

Tribunal meeting number: 231

Case reference: 133839

Level 2 provider: Heart Communications Limited (London, UK)

Type of service: Information service on working from home as a virtual assistant

Level 1 provider: Numbers Plus Limited (Bristol, UK)

Network operator: Numbers Plus Limited (Bristol, UK)

Background

The case concerned a Service that provided information on working from home as a virtual assistant promoted on www.ukassignments.co.uk and www.paidpeople.co.uk and operating on premium rate number 09131240150 (the “Service”).

The Level 2 provider for the Service was Heart Communications Limited (the “**Level 2 provider**”). The Level 2 provider registered with the Phone-paid Services Authority (the “**PSA**”) on 14 January 2014.

The Level 1 provider was Numbers Plus Limited (“**Numbers Plus**”)

The Service was stated to be a Service that provided information on working from home as a virtual assistant charged at £2.50 per minute plus phone company access charge.

The Level 2 provider stated that the service operated from 5 September 2016 to 20 August 2017.

The Service was promoted on www.ukassignments.co.uk and www.paidpeople.co.uk operating on premium rate number 09131240150 costing £2.50 per minute plus phone company access charge. Users of the Service were required to call a premium rate number in order to obtain an activation code which gave them access to a member’s area of the website with information and advice relating to the Virtual Assistant industry. This included but was not limited to filing envelopes, mystery shopping and website testing.

Summary of complaints

The Executive had received 9 complaints concerning the Service since 11 April 2017.

Complainants variously alleged issues with pricing information, that they were misled and that there was undue delay when using the Service.

A sample of complainant accounts is below:

“I called this number to obtain an activation code for a website, <http://www.paidpeople.co.uk/activate-by-phone/>, the website turned out to be fake. The number is

actually for Heart Communications which I found out by researching. The charge of £34.53 for a 13 minute call has been logged on my O2 recent charges and will be on my bill when it is produced next month. I have tried contacting 2 email addresses requesting a refund for the call but have had no responses. I have tried calling the customer care number but again, no response."

"the webpage is this :<http://www.paidpeople.co.uk/> I got accepted for a job and they sent me this link: <http://www.ukassignments.co.uk/phone-activation/> And the page had this:

Phone Activation

You can instantly access the members area by completing our simple telephone activation process now.

1. Call 09131 240 150 to get your activation code

Calls cost £2.50 per minute + your phone company's access charge.

2. Enter the activation code in the box below

3. Choose your username and password, login and get started!

I spoke to the Lady for a good 15 minutes and she set up my account but then they charge my phone. I emailed the email she gave me to request for a refund and no one is responding to me but they have already put a charge on my phone bill"

"I went onto a website called Paid People which leads people to believe that they have assignments waiting so that you can earn money by choosing whatever tasks or projects that suit you. To get started they ask that you register with them online and you'll be emailed login details to their portal, once I did this they ask you to call 09131 240 150 to get your activation code but once you ring them the operator will ask you to repeat everything that you just filled in online so that they can once again fill something in. The operator then continues talking to you about if you have adobe, where you can download it , info about the company etc. The wording is misleading as you are lead to believe you are just ringing to get an activation code. It also states on the page that gives you the number that if you would like to request a refund to contact them. I have emailed them (admin@heartcommunications.co.uk) on 6th June to which they replied "To request a refund of call charges, please send a copy of your phone bill, highlighting the call(s) made along with your reason(s) for requiring a refund. Refunds are issued to the account holder stated on the phone bill.

You may send your phone bill via email or by post to:

*HCL
34 New House
67-68 Hatton Garden
London EC1N 8JY "*

I emailed them back again on 6th June with the screen shots I am sending you and also outlined why I wanted a refund. I heard nothing back from them so emailed them again on 9th June to ask that they get back to me but I still have not heard anything back from them. I believe this company is scamming

people by misleading them to believe they offer a service which they clearly don't. I have read complaints on some websites about Paid People.

Here are some links to their website

<http://www.paidpeople.co.uk/activate-by-phone/>

<http://www.paidpeople.co.uk/faqs/>

One phone call was made to them and the bill came to £40.76 (£33.97 + vat)"

"This is a complete scam, the call cost me £31.43. The lady on the phone spoke very slowly and dragged it out so you pay more and I even asked her to speed up on a couple of occasions which she clearly ignored. This is a scam as it doesn't even lead to anything. It states on their website you can claim a refund for the charges but to be honest I have e-mailed on several occasions and written to them and not even had an acknowledgement and definitely no refund. I am not the only person they have scammed out of this kind of money figure either. I am a single mum looking for extra work and it has cost me more money with a huge mobile bill I am disgusted, stressed and upset this shouldn't be allowed to happen."

The Level 2 provider had been subject to three previous Track 1 procedures, all in 2015, concerning the following websites www.thehelplineservice.co.uk, www.worksmartco.co.uk and www.thejobline.co.uk.

