the industry on the criteria used by the Tribunal and single legally qualified CAP member to assess seriousness ratings in different cases.

526. The PSA publishes accurate, relevant and proportionate information. All Tribunal decisions are available indefinitely through the PSA website based in accordance with the public interest requirements of the Communications Act 2003, including where such decisions are against sole traders and/or prohibited individuals. Where there is a compelling reason to redact the name of any sole trader or individual following a period of time, then the PSA will do so. An example of a compelling reason would include a situation where a Tribunal concluded that the individual was not, for example, an associated individual and did not prohibit that individual from involvement with PRS.

The PSA Registration Scheme

527. The PSA Registration Scheme will record breach history records associated with relevant parties or their directors and/or other associated individuals, including any settlement without a Tribunal and adjudication by a Tribunal and/or single legally qualified CAP member and any engagement activity that has resulted in a warning letter and/or action plan being issued, for three years from date of publication of the relevant decision. In cases where the final assessment given to the case is “very serious”, the settlement or adjudication will be recorded on the Registration Scheme

for five years, from the date of the publication of the relevant Tribunal/single legally qualified CAP member's decision.

528. In the case of prohibitions of relevant parties or associated individuals, the PSA Registration Scheme will record this information until expiry of the prohibition in cases where the prohibition is longer than three or five years. Where the prohibition is less than three or five years, the information will be recorded on the Registration Scheme until the three or five-year period is over.

529. This information is provided on the Registration Scheme to assist due diligence searches conducted by network operations or intermediary providers on their current, or prospective, business partners. The Registration Scheme acts as one of many sources of information that may be relevant to contracting parties.

Monitoring compliance with sanctions imposed by the CAT

530. The PSA may, where necessary, monitor a relevant party's compliance with sanctions imposed by the CAT. The failure of any relevant party to comply with any sanction within a reasonable timeframe may result in the PSA issuing a suspension direction to the relevant party until full compliance with the sanction(s) has been achieved, and/or a further breach of the Code by the relevant party, which may result in additional sanctions being imposed, and/or the PSA taking such other action as it is entitled to do by law.

531. The PSA will also pursue recovery of any financial penalty that is outstanding. This action may include issuing legal proceedings or starting insolvency action such as winding up proceedings against a business.

Glossary

Action plan - action plans are established as part of the PSA's engagement process to address and remedy breaches of the Code where appropriate. They are proposed by the PSA but must be agreed by the provider.

Case - a matter that has been referred to the Engagement and Enforcement function for consideration.

Code Adjudication Panel (CAP) - a panel of experts who undertake adjudicatory activity and decision making in relation to Code enforcement on behalf of the PSA. The Code Adjudication Panel (CAP) is constituted separately from the PSA Board, and its formation, composition and responsibilities are governed by section 6.3 of the Code.

Code Adjudication Tribunal (CAT) - Tribunals are constituted of three members of the Code Adjudication Panel (CAP). Details of the process followed in advance of, and during, Tribunals are set out in sections 13 - 16 of the Procedures.

6.1.1 Direction - a direction made under Code paragraph 6.1.1 to require a party to supply specified information or documents to the PSA. Failure to comply with such a direction may be a breach of the Code. Information gathered as a result of 6.1.1 directions may form part of the evidence relied upon by the Executive when preparing an action plan or issuing an enforcement notice.

Engagement and Enforcement Committee - the Engagement and Enforcement Committee is led by the Head of Engagement and Enforcement. The group's function is to consider intelligence gathered or received to date. The group then follows the process outlined in section 7 below triggering Engagement or Enforcement action where necessary.

Engagement and Enforcement Team - the team within the PSA that is responsible for conducting engagement and enforcement activities. The team is responsible for liaising with providers to gather evidence as part of any engagement or enforcement activity and undertaking an assessment of any evidence gathered. Members of the engagement and enforcement team will also attend Tribunals where required to.

Engagement procedure - an investigation of potential breaches of the Code, which may be resolved between the PSA and the relevant PRS provider without enforcement action. Resolution may include use of an agreed action plan. The Engagement procedure does not require an adjudication by the CAT. The procedure is set out in the Code at section 5.2 - 5.3, and further details are set out in section 8 of the Procedures.

Enforcement procedure - an investigation into potentially more serious breaches of the Code, which may require more extensive information and evidence gathering. This formal process is set out in the Code at section 5.4 and explained in greater depth across section 9 of the Procedures.

Enforcement notice - a formal notice issued by the PSA to a relevant PRS provider, providing a description of the service and potential breaches identified by the PSA, together with supporting evidence and a recommendation of sanctions. It also provides instructions to the PRS provider relating to how it can respond to the enforcement notice. Details of this key stage in the investigation can be found in section 9 of the Procedures.

Interim measures - suspension or withhold directions which may be issued to parties in the PRS value chain prior to the issuing of an enforcement notice or during the course of any engagement activity. The withholding of revenues from the merchant ensures security for financial sanctions and administrative charges during the investigatory process; and suspension of services enables the prevention of further consumer harm pending the completion of the investigation. Details of these interim measures and how they are invoked are set out in the Code at section 5.6, and in section 11 of the Procedures.

Interim enforcement notice - correspondence which notifies a party that the PSA intends to seek the imposition of interim measures and invites the recipient to respond urgently with any representations. The Interim enforcement notice contains information on breaches that are apparent at that stage of the investigation and the nature of the interim measure proposed. If the case progresses to the enforcement stage a full enforcement notice will be prepared in the usual way at that point.

Investigation Oversight Panel (IOP) - an internal panel comprised of senior executives that oversee case management and provide quality control during the progress of investigations. Its role is explained at section 10 of the Procedures.

Investigation - a matter(s) which the Enforcement and Enforcement committee has determined requires a more detailed and careful examination of the facts and evidence in order to establish the existence and severity of apparent breaches of the Code.

PSA - defined at paragraph D.2.51 of the Code, "PSA" means the employees of the PSA and/or members of the Board save where the context otherwise requires. It is an enforcement authority with responsibility for enforcing the Code, which regulates the use of premium rate services (PRS).

PSA Board - the Board of Directors of the PSA Limited – a not-for-profit organisation limited by guarantee. The Board govern the strategy, policy setting, and operations of the PSA. Board members do not take part in any adjudicatory activity or decision making in relation to Code enforcement.

Review of interim measures - a review undertaken by a CAT (under paragraphs 5.6.8 - 5.6.12 of the Code) of the decision to impose interim measures. Details of this process are found in section 11 of the Procedures.

Suspension directions - directions issued to parties in the value chain to suspend a PRS. Suspensions may be imposed on services where there is evidence of a serious breach of the

Code and the need to suspend is urgent. Details of the process associated with these directions are set out in section 11 of the Procedures.

Tribunal / single legally qualified CAP member bundle - the bundle of documents prepared for the use of the CAT or single legally qualified CAP member and the parties prior to consideration at a paper hearing or oral hearing. The bundle includes all the relevant documentation, including the enforcement notice or interim enforcement notice and any response from the relevant PRS provider.

Warning letter - a letter sent to a relevant party in appropriate cases where it appears to the PSA that a potential breach or breaches of the Code have occurred and which sets out its concerns and any corrective action that is required.

Withhold directions - directions issued to either a network operator or intermediary provider to prevent out-payments of PRS revenues being shared with providers lower down in the value chain pending payment of any sums due as a result of any sanctions imposed by the CAT, administrative charges incurred, or a decision by the CAT following a review of interim measures to lift or amend the withhold direction. Details of the process associated with these directions are set out in section 11 of the Procedures.