

**POLICY STATEMENT 47 | Enforcement****UNCONTROLLED DOCUMENT WHEN PRINTED****Effective date of Implementation:** 06/07/2015**ASSI File Reference:** UK/X/J/86/02 – Policy Statements**Rationale:**

Basic legislative enforcement provisions have in some cases been concerned with imposing penalties for violations within the service provider or by the regulator. In an SSP-SMS environment, it is intended that enforcement policies and procedures, of both the individual service provider and regulator, take account of the actual conditions and circumstances surrounding a violation or act of non-conformance. The intent is to ensure that a distinction is made between an unintentional error or mistake and a deliberate or gross violation.

Service providers are expected to have an acceptable process in place to manage their own routine safety and quality non-conformances. Regulatory intervention can be expected under certain conditions and circumstances in which the designated regulator will actively investigate a particular violation or non-conformance.

This enforcement policy is aimed at promoting compliance with aviation safety regulations and requirements through enforcement functions in an equitable manner designed to support the implementation of SMS. The policy and related procedures allow service providers to deal with, and resolve, certain events internally to the satisfaction of the regulator, within the context of a service provider's SMS. This approach aims to nurture and sustain effective safety reporting, whereby service providers' employees can report safety deficiencies and hazards without fear of punitive action. A service provider can therefore, without apportioning blame and without fear of enforcement action, analyse the event and the organisational or individual factors that may have led to it, in order to incorporate remedial measures that will best help prevent recurrence. Intentional contraventions of legislation and related Overseas Territories Aviation Requirements (OTARs) will be investigated and may be subject to conventional enforcement action where appropriate, with due consideration to distinguishing between unintentional errors or non-compliances and premeditated violations.

For the purposes of this policy, service providers are holders of certificates, approvals, permissions, authorisations or similar documents issued under the Order.

**Policy Statements:**

1. Information derived from safety data collection and processing systems established under an SMS relating to reports classified as confidential, voluntary or equivalent shall not normally be used as the basis for enforcement action.
2. When a service provider, operating under an SMS, unintentionally contravenes the requirements, the regulator will engage in dialogue with the organisation. The objective is to agree on proposed corrective measures and an action plan that adequately addresses the deficiencies that led to the contravention and to afford the service provider a reasonable time dependent on the risks to safety to implement them.
3. If the regulator considers the corrective measures proposed satisfactory, likely to prevent recurrence and foster future compliance, there will be no further enforcement action by the regulator. Where either the corrective measures or the systems in place are considered inappropriate, the regulator will continue to interact with the service provider to find a satisfactory resolution that would negate the need for enforcement action. However, in

cases where the service provider refuses or is unable to engage with the regulator, to address the event and to provide effective corrective measures, the regulator will consider taking enforcement action as deemed appropriate.

4. Breaches of requirements may occur for many different reasons, ranging from a genuine misunderstanding of the regulations to disregard for aviation safety. Enforcement decisions must be proportional to the identified breaches and the underlying safety risks, based on the following principles:
  - a) action will be taken against those who deliberately or consistently operate outside the requirements;
  - b) the regulator will seek to educate and promote training or supervision of those who show commitment to resolving safety deficiencies; and
  - c) the regulator will give due and equitable consideration to distinguish unintentional errors or non-compliances from premeditated violations.
5. Enforcement actions may include:
  - a) counselling;
  - b) remedial training;
  - c) variation, suspension or revocation of a certificate, approval or authorisation; or
  - d) prosecution as provided for in the applicable legislation.
6. Enforcement decisions must not be influenced by:
  - a) personal conflict;
  - b) personal gain;
  - c) considerations such as gender, sexual orientation, race, religion, political views or affiliation; or
  - d) personal, political or financial power of those involved.
7. Enforcement decisions must:
  - a) be fair and follow due process;
  - b) be transparent to those involved;
  - c) take into account the circumstances of the case and the attitude and actions of the service provider or individual when considering action;
  - d) be consistent actions or decisions for like or similar circumstances; and
  - e) be subject to appropriate internal review.