The breaches raised had included pricing prominence where there was either no pricing information or pricing information was given in a grey text, on a grey background, "hidden" within other information, and was not "stand alone", misleading consumers about the nature of the Service asking about qualifications and work history, even though the service was just to obtain an information pack, undue delay by unnecessarily prolonging the call, even though the service was just to obtain an information pack and having no prior permission for an ICSS Service.

Heart Communications sought compliance advice from the PSA regarding the Service operating on 09131240150 and promoted on www.ukassignments.co.uk and www.paidpeople.co.uk on 31 July 2017.

On 4 September 2017 the Level 2 provider advised:

"I can confirm that within 48 hours of receiving your letter, the decision was made internally to suspend the website(s) and premium rate number, pending a resolution of your concerns."

The letter sent by the Executive making preliminary enquires was dated 17 August 2017.

Apparent breaches of the Code

The Executive stated that the service contravened the PSA Code of Practice 14th Edition (the "Code") and in particular the following Code provisions:

Rule 2.2.7 – Pricing information

Rule 2.3.2 – Misleading

Rule 2.3.4 – Undue delay

Rule 2.6.1 – Complaint handling

Alleged Breach 1

Rule 2.2.7 of the Code states “In the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”

1. The Executive submitted that the Level 2 provider acted in breach of Rule 2.2.7 of the Code as pricing information provided on promotional material was not sufficiently proximate to the premium rate number.

The Executive relied on the promotional material supplied by complainants and the PSA Guidance on “Promoting premium rate services” (the “**Guidance**”). The Guidance states:

Pricing information

“3.1

Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase. The principle rule around transparency of pricing information in the Phone-paid Services Authority’s Code of Practice is rule 2.2.7, which states the following:

2.2.7 In the course of any promotion of a premium rate service, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.

Prominence and proximity

3.7 Pricing information needs to be put where consumers will easily see it, not where it is hard to find. This is because the price ought to be part of what attracts consumers into making a purchase. The rules in our Code are there because consumers want this information so they can choose what they buy and how much they pay for it. It is likely to be judged as ‘prominent’ if the information is clearly visible when a consumer makes their purchase and triggers the payment. Both the font size and use of colour are important to establishing prominence, and information on this is found at paragraphs 3.12 to 3.15 of this guidance.

3.8 ‘Proximate’ is a key term within the Phone-paid Services Authority’s Code of Practice, and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of pricing information being proximate is when it is provided

immediately before or above the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion.”

The Executive relied on the promotional material supplied by two complainants. The promotional material provided by the two complainants is shown below and relates to the URL www.paidpeople.co.uk:

The screenshot shows the 'Activate by Phone' page on the PaidPeople website. The page includes a navigation menu with links for Home, How It Works, FAQs, Register, Login, About Us, and Contact Us. The main content area is titled 'Activate by Phone' and contains the following text:

You can instantly access the members area by completing our simple telephone activation process.
You could start earning up to £120 per day as a Virtual Assistant - complete your registration now.

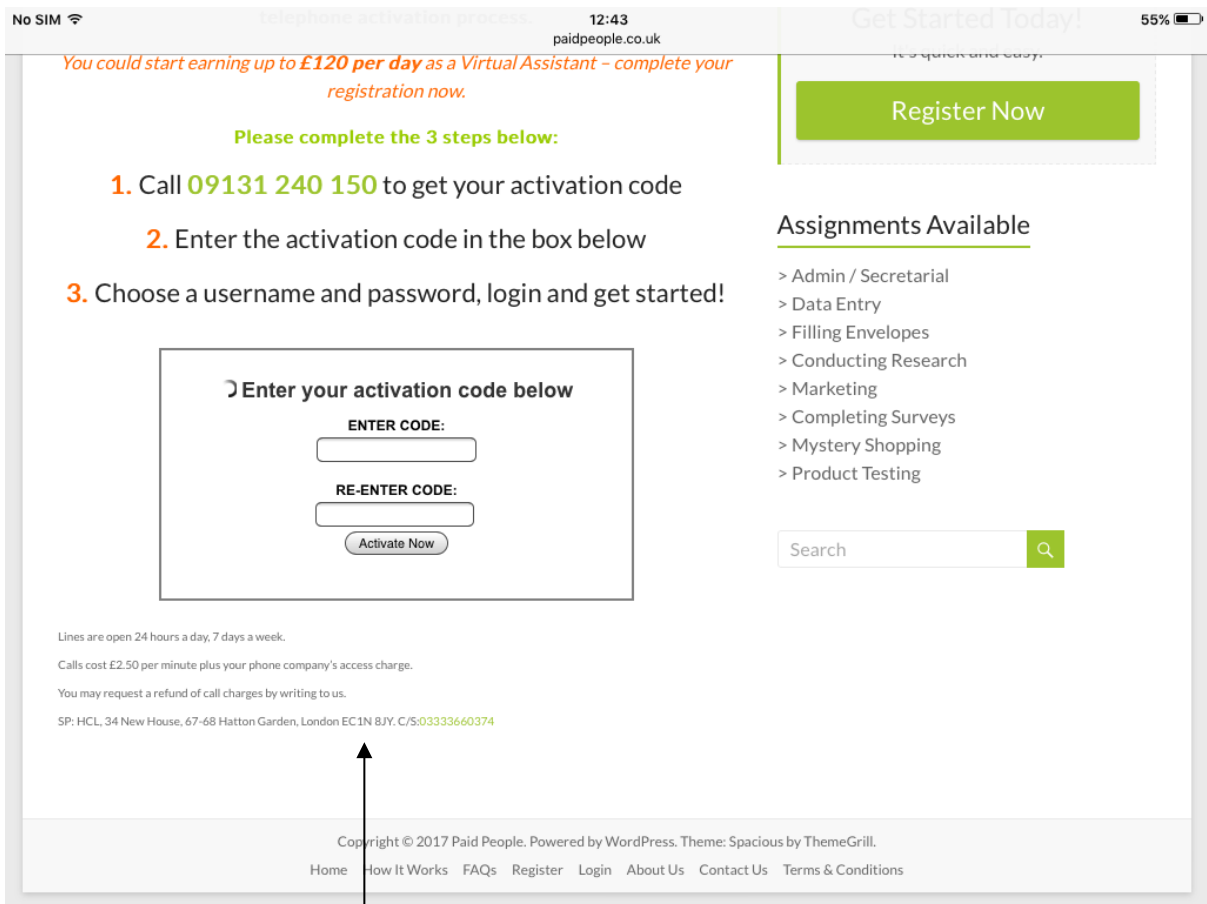
Please complete the 3 steps below:

