

Final Statement on the PSA proposals to enhance the effectiveness of sanctions

Published: 18 July 2017

Contents

Part one – Summary	2
The Phone-paid Services Authority and Code enforcement.....	2
Effective sanctioning process review and proposals	2
Next steps, including transitional arrangements.....	3
Part two – Proposal development through consultation	4
General feedback on the PSA sanctions review	4
Revised process for imposing fine sanctions.....	6
Revenue considerations set out in adjudication reports	7
Establishing severity levels for Code breaches.....	8
Sanctions-setting process.....	9
Other changes to the Code 14 Supporting Procedures following consultation.....	11
Table of changes made as a result of the consultation	12
Part three – Transitional arrangements	14
Feedback from industry	14
How the transitional arrangements will be managed through investigations	14
Part four – Impact assessment	15

Part one – Summary

The Phone-paid Services Authority and Code enforcement

The Phone-paid Services Authority's (PSA) primary function as a regulator is consumer protection. Our vision is a healthy and innovative market in which consumers can charge content, goods and services to their phone bill with confidence.

The PSA applies an outcomes-based Code of Practice, and undertake enforcement action where such action is considered a proportionate way of achieving our regulatory goals, which include remedying Code breaches, improving compliance standards in the industry, and resolving underlying issues which trigger them..

The PSA has an Investigations Team dedicated to gathering information and presenting cases to a Code Adjudication Tribunal (CAT) for adjudication, as required. The CAT is made up of members of the Code Adjudication Panel (CAP), who are responsible for imposing sanctions if Code breaches are upheld and it is considered fair and proportionate to do so.

Any sanctions are set with reference to Part 4 of the Code and in accordance with the Code 14 Supporting Procedures, as published by the PSA.

Effective sanctioning process review and proposals

The consultation paper issued on 18 March 2017 set out our proposals including introduction of the new process for assessing the severity of breaches and considering appropriate and proportionate sanctions by those involved in the PSA enforcement activities.

In the course of our review of sanctioning powers and how they are used:

- PSA considered issues arising from previous Code Adjudications Panel adjudications, feedback from CAP members, and by the Board;
- PSA reviewed the sanctioning procedure of comparable regulators to draw upon a broader pool of expertise and experience;
- PSA consulted with Ofcom and obtained its views on the proposed changes;
- PSA held a CAP workshop where it considered how sanctioning practice might be improved, whilst ensuring that sanctions remained proportionate.

Following this review, we concluded that there was scope for us to make our approach to sanctions more effective in achieving their stated objectives. Our view was that the sanctions imposed in a case should be sufficient to, where necessary, punish and permanently deter non-compliant behaviour and encourage a culture of compliance by the party in breach and by others. The consultation was an opportunity to get wider insight into the new process.

The Supporting Procedures play a key role in communicating the sanction-setting process, and as such the PSA published a draft version of this document reflecting the new proposals. This

meant consultees could refer to it when considering the proposals, as was done in the two written responses we received during the consultation period.

In section two of this statement we consider the proposals and industry feedback, on the following topics:

- Imposing fine sanctions;
- Revenue considerations set out in adjudication reports;
- Establishing severity levels for Code breaches;
- Sanctions-setting process, including assessments relating to deterrence and proportionality.

Having considered the two responses in detail we have decided to adopt the proposals we outlined in the consultation. However, some feedback from respondents has helped us improve the clarity of the Supporting Procedures to fully assist PSA and providers when using the process to assess what sanctions may be appropriate. This helps PSA act consistently and fairly when dealing with cases, and also assists relevant providers who are subject to investigations. We seek to enable providers to be in a position to fully respond to any Warning Notices issued in the course of investigations, and improve the potential for adjudications by consent¹ where appropriate.

Next steps, including transitional arrangements

The CAP will follow the revised guidance in the Supporting Procedures in respect of any matters for which Warning Notices are served after the publication of the revised Supporting Procedures. The Supporting Procedures are published alongside this statement. Warning Notices issued from publication of this Statement onwards will include clear instructions to equip responding parties when providing evidence in support of their submissions to the CAP.

