

## PSA Enforcement: Case Prioritisation Policy and Principles

### Introduction

The PSA's vision is of a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

Our mission in the phone-paid services market is twofold:

- to protect consumers from harm
- to further consumers' interests through encouraging competition, innovation and growth.

Phone -paid services providers are required to comply with the PSA's Code of Practice ("the Code"). PSA seeks to resolve issues of non-compliance with the Code informally and collaboratively where this is possible. However, we will take robust enforcement action where necessary. PSA seeks to focus its resources and efforts on driving up standards within the Phone-paid services industry and deterring market behaviour that poses the greatest risk of harm to consumers.

PSA needs to make decisions about the best use of its resources in order to deliver the best outcomes for consumers. This involves making appropriate decisions about which cases to pursue through formal procedures, and subsequently, which of those cases to prioritise. PSA has established Case Prioritisation Principles ("Principles") that enable it to make such decisions efficiently and effectively.

These Principles are outcomes focussed and aim to ensure that our resources and our enforcement approach is targeted to have the greatest regulatory effect.

Our aim is to pursue all cases which satisfy the criteria for allocation for investigation and to give them all sufficient priority. However, at times of limited resource or where there is particularly high demand on resource, this aim is unlikely to be achievable and decisions will need to be made as to which cases to pursue and which to prioritise. The Principles will therefore apply to decision making about:

- which cases (out of those which satisfy the criteria for allocation to an enforcement track) to take forward to investigation (whether through a Track 1 or a Track 2 procedure);
- where cases are taken forward for investigation, which investigations (whether Track 1 or Track 2) to prioritise in order to achieve the greatest impact on non-compliance more broadly in the market.

### Approach to Prioritisation Assessment

At the allocation stage the Principles will be considered and applied when considering the following allocation criteria:

- Whether the apparent breach(es) are of a nature that can be addressed through any given enforcement procedure
- Whether PSA considers that an effective regulatory outcome is likely to be achieved through the use of any given enforcement procedure

Cases will be prioritised based upon a consideration of the following Principles:

1. **Impact**; and
2. **Strategic considerations/enforcement approach** as determined at the relevant time

This will be balanced against:

3. the **Risks** involved; and
4. the **Resources** required

Prioritisation decisions will be taken using a **flexible approach** by reference to the Principles. The considerations set out under each principle below are designed to aid decision making. The Principles are not intended to be mutually exclusive and therefore there may be some overlap in terms of the considerations across the Principles.

The Principles are not exhaustive, and decisions are to be made on a case by case basis, based upon consideration of the Principles in the round. Other relevant factors may also be taken into account.

## Prioritisation Principles and Relevant Considerations

### 1. Impact

**Consideration will be given to the *direct* impact of an enforcement procedure. In particular:**

- How serious the consumer harm is;
- Whether the harm is ongoing or not;
- If the harm is not ongoing, how likely it is that the non-compliance will recur and that consumers will be harmed in the future. Whether there is a need to prevent a reoccurrence;
- Whether particular categories of consumers (which are likely to include vulnerable persons) have been targeted and whether this warrants enforcement action being taken to protect them and deter such practices;
- Whether a provider has already taken steps to correct, remedy or prevent the breaches;

*For example, where a low number of consumers have been affected, the consumer harm has been halted, refunds issued and permanent changes made by the provider, this may lessen the impact that any enforcement action might have.*

- What is the likelihood of regulatory action being effective?

*For example, will the action be likely to result in the imposition of sanctions that will be effective and achieve credible deterrence? Is there a need for consumers to have financial redress who are unlikely to achieve it otherwise?*

**Consideration will also be given to the *indirect* impact of an enforcement procedure. In particular:**

- Whether the action will result in an improvement in market behaviour more broadly and whether there is a need to achieve credible deterrence in respect of the industry as a whole;

*Examples would include a service type associated with particularly marked industry non-compliance, high complaint generating service types, emerging models of malpractice with the potential to proliferate, breaches of special conditions.*

- Whether there is a need to increase consumer awareness of a specific service type or practice which could be achieved by taking enforcement action.

## **2. Strategic considerations**

**The following matters will be considered:**

- Whether the enforcement action will further PSA's current enforcement approach;
- Whether there are strategic reasons to pursue the case which will increase its impact;

*For example, targeting of PSA resources to a particular aspect of the value chain or to a persistently non-compliant service provider.*

- Whether the issues of concern can be substantially addressed by a PSA policy or other initiative which reduces the necessity for, or likely impact of, any enforcement action;
- What the current balance of cases is and whether there are other enforcement cases which already address the same strategic considerations;
- Whether there is the potential for media exposure which will be beneficial for the protection and education of consumers and/or will have a positive impact on consumer confidence in the market;
- Whether the non-compliance undermines consumer confidence/a healthy and innovative market;
- Whether the non-compliance fundamentally undermines PSA regulation;

- Whether the PSA is best placed to act or whether a referral should be made to another body.

### 3. Risk

#### The following matters will be considered:

- What the likelihood is of a successful investigation/case outcome;

*For example, how likely is it that we will be able to evidence any apparent breach to the required standard? Is there a risk that resources will be wasted by pursuing the investigation?*

*How likely is it that the case will achieve its desired impact? In some cases, there may be a low likelihood of a finding of breaches or sanctions by a Tribunal. This may be a reason not to pursue a case, particularly where resource constraints exist. In other cases, the seriousness of the consumer harm may require that a case be pursued, even where there exists a low likelihood of significant sanctions being imposed by a Tribunal, for example where the outcome could either clarify a legal point or send an important deterrent message.*

- Whether there is any legal risk to taking the case;

*For example, whether there is a particular risk of legal challenge or a previously untested legal approach to a service type.*

- What the risk is to consumers or the wider industry of either taking the case or not taking the case;

*For example, what is the balance between risk and return in terms of outcomes for consumers and/or industry?*

- Whether there is any reputational risk to either taking the case or not taking the case.

*This consideration may be linked to the questions above.*

### 4. Resources required

#### The following matters will be considered:

- What the resource implications are of conducting (or continuing) the investigation;

*For example, how difficult will the investigation be given its subject matter and how long will the investigation take?*

- Whether the required resources are proportionate to the issues being addressed and the likely impact of the enforcement procedure;

- Whether the resource required could be more effective and have greater impact elsewhere.

## Using the Principles

These Principles will be applied from the Allocation stage onwards.

The available resource at Allocation stage will be assessed with reference to both those cases which are also at Allocation stage and those that have already been allocated.

Case prioritisation decisions will be subject to ongoing consideration as necessary, with reference to the Principles and the current and likely future demands on resource.

Cases which are at post-allocation stage may be closed, where appropriate, with reference to the Principles. For example, this may occur where the application of the Principles indicates that the resource currently allocated to one or more existing cases may be better utilised on new cases being presented for allocation.

*This may be appropriate in cases where, for example, a delay in the PSA's ability to actively investigate a post-allocation case may have significantly lessened the impact that the enforcement action may have, or where a PSA policy or other initiative or external market correction has substantially resolved an issue.*

Decisions will be made as to whether an investigation should continue to have resource allocated to it, when weighed against other potential cases that could be taken forward using that resource.