1. Call 09131 240 150 to get your activation code
2. Enter the activation code in the box below
3. Choose a username and password, login and get started!

Below the steps is a form titled 'Enter your activation code below' with two input fields: 'ENTER CODE:' and 'RE-ENTER CODE:', and an 'Activate Now' button.

On the right side of the page, there is a 'Get Started Today!' section with the text 'It's quick and easy.' and a 'Register Now' button. Below this is an 'Assignments Available' section with a list of tasks: Admin / Secretarial, Data Entry, Filing Envelopes, Conducting Research, Marketing, Completing Surveys, Mystery Shopping, and Product Testing. There is also a search bar at the bottom right.

At the bottom of the page, there is a copyright notice: 'Copyright © 2017 Paid People. Powered by WordPress. Theme: Spacious by ThemeGrill.' and a secondary navigation menu with links for Home, How It Works, FAQs, Register, Login, About Us, Contact Us, and Terms & Conditions.



Lines are open 24 hours a day, 7 days a week.

Calls cost £2.50 per minute plus your phone company's access charge.

You may request a refund of call charges by writing to us.

SP: HCL, 34 New House, 67-68 Hatton Garden, London EC1N 8JY. C/S:03333660374

When the Executive had viewed the website and promotional material provided by complainants, it found that pricing information was given in a small grey font on a white background at the bottom of the page, underneath opening times information. Guidance on Promoting premium rate services has specific guidance on font size and the use of colour:

3.12

"In some cases, the Phone-paid Services Authority accepts that prominence may take precedence over proximity. An example would be a print or web page which clearly and prominently stated that all numbers/shortcodes/other access codes on the page cost £X/£X per minute or Xp/Xp per minute. In this case, there would be no need for there to be an individual price in close proximity to all the numbers/shortcodes/other access codes on the page. However, we stress that examples of prominence and proximate being mutually

exclusive in this way are rare, and that providers who have any doubt should contact the Phone-paid Services Authority's before they begin to provide services."

3.13

"Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, 'close examination' will differ for the medium, for example a static webpage, a fleeting TV promotion, in a print publication, or on a billboard where you may be at a distance or travelling past at speed."

3.14

"The use of colour (see immediately below) also needs to be considered, as this could affect the need for close examination, regardless of font size."

3.15

"There are a number of instances when the combination of colours used in promotional material reduces the clarity of information and the ease with which it can be seen. Providers should take care to ensure that the colour combinations (including black on white) used for the presentation of the price do not adversely affect the clarity."

The premium rate number is in a large clear font and colour at the top of the page, while the pricing information is neither prominent, nor proximate.