For more information about transitional arrangements, please read section three of this statement. If any provider is subject to an ongoing investigation and would like further clarity, beyond what is set out in this statement, we recommend either of the following options:

1. Contact the Investigations Executive responsible for the investigation to ask about how the new process will affect your case;
2. Email compliance@psauthority.org.uk to ask general questions about the enforcement process and the transitional arrangements – our Industry Support Team will assist, with support from our In-house Counsel.

¹ This is available for parties who accept liability for breaches raised in a Warning Notice and agree sanctions prior to a Tribunal hearing, subject to the PSA's discretion. The PSA is likely to refuse an adjudication by consent where there remains an unresolved dispute as to key facts or the appropriate sanctions that are deemed fair and proportionate in the circumstances.

Part two – Proposal development through consultation

General feedback on the PSA sanctions review

PSA proposal

The PSA has reviewed the effectiveness of its approach to sanctioning. In particular we have reviewed whether our current approach effectively supports our mission to both protect consumers from harm in the market, including where necessary through robust enforcement of our Code of Practice, and to further their interests through encouraging competition, innovation and growth in the market.

We concluded that the current sanctioning process is not optimal. The existing procedure states that the severity of the breaches is to be aggregated and that factors which may require sanctions to be adjusted for proportionality (such as mitigating and aggravating factors, and the need for sanctions to be sufficient to deter providers from breaching the Code) are considered before the question of appropriate sanctions for the breaches.

The proposed changes ensure that the severity and initial sanctions are determined for each individual breach. The changes also seek to make it more explicit that all factors relevant to the consideration of proportionality (for example overlapping breaches, aggravating and mitigating factors, refunds already provided to consumers and the financial effect of other sanctions imposed) are taken into account by the CAT in assessing the appropriate final sanctions, including the need for deterrence.

Our view is that only a small percentage of providers will ever come before a CAT. Of those providers that do come before a CAT, for many the new process will not result in any changes to the sanctions which would otherwise have been imposed. However for more serious cases the sanctions will be made more effective, in that they will have both a specific deterrent effect on the party in breach and also on any other members of industry intent on operating similarly non-compliant services.

We consider that the above issues will be sufficiently addressed by making amendments to the Tribunal decision-making procedures as reflected in Parts 12 and 13 of the Supporting Procedures. We consider this will empower the CAT to impose more effective sanctions where it is proportionate to do so, with the overarching aim of deterring the minority of providers who engage in sharp practices that are in breach of the Code, thereby causing consumer harm and damaging the reputation of the phone-paid services market. Our ultimate goal is to increase compliance standards in the market and to improve the ability of the vast majority of providers who do comply with our Code to compete in a healthy market.

Respondents' views

A trade body, Association for Interactive Media and Entertainment (AIME) and Three (a Mobile Network operator), provided separate responses to the consultation. Both were supportive of the approach being taken and pleased that the enforcement processes are kept under review to make sure that they are effective.

AIME recognised the need for the review, however, it questioned whether its outcome justified all the proposed changes to the process itself. It suggested the current process is capable of achieving a range of sanctions imposed on a case-by-case basis, and points to higher fines being imposed in appropriate cases. The comments did not go so far as to dismiss the proposals themselves.

AIME also indicated that there were other matters raised by the review that ought to be given due consideration – the proposals alone may not achieve the objectives stated. The trade body pointed to the need to use referrals to other enforcement agencies who may be well placed to investigate and reduce consumer harm. Specifically, criminal matters should not be a drain on the PSA's resources, and police enforcement could be accessed where the evidence warrants a criminal investigation.

AIME welcomed efforts to improve enforcement activities equipping staff with skills to identify relevant factors associated with the severity of matters under investigation. It suggested the enforcement process as a whole would benefit from this.

AIME also welcomed the flexibility of sanctioning powers and called on the PSA to consider the broad range of remedies needed to support consumers affected as a result of Code breaches. It pointed to notification of all subscribers where a right to a refund exists as one such remedy.

AIME acknowledged that the review identified repeat offences affecting the market and damaging the reputation of phone-paid services generally. AIME encouraged the CAP to use its powers, while recognising the impact sanctions like the universal refund would have on the business. AIME pointed to the high evidence hurdle to be reached before use of such sanctions, yet it agreed the PSA ought to be equipped to identify such evidence in egregious cases, and Tribunals ought to be equipped to impose sanctions as appropriate.

