

Code implementation workshop

Engagement & Enforcement

CODE 15

raising standards | preventing harm | simpler compliance | smarter enforcement

Objectives & agenda

- This is an opportunity to talk about Engagement and Enforcement
 - We'll touch on Engagement, Enforcement and adjudications
 - Got a question: type it in the chat and we will try to get to it
 - This session is being recorded
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How we intend to enforce the Code

- Code 15 places emphasis on preventing harm in the first place
 - But where we do have to enforce, Code 15 allows for us to do it smarter and more efficiently
 - We have two approaches: Engagement and Enforcement
 - We intend to use Engagement far more than we used Track 1s
 - Where we need to use our Enforcement powers, Code 15 should make the process more streamlined
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Engagement

- Our new Engagement process is designed to be:
 - Swift
 - Co-operative
 - We want to use this route as often as possible
 - We will allocate cases to this route based on various factors, including:
 - The seriousness of potential Code breaches
 - The level of consumer harm
 - A provider's breach history
 - Level of engagement to date
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The Engagement Process



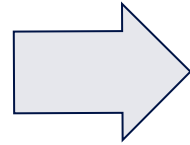
Enforcement

- Our new Enforcement process is designed to be:
 - More efficient
 - Clearer
 - More transparent
 - We have simplified the routes to early settlement
 - We have clarified various other elements of the process such as the what we will consider where providers apply for extensions and how we apply the prioritisation criteria
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The Enforcement Process

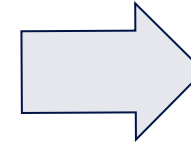
Formal notification

- We will send a formal notification that an enforcement case has opened
- Can start following Engagement or directly
- We will publicise this on our website
- We will discuss indicative timescales with the party
- We will send directions for information whether with the formal notification or shortly thereafter



Enforcement notice

- This will outline the breaches and proposed sanctions
- The relevant parties will be able to respond the notice and provide any further evidence
- Providers will also be able to indicate whether they would like to attend to make oral representations at the Tribunal



Settlement or adjudication

- There will be an opportunity for parties to settle at any point after receipt of the formal notification
- Cases will otherwise be referred to the Tribunal

Settlement

- Code 15 opens up the opportunity for easier settlement
 - Parties can settle at any time following receipt of a formal notification through to a Tribunal
 - We have detailed some of the incentives to settle in Procedures
 - Settlements may be agreed with the PSA without a Tribunal, as long as no oral hearings have been requested
 - Adjudications by consent where an oral hearing has been requested will be approved by the Tribunal
 - All settlements will be published (case report and consent order)
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Adjudication

- The Tribunal will continue to be formed by three members and a legally qualified chair in most cases
 - There is the option for a single-person (legally qualified) Tribunal to consider cases. This will be reserved for cases where the sanctions are not at the higher end of severity/party does not wish to attend to make oral representations.
 - Parties can continue to make oral representations to a three-person Tribunal at a paper based hearing
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Oral hearings

- The opportunity to apply for an oral hearing has been clarified
 - Parties can apply for an oral hearing when there are serious and complex issues that require in-person explanation to reach a fair decision
 - The Chair of the relevant Tribunal and/or chair of the CAP will then decide whether to grant an oral hearing
 - The automatic right for an oral hearing remains in the case of Prohibition of an individual
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Sanctioning

- There have no significant changes to the sanctioning regime save for prohibitions
 - In relation to prohibitions, the test is wider and a prohibition can be made where a provider/associated individual is not just knowingly involved in the breaches but has also failed to take reasonable steps to prevent such breaches
 - We've amended the severity descriptors within Procedures and the fine levels but the statutory limit of £250K per breach remains unaltered
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Reviews

- Criteria for applying for a review of a substantive decision remains as is
 - The grounds include:
 - A determination based on a material error of fact or law
 - A determination is unjust due to an error of process
 - A determination was unreasonable
 - Reviews are time limited and will be considered by a legally qualified CAP member
 - Review process for interim measures remains unchanged
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Transitional arrangements

Ongoing cases	New cases relating to activity pre-April 2022	Cases relating to activity post-April 2022
<ul style="list-style-type: none"> • We have been working hard to clear the backlog of current cases • Where we have ongoing cases, we will enforce where required using Code 14 outcomes, but new processes and procedures will apply if the matter is not concluded prior to Code 15 coming into effect. 	<ul style="list-style-type: none"> • We will be enforcing against Code 14 outcomes • New processes and procedures will apply 	<ul style="list-style-type: none"> • We will be enforcing against Code 15 standards • New processes and procedures will apply

What's next

- Consultation on draft amendments to section 3.13 (Competitions and Voting Services) closes February 23rd
 - Code in force on April 5th
 - Any questions, then email us at compliance@psauthority.org.uk
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Thank you

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