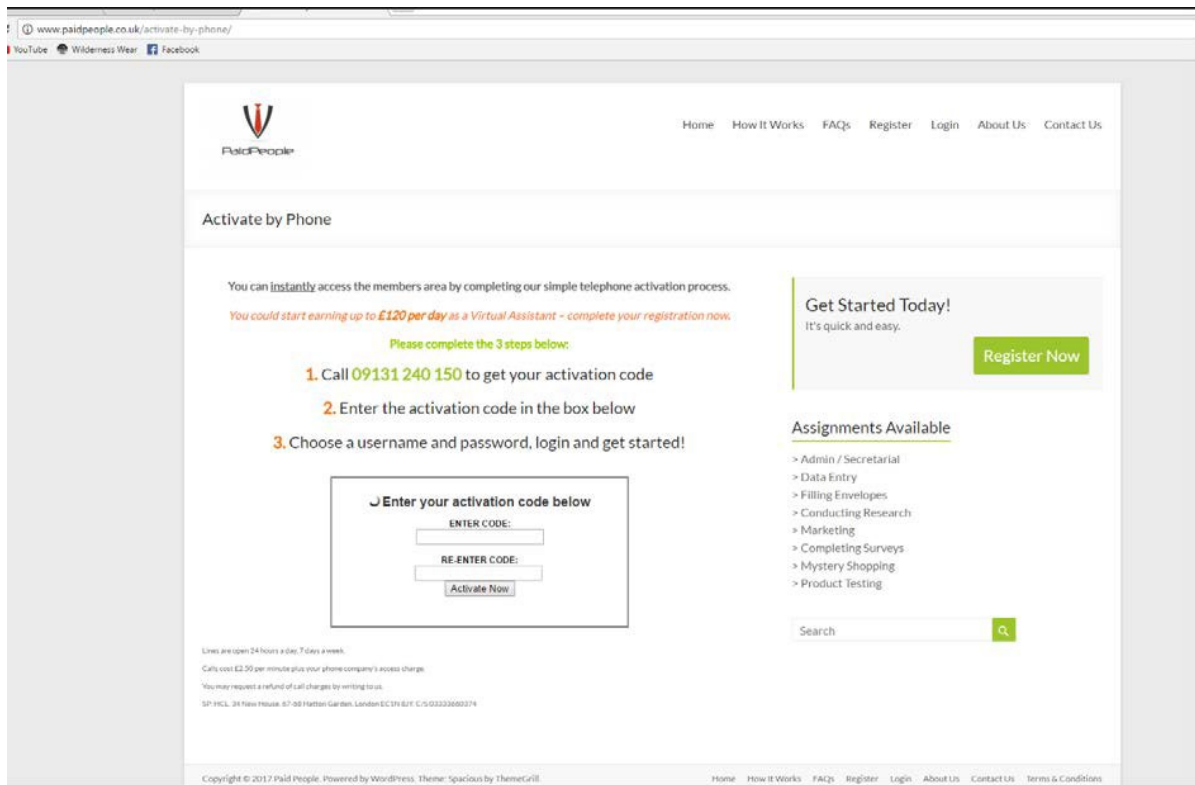
The promotional material for the Service provided by the complainants demonstrates the pricing information was neither prominent, nor proximate. As a result, consumers would likely not have been fully and clearly informed of how much the premium rate service was likely to cost them before calling the premium rate number. This is supported by the complaints made about the service in which consumers expressed their shock at being charged for the call.

The promotion makes it appear a straightforward simple process of calling the premium rate number to get an activation code, enter the activation code, choose a username and password, login and get started.

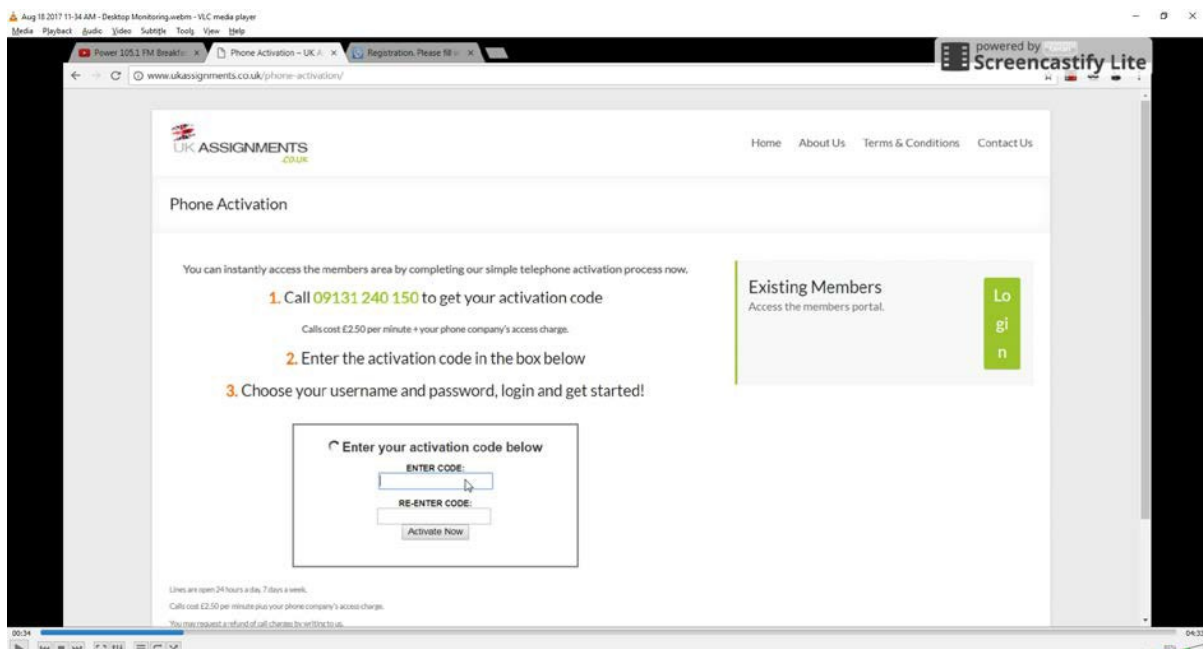
"You can instantly access the members area by completing our simple telephone activation process"