Three was supportive of the review and agreed with its findings, expressing support for the steps being taken to improve the sanctions-setting process. The mobile network encouraged the PSA to consider using all its powers under the Code, and seek to enforce it across the value chain in order that enforcement activities meet their objectives.

Three suggested that standards could improve in relation to the role of Level 1 providers, who give Level 2 providers access to the UK phone-paid services market. Three would like more to be done by Level 1 providers to prevent non-compliant services being launched and promoted in a way that harms customers and damages the reputation of the market as a whole.

Three commented on uncollected fines imposed against some Level 2 providers, and suggested that by tackling issues associated with poor due diligence, risk assessment, and control measures, Level 1 providers would be incentivised to give those services that operate for short-term gains the proper scrutiny needed before making them available for customers.

The PSA notes that a number of the comments as set out above did not directly affect the proposals being consulted upon or the or the accompanying changes to the Supporting Procedures. However, we are satisfied that all of the suggestions for further action and improvements are currently being addressed through other PSA work streams.

In relation to AIME's comment as to the need for the proposed changes we have already set out our view as to why the current process and PSA's ability to use its powers effectively is sub-optimal within the consultation document. In particular, we have made clear that the ability to move away from precedent cases and pay greater regard to revenue (in a manner that is not envisaged in the current Supporting Procedures), coupled with a revised process for ensuring better use of the statutory maximum penalty available for Code breaches, will ensure that PSA sanctions are able to be a sufficient deterrence for serious non-compliance with the Code, particularly where significant revenue has been generated by the service.

Other comments from both AIME and Three in response to the specific questions raised in the consultation are set out below together with our consideration of them.

Revised process for imposing fine sanctions

PSA proposal

The primary purpose of gathering accurate information as to the level of revenue received by a service found to operate in breach of the Code is to make sure any sanctions, including any fines, are effective, reasonable, fair and proportionate. Fines may be considered necessary to remove some, or all, of the benefit or profit made from the non-compliant services, and serve as a deterrent against future non-compliant activity being initiated by the party in breach, or by other members of industry intent on operating similar non-compliant services.

The PSA considered that further guidance to the CAP was appropriate, in order to enable them to impose sanctions that are effective. It was our view that the level of revenue received by a provider relating to a non-compliant service is relevant to the process of setting the level of a fine. We believe that penalties should be set at levels, having regard to that revenue, that will have a deterrent impact on the provider and which will provide signals to other providers that misconduct by them will result in similar impactful penalties.

The proposed guidance seeks to clarify that a fine should be considered only after a Tribunal has imposed any other sanctions which it deems appropriate to remove the risk of ongoing consumer harm and non-compliance with the Code. This is because other sanction types (such as a bar and/or remedy the breach) may be better at obtaining an outcome that is fair, proportionate and appropriate.

Respondents' views

Three welcomed the proposals for greater flexibility and considered that the new process will give Tribunals the flexibility to set fines that are effective. Three sought clarity in relation to relevant revenue being considered, thinking about provider revenue as a whole and how it might be made in relation to a single service or multiple services.

Three raised consideration as to who is the subject of investigations and any resulting sanctions, including fines, suggesting that there ought to be more focus on the Level 1 provider. These comments are duly noted, and the powers available to the PSA permit investigations to be undertaken against any PRS providers, including network operators, Level 1 providers and Level 2 providers and either in respect of the harm that has occurred or due

diligence and risk assessment failures as appropriate. The ability to fine a provider where breaches of the Code are upheld is not restricted in any way.

AIME stated that it did not appear that there were significant issues in the procedures that would justify an industry consultation. The trade body questioned the clarity of the consultation paper, which set out the rationale for the proposals.

In response to this the PSA refers to the background section of the consultation paper, and in particular the points raised in relation to the need for a sanction-setting process that is fit for purpose. The PSA has drawn up the new process having regard to the statutory fining powers stipulated by the Communications Act 2003 and its adoption within the Code at paragraph 4.8.3.

AIME indicated that the occurrence of re-offending in the market does need to be addressed and suggested means to achieve that ought to be considered separate from fine sanctions. AIME also raised consent to charge related issues and the need to seek remedies for the issue itself. The PSA already have powers to order providers in breach of the Code to remedy the said breach, which is used in relevant cases. In addition, the proposals we are introducing should assist the CAT further in addressing and deterring the commission of such harm.

Revenue considerations set out in adjudication reports

PSA proposal

When the Executive publishes adjudications, it publishes the revenue band (associated with the breaches upheld) within which the service fell (see Section 14 of the Supporting Procedures). The intention is that this provides some information on why a fine of the specified amount was imposed, but without giving specific details of the service provider's revenue. It may also assist with understanding the scale of market issues identified during an investigation and give insight into the severity of a breach or case as a whole.

The PSA took the view that it would assist providers, and better inform the public, if the revenue bands were removed altogether and Tribunals were able to comment on the revenue in the published adjudication report. The CAT would do so with reference to the revenue levels it had considered relevant to its assessment, and in a way that did not become overly specific. The Tribunal may opt to provide information as to the relevant revenue accrued over the full period related to the breaches, and indicate monthly revenue levels as appropriate to report on its decision-making process.

Such information will more readily convey the impact on consumers, how many consumers were affected, the need for interim measures (if any were taken), and assist with the rationale for key decisions taken in the case relating to both severity of the breaches and the sanctions imposed.

Respondents' views

AIME did not respond directly to these proposals. Comments were given in relation to other elements of the process outlining relevant revenue for consideration when setting fine

sanctions. This indicated an interest in Tribunals explaining their considerations as to revenue when making determinations.

Three agreed with the steps proposed in order that fines can be imposed at appropriate levels in each case, and due clarity be given in the adjudication reports. Three saw the proposed change as an improvement on current reporting efforts using the revenue bands.

The respondents did not identify any concerns with removing the revenue bands and their use in publication of CAT decisions within adjudication reports.

Establishing severity levels for Code breaches

PSA proposal

As part of its process in determining sanctions, a CAT apportions a seriousness rating to each breach. The possible ratings set out in the Supporting Procedures are “minor”, “moderate” “significant”, “serious” and “very serious”. Typically, more serious cases will attract more severe sanctions.

We have considered the ways in which we can provide greater clarity around how to assess the seriousness of breaches, taking into account feedback received from the CAP. Our view was that clarity can best be achieved by making appropriate minor amendments to the descriptors, and by providing interpretive guidance to the descriptors in the form of a range of factors which may be relevant to each descriptor (organised as factors relevant to the impact and nature of the breach and the state of mind of the party in breach). Our view was that these changes will be sufficient to enable the CAP to more confidently assess the seriousness of breaches on a case by case basis, whilst maintaining consistency of approach.

The current lists of examples accompanying the descriptors (which are based upon previous CAT decisions) do not contain the detail and context of those decisions, and may not reflect the passage of time or regulatory and industry developments. Further, subsequent cases often differ significantly from the examples listed. The examples were originally intended to serve as an aid to consistency and were initially created for the Investigations and Sanctions Procedure that was in force at the commencement of the 12th Edition of the Code, as there were no useful precedent cases for the Tribunal at that time. We proposed to remove the list of examples from the current Supporting Procedures.

Supporting Procedure publication error

It came to the attention of PSA after the conclusion of the consultation period that there was an error in the publication of the Code 14 Supporting Procedures (Version: March 2017) which was published with the consultation document. The descriptors were set out in text boxes for each of the five severity levels ‘minor’ to ‘very serious’. However, some of these boxes did not wrap the text which meant some of the content (essentially the lower part) was not displayed.

Notwithstanding this, PSA is satisfied that the inability of consultees to see content of the hidden part did not preclude a full understanding of the proposed changes particularly given that the relevant interpretative guidance section which was newly introduced remained visible. Indeed, it was clear from responses to the consultation that parties could properly

engage with the proposed changes and understand how the factors in the interpretative guidance mapped across to the descriptors.

Respondents' views

Three supported the efforts of PSA to reduce restrictions on sanctioning decisions based on precedent cases, given specific facts and issues may impact on different cases and each case should be considered on its merits.

Three was supportive of the proposed changes relating to the descriptors that CATs could refer to when assessing case severity.