"Get Started Today! It's quick and easy"

The Executive relied upon screenshot evidence provided by complainants (below):



The Executive also relied upon its own monitoring evidence:



The Executive contended that the pricing information was neither prominent, nor proximate. It stated that in the event that a consumer had seen the pricing information, there would have been a reasonable expectation that obtaining an activation code

would not take a long period of time, particularly given the lack of any stated minimum call length or maximum price per call. The Executive stated that it should have been possible for a simple activation code to be provided in less than a minute and therefore access to the members' area portal should have been gained for just £2.50 plus the phone company's access charge.

Consumers were not made aware, before calling the £2.50 per minute premium rate number, that they would not be given an activation code straight away, but would instead be taken through several repetitive questions by an operator asking for various pieces of information including name, contact details, type of virtual assistant work interested in.

The Executive stated that consumers were not provided with all relevant information within the promotional material to make an informed decision, whether or not to call the premium rate number. There was no indication as to how long the call was likely to last, it was also not clear why there was use of a live operator to provide an access code to be entered back into the website, or why information had to be given by a consumer during the call. The premium rate number was specifically advertised to obtain an activation code for a specific purpose, which was access to the members area portal. It was not a helpline, nor advice line, and was not described as such.

The Executive stated that complainants had stated that calls to obtain an activation code lasted for in excess of 11 – 15 minutes and cost in the region of £31 - £35. The Executive's own monitoring had involved a call lasting 14 minutes and 54 seconds. Complainants felt misled after calling the premium rate number.

For the reasons set out above, the Executive submitted that pricing information was not prominent or proximate to the premium rate number.

2. The Level 2 provider did not respond to the Warning Notice but had previously stated "For the avoidance of doubt, we refute all the claims and allegations in your document."
3. The Tribunal considered the Code and all the evidence before it.

The Tribunal noted that the Executive's own monitoring and the evidence supplied by both the Level 1 and Level 2 providers showed pricing that was proximate to the premium rate number. However, screenshot evidence supplied by two complainants showed pricing information which was not, in the view of the Tribunal, sufficiently prominent and proximate to the premium rate number, for the reasons advanced by the Executive. The Tribunal was therefore satisfied, based on the complainant evidence, that the "PaidforPeople" promotion did not contain prominent or proximate pricing, when viewed through a website. The Tribunal was not able to determine how long this had been the case from the evidence before it.

The Tribunal was also satisfied that the service promotions did not contain any information about likely minimum or maximum call lengths and that, as a consequence, consumers would not have understood how long they were likely to be on the phone and how much the call would cost.

For the reasons set out above, the Tribunal found that consumers were not sufficiently informed of the cost of the service before calling the premium rate number. Accordingly, the Tribunal upheld a breach of rule 2.2.7 of the Code.

Breach Upheld

Alleged Breach 2

Rule 2.3.2 of the Code states “PRS must not mislead or be likely to mislead in any way.”

1. The Executive stated that the Level 2 provider had acted in breach of Rule 2.3.2 of the Code, as the Service and its promotional material was misleading.

The Executive relied on the complainant accounts, monitoring of the Service and the PSA Guidance on “Promoting premium rate services” (the “**Guidance**”). The Guidance states:

“7.1

If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, a key term or condition likely to affect a consumer’s decision to use the service.”

The Executive relies on complainant accounts received by the PSA, excerpts from which are provided below:

“I went onto a website called Paid People which leads people to believe that they have assignments waiting so that you can earn money by choosing whatever tasks or projects that suit you.”

“I am a single mum looking for extra work and it has cost me more money with a huge mobile bill I am disgusted, stressed and upset this shouldn't be allowed to happen.”

“After inputting 'work from home jobs' in google one of the first options available was from a company called paidpeople.co.uk”

“I came to this page by registering for an online account to provide me paid freelance work.”

The Executive submitted that the provider had stated the Service provided information on working from home as a virtual assistant where users call a premium rate number providing access to an eBook operators manual, and members portal, which provided information allowing a person to be a virtual assistant and links to virtual assistant opportunities

However, the Executive noted that complainants had indicated that they had been misled into believing that this was an *employment service with assignments and paid work opportunities available*. The Executive argued that domains such as www.ukassignments.co.uk and www.paidpeople.co.uk could be mistaken for employment websites, especially in conjunction with the information contained within them. The fact that this was an information service was not made clear, as demonstrated by the complaints.

The complainants in the case were all under the impression that the Service would provide them with work opportunities.