AIME highlighted one particular concern with how a factor associated with the nature of the breach mapped across to descriptors. Some descriptors made reference to the value of a service to consumers, and AIME argued that such judgments are not for CAP to make.

AIME highlighted that this needed clarification, and that the final version should not include an assessment of "value" in isolation.

It is important to note that in the list of factors associated with the nature of the breach, found at paragraph 186 of the Supporting Procedures, it states that a service should be able "*to deliver its purported value to consumers*". This is an objective assessment based on a review of the promotional material and the operation of the service. We have made some clarificatory changes to the relevant descriptors in the text of the Supporting Procedures (paragraphs 192.1 to 192.5) attached to this Statement to ensure consistency with the above factor.

AIME also requested that the references to 'deliberate' and 'reckless' (paragraph 187 of the Supporting Procedures) should be separated out and dealt with in turn rather than together. It believes the definition of 'reckless' in that paragraph is unhelpful. It went on to identify two different reactions to a provider dependent on whether its conduct was 'deliberate' or 'reckless' and that training and rehabilitation was generally appropriate for the latter.

PSA recognises that there is a distinction between the concepts of 'deliberate' and 'reckless' conduct. However, PSA considers that both make a situation relating to a service found in breach of the Code more serious. The PSA considers that training and rehabilitation may be generally appropriate in relation to more inadvertent breaches of the Code, while sanctions need to appropriately deter reckless or deliberate behaviour.

Sanctions-setting process

PSA Proposal

The PSA has the power to impose a fine of up to £250,000 per breach (as clarified by s.80 of the Consumer Rights Act 2015). At present, the Supporting Procedures do not contain any guidance in the scenario where there are multiple breaches of the Code upheld by the CAT and it determines that it is appropriate to impose fines on a per breach basis (rather than a per case basis) up to the statutory maximum.

The Executive is of the view that the current sanctioning process is not optimal. The existing procedure states that the severity of the breaches is to be aggregated and that factors which

may require sanctions to be adjusted for proportionality (such as mitigating and aggravating factors, and the need for sanctions to be sufficient to deter providers from breaching the Code) are considered before the question of appropriate sanctions for the breaches.

The proposed changes ensure that the severity and initial sanctions are determined for each individual breach. The changes also seek to make it more explicit that all factors relevant to the consideration of proportionality (for example overlapping breaches, aggravating and mitigating factors, refunds already provided to consumers and the financial effect of other sanctions imposed) are taken into account by the Tribunal in assessing the final appropriate sanctions, including the need for deterrence. These changes were considered necessary to make the process clearer and more transparent, and assist the Tribunal in making more effective use of their sanctioning powers:

- a) After the assessment of the severity of each breach a stage is added whereby the CAT determines the appropriate provisional sanctions based on the facts of each breach;
- b) The need for an initial overall assessment of seriousness of the case at this stage is removed;
- c) Mitigating and aggravating factors (and other factors such as revenue) can be applied to specific breaches where appropriate to do so;
- d) The stage at which the provisional sanctions may be adjusted based on factors relevant to proportionality (including non-breach specific mitigating and aggravating factors as well as revenue generated by the service, the overall case seriousness, and the need for sanctions to act as a sufficient deterrence) is made explicit.

Respondents' views

AIME were supportive of the changes and suggested that the proposals overlapped with previous commentary given by the trade body and its members during earlier Code 14 development.

AIME picked out one particular factor that may lead to an assessment of aggravation on the part of a provider, listed at paragraph 197 of the Supporting Procedures – the failure to react to Compliance Updates and adjudication reports. The trade body suggested the industry are in receipt of a mass of regulatory updates and there is potential for a lack of clarity in such PSA Compliance Updates, making these hard for compliance decisions to be made as a result.

Finally, AIME raised concerns that aggravation may be detected by a CAT even in cases where the provider has not had time to consider the information contained in such publications.

PSA considers that the factors remain relevant, and duly notes the risks highlighted by AIME in its response. However, these risks are not born out of the content of the Supporting Procedures themselves but how they are implemented in cases. It is recognised that the existence of Compliance Updates and adjudication reports on relevant topics does not in itself amount to aggravation in respect of a later case. The facts of each case will need to be assessed and a view taken on the relevance of PSA publications, which is expected under the Supporting Procedures.

Three was supportive of the changes, which it considered would give CATs adequate flexibility to impose proportionate and effective sanctions, including fines.

Other changes to the Code 14 Supporting Procedures following consultation

The consultation process led to some broad discussions with key stakeholders and has been an opportunity for refinement of the sanctions-setting process, and the Supporting Procedures that assist with being able to understand and follow it.

When assessing relevant revenue, the version of the Code 14 Supporting Procedures published in March 2017 alongside our consultation suggested that the phone-paid service provider would need to clearly evidence what revenue flowed from the breaches. There was some concern that this shifted the burden of proof from the Executive to the party responding to the breaches.

There is a clear need for the phone-paid service provider, and others in the value chain, to supply evidence to assist with any assessment of the revenue flowing from the breaches. That evidence is then referred to by the PSA when considering what sanctions are effective and proportionate. The Executive will set out its thinking in the Warning Notice, with reference to evidence it holds.

Any counter arguments of fact raised by the phone-paid service provider must be clearly articulated in its response and supported by evidence. This should be sent to the PSA and will be provided to the CAT (where the matter proceeds for CAT determination). The absence of evidence may lead to a CAT dismissing claims made by either side. The new wording at paragraphs **201** and **247** of the Code 14 Supporting Procedures make this position clear, and avoids any suggested shift in the burden of proof.

Since the launch of Code 14 on 12 July 2016, the PSA has used its powers under the Code to adopt interim measures pending the conclusion of an investigation. After consideration of the process used to adopt interim measures, the PSA has decided to update the forms used to make an assessment of relevant factors indicating the need for such interim measures. These are found at **Annex B** to the Supporting Procedures. The new forms are found within the Supporting Procedures published alongside this final statement.

Finally, as the PSA considers implementation of the new sanctions-setting process, and associated Supporting Procedures, we are looking at the necessary content and format of the Warning Notices used to set out the alleged breaches and the evidence, and how recommendations for sanctions are presented. This will also necessitate some changes to the Supporting Procedures (including clarifying that it is the Executive that makes recommendations rather than the Investigations Oversight Panel). The Executive will be asked to provide greater transparency around its own assessment of potential sanctions, giving the phone-paid service provider an opportunity to respond effectively to the Warning Notice.

This will involve changes in at least the following areas:

- how sanction recommendations are set out;
- how evidence associated with potential aggravating factors and / or mitigating factors are set out and introduced;
- how evidence associated with service revenue is presented.

Table of changes made as a result of the consultation

The following changes have been made to the Supporting Procedures:

#	Where is the change made?	Final position
1	Paragraph 186 – factors relating to B. the nature of the breach	Improved clarity relating to considerations of the Code provisions or other regulatory requirements discussed under this heading. Identifies that this deals with “the circumstance in which the breach occurred” and then specifically refers to “the purpose for which the specific Code rule”, etc., “were created”.
2	Paragraph 190 – CAT use of descriptors and factors in their assessment of breach severity	Clarity that “the descriptors and factors listed are non-exhaustive”.
3	Descriptors at paragraph 192.1 to 192.5 relating to purported value	Correction in terms of translating the factor associated with the capacity to provide the purported value across the five seriousness levels. It is not a subjective assessment but one considering whether information given to the consumer matches the experience achieved through operation of the service.
4	Paragraph 195 – introducing the CAT’s handling of aggravating and mitigating factors	Improved clarity as to what aggravation and mitigation means in regulatory terms, and how such factors may be relevant to the breaches or to conduct of the party and case as a whole. Improved clarity as to what type of adjustment takes place in relation to aggravation and mitigation.
5	Paragraph 201 – consideration of relevant revenue information by the CAT, including reference to the gathering of evidence for the purpose	Clarity as to how evidence is sought by the Executive, provided by the responding party, and assessed by the CAT. Amendment clarifies the burden of proof relating to claims made in submissions.