When the Executive viewed the promotional material supplied by complainants, it found that the promotion placed an emphasis on the types of assignments and paid work opportunities available once registered and on how a person would be paid for their services. The promotion listed “Assignments Available” and stated:

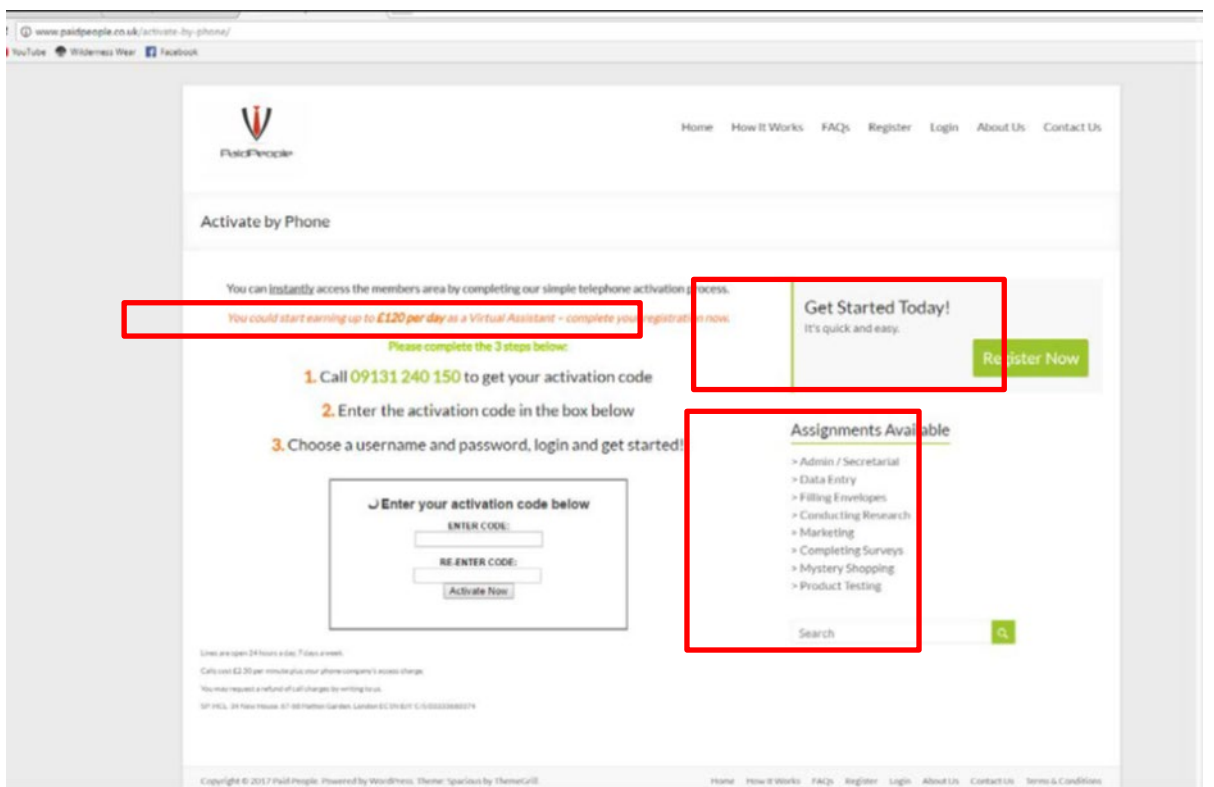
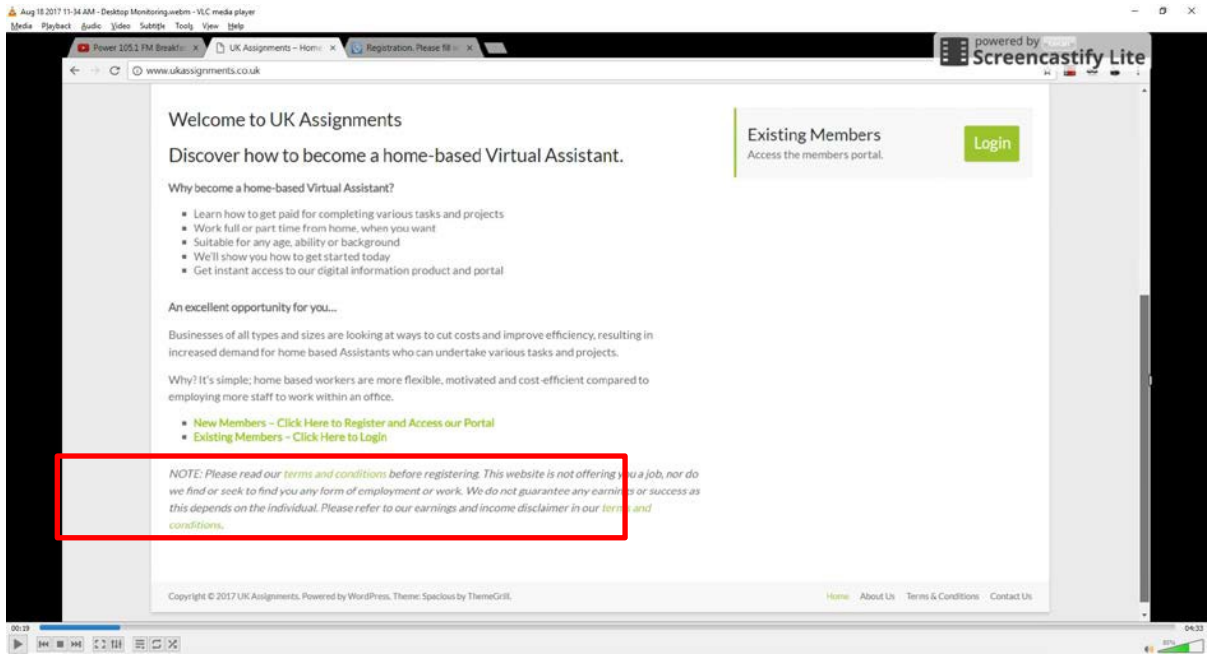
*“You could start earning up to **£120 per day** as a virtual assistant – complete your registration now.”*