6	<p>Paragraphs 241-242 – the stage in which fine sanctions are associated directly with breach severity, and what happens when adjusting sanctions at a later stage in the process</p>	<p>Clarity given as to how the breach severity assists with setting initial sanctions, including fine sanctions. The new text highlights that adjustments will be made to sanctions imposed as a result of an assessment of non-breach specific aggravation and mitigation, and other proportionality considerations, but the severity levels for the breaches are not adjusted.</p> <p>This makes clear that the sanctions are proportionate to the facts of the case, and removes confusion as to the true impact of the breaches themselves. This should make analysis of adjudications over time easier, with greater transparency as to consistency.</p>
7	<p>Paragraphs 245 & 247 – Assessments of relevant revenue when testing proportionality</p>	<p>The key change is at paragraph 247 with an ancillary change at the earlier paragraph 245. This clarifies the burden on the Executive to provide the CAT with information relevant to an assessment of the revenue flowing from the breaches. This information will be gathered by the Executive and its analysis set out in the Warning Notice. It is then left to the relevant party to respond to that analysis and contribute any further evidence (particularly where it asserts an alternative factual position) it wishes the CAT to consider.</p> <p>Previous wording lacked clarity and risked the burden of proving the breaches shifting from the Executive to the phone-paid service provider, which was not the intention. It is incumbent on the relevant party to cooperate with the investigation and assist the CAT with clear information as to revenue and provide it with evidence where it is making an alternative factual assertion.</p>
8	<p>Paragraph 250 – adjusting fine sanctions as a result of any deterrence or proportionality assessment</p>	<p>The adjustment may be upward or downward, so the emphasis is shifted away from a “reduction” in fines.</p>
9	<p>ANNEX B – Withhold Assessments</p>	<p>This form has been updated to improve the assessment process used for the consideration of interim measures.</p>

Part three – Transitional arrangements

Feedback from industry

Having set out our intentions relating to transitional arrangements for the new sanctions-setting process in the consultation paper, the PSA received feedback from AIME and Three on the matter. Three was supportive of the approach being taken and encouraged the swift adoption of the new procedures, which it acknowledged was likely to deliver more effective sanctions in future adjudications.

AIME suggested that care is required to make sure the process is fair to parties that are already subject to investigation. Any changes to the procedure should not place a provider in an adverse position, where legal costs have been spent and advice received that becomes outdated due to the implementation of these proposals.

The PSA has already considered the impact of these procedures on cases that are under investigation. There are various stages to the investigative process and the concerns raised are only material in the short period between issuance of a Warning Notice and any determination of the case, either at a CAT hearing or through adjudication by consent.

Our transitional arrangements make clear that where a Warning Notice has already been issued prior to the date of publication of this statement, that case will proceed under the old process. From the publication of this Statement onwards, when a Warning Notice is issued, the case will be dealt with under the new process as discussed above.

How the transitional arrangements will be managed through investigations

The Warning Notice includes clear instructions for providers who are now subject to alleged breaches and recommendations as to appropriate sanctions. The new process will be explained in Warning Notices issued after the date of publication of this statement. Any queries about the new process, or any evidence submitted in the Warning Notice associated with breach severity and sanctions, may be raised with the relevant Investigations Executive.

Providers affected by these changes can also contact the Industry Services Team using its email account – compliance@psauthority.org.uk. The PSA will seek to answer any general questions about investigations and adjudications as a matter of priority.

Providers who have any questions about the new process should raise them as soon as possible, and should not delay responding to the Warning Notice or other correspondence. Deadlines are set giving a reasonable time for providers to respond to the alleged breaches, and providers have a responsibility to respond to correspond in the time set.

Part four – Impact assessment

The PSA set out its impact assessment in the consultation paper and nothing has arisen from responses to our proposals that suggests any amendment is required.

AIME commented that appropriate and proportionate sanctions would not deter compliant providers from operating in the phone-paid service market. The PSA agrees with this and recognises that the investigations process, and the cooperation of the provider subject to an investigation, are important when establishing fair and proportionate outcomes.

Three invited the PSA to consider using its full range of powers, and investigative tools, to improve consumer protection in the market. Three stated that these proposals were a welcome step in the right direction. It acknowledged that more may be required to deter non-compliance while reducing the overall cost of regulation in this sector.

The PSA will keep these matters under consideration as it implements the new process following publication of this statement.