“Get Started Today! It’s quick and easy”

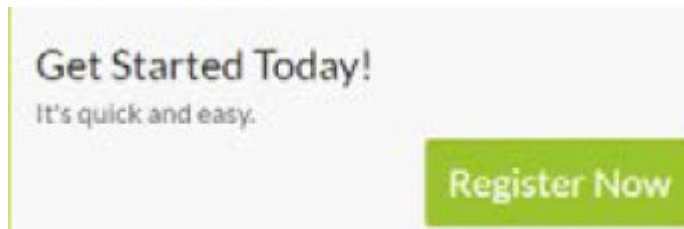
When the Executive monitored the Service on 18 August 2017, it found that while there was a disclaimer explaining the nature of the service, it was not prominent, and was in a grey text on a white background at the bottom of the web page. The disclaimer stated:

“NOTE: Please read our terms and conditions before registering. This website is not offering you a job, nor do we find or seek to find you any form of employment or work. We do not guarantee any earnings or success as this depends on the individual. Please refer to our earnings and income disclaimer in our terms and conditions.”

The Executive submitted that the Service and its promotion gave a strong indication that it was a route to finding employment and making money. It was the Executive’s position that this “note” was not sufficient to counter the misleading impression given by the remainder of the website. In any event, further clarification of the Service by providing a disclaimer, would not have been necessary if it had been clear what the nature of the Service was. The Executive stated that promotional material led consumers to believe that the Service was an employment service.



You could start earning up to £120 per day as a Virtual Assistant - complete your registration now.



Assignments Available

- > Admin / Secretarial
- > Data Entry
- > Filling Envelopes
- > Conducting Research
- > Marketing
- > Completing Surveys
- > Mystery Shopping
- > Product Testing

For the reasons set out above, the Executive submitted that the Service and its promotional material was misleading.

2. The Level 2 provider did not respond to the Warning Notice but had previously stated “For avoidance of doubt, we refute all the claims and allegations in your document.”
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the use of phrases such as “You could start earning up to £120 per day – complete registration today” and “Assignments available” created the impression that this was an employment service, not a service providing information on how to become a virtual assistant.

The Tribunal noted that a consumer would have to listen very carefully and pay close attention to understand that the service was not an employment service. The Tribunal considered that the “disclaimer” on the promotional material explaining the nature of the service would have been very easy for a consumer to miss. The Tribunal was further satisfied that the promotional wording was carefully constructed and designed in order to mislead a consumer into dialling the premium rate number thinking that the service was an employment service

For the reasons set out above the Tribunal was satisfied that the service promotions had misled consumers. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Breach upheld

Alleged Breach 3

Rule 2.3.4 of the Code states “PRS must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.”

1. The Executive stated that the Level 2 provider had acted in breach of Rule 2.3.4 of the Code.

The Executive relied on the complainant accounts, monitoring of the Service and the PSA Guidance on “The avoidance of undue delay” (the “Guidance”). The Guidance states:

“Paragraph 1.1

Once a consumer has chosen to engage with any type of premium rate service, the service should either offer prompt engagement with the service itself, or the service goods purchased should be promptly delivered (pay-for-product services), where this is possible.”

The Executive also relied on complainant accounts received by the PSA. Excerpts from two complaints are provided below:

“This is a complete scam, the call cost me £31.43. The lady on the phone spoke very slowly and dragged it out so you pay more and I even asked her to speed up on a couple of occasions which she clearly ignored. This is a scam as it doesn’t even lead to anything.”

“The call was dragged on for no reason and once I logged into the account there was nothing but a few links to other sites, no services provided.”

The Executive stated that the delaying consumers from reaching key information was not permitted on any service. It was clear from complainants that their expectation when calling the premium rate number was to obtain an activation code to access the member’s area of the website, it was not to be kept on a premium rate call costing £2.50 per minute having to repeat all the details they had already submitted online.

The Executive submitted that the expectation of consumers was that they would call the premium rate number to obtain an activation code, without any undue delay. Instead callers were taken through a whole process of questions. It was not made clear in the promotional material that the caller would be required to provide details over the phone in order to obtain the activation code, nor was it made clear how long the call would last.

The Executive stated that complainants had advised that they had already filled out an online form with their details before calling the premium rate number for an activation code but were made to repeat all the details again by the operator. The Executive argued that this was unnecessary and simply had the effect of prolonging the call and creating undue delay.

Monitoring by the Executive had confirmed what complainants had stated regarding undue delay. When the Executive had viewed the website, there was no option to register online. The Executive had called the premium rate number 09131240150 and was on the call for 14 minutes and 54 seconds to obtain an activation code to access the members' portal area. During the monitoring call, the Executive had queried whether it would be possible to log the details online and the operator had advised "You can do it online, but to activate over the phone I'll take them again anyway". The Executive was required to provide a name and contact details including email address, contact number and postal address. The Executive was also taken through a list of virtual assistant jobs by the operator and asked which ones the Executive would be interested in, and how many hours per week the Executive could commit to.

The Executive submitted that the Level 2 provider had provided no clear explanation as to why these questions by the operator were required in order to obtain the activation code to access the members portal area. The Executive stated that there was a clear inference of undue delay being caused by the operator.

For the reasons set out above, the Executive submitted that there was undue delay in providing the key information to consumers, namely the activation code required to obtain access to the member's area of the website.

2. The Level 2 provider did not respond to the Warning Notice but had previously stated "For the avoidance of doubt, we refute all the claims and allegations in your document."
3. The Tribunal considered the Code and all the evidence before it, in particular the monitoring call made by the Executive to the Service. The Tribunal considered that sections of the call were scripted and that the script had been deliberately designed to enable the operator to keep the consumer on the call for as long as possible. The Tribunal noted that the operator had requested lots of information from the Executive on the call. The Tribunal rejected the Level 2 provider's account that the information requested by the operator was required. The Tribunal's finding was that, unless the consumer was a "VIP" client of the Service, the information requested on the call was wholly unnecessary. The Tribunal was also satisfied that the activation code given on the call had no relation to the caller, or to the information supplied by the caller.

The Tribunal was satisfied that there had been an undue delay in delivering the Service and accordingly upheld a breach of rule 2.3.4 of the Code.

Alleged Breach 4

Rule 2.6.1 of the Code states "Level 2 providers must ensure that consumers of their services are able to have complaints resolved quickly, easily and fairly and that any redress is provided quickly and easily."

The Executive submitted that the Level 2 provider had acted in breach of Rule 2.6.1 of the Code, as pricing information provided on promotional material was not sufficiently proximate to the premium rate number.

The Executive relied on complainant accounts and the PSA Guidance on “Complaint-handling process” (the “Guidance”). The Guidance states:

“1. Desired outcomes – what we believe good complaint handling should look like

1.1 Consumers have certain expectations when, in their mind, an issue has arisen that gives them cause for complaint. We believe that these expectations give rise to certain outcomes, as follows:

Pursuing a complaint should not unduly cost the consumer in terms of time or money.

Consumers with valid claims should have to make as few calls as possible in order to find redress.

Providers should be courteous and respectful to consumers at all times.

Consumers should be kept informed as to the status of their complaint.

Providers should make every reasonable effort to resolve a consumer’s complaint.

The Level 2 provider should take the lead in providing redress (in the case of a valid complaint). Where a Level 2 provider does not, and the Network operator and/or Level 1 provider is aware of a problem, they must take the initiative as appropriate and proactively seek to provide redress.

Consumers must have recourse to an objective third party to arbitrate over disputes.

2. Complaint-handling process

2.1 The Code focusses on quick and easy resolution of complaints. This involves consumers having access to both information and a process by which issues can be identified, shared, and considered.

2.4 The Code refers to the ability “to have complaints resolved quickly and easily...and that any redress is provided quickly and easily”. Complaint handling is therefore not just about gathering information from a complainant but being able to resolve matters fully and to provide a proper form of redress.”

The Executive relied on complainant accounts received by the PSA.

Excerpts from complaints are provided below:

“Consumer said he tried to email the company and has had no response”

“I have tried contacting 2 email addresses requesting a refund for the call but have had no responses. I have tried calling the customer care number but again, no response.”

“I emailed the email she gave me to request for a refund and no one is responding to me but they have already put a charge on my phone bill”

"I emailed them back again on 6th June with the screen shots I am sending you and also outlined why I wanted a refund. I heard nothing back from them so emailed them again on 9th June to ask that they get back to me but I still have not heard anything back from them."

"consumer tried to call, email and write a letter to the company to request a refund but the company is yet to response"

"...I have followed the steps as stated on there registration screen and written to request a refund but they have just ignored the letter completely so much so that's it's now being returned to sender..."

The Executive confirmed that PSA complainants who requested a refund did eventually obtain one, but that it was clear from the complainant evidence that their complaints were not quickly and easily resolved, and that redress had not been provided quickly and easily.

The Executive referred to the service promotional material which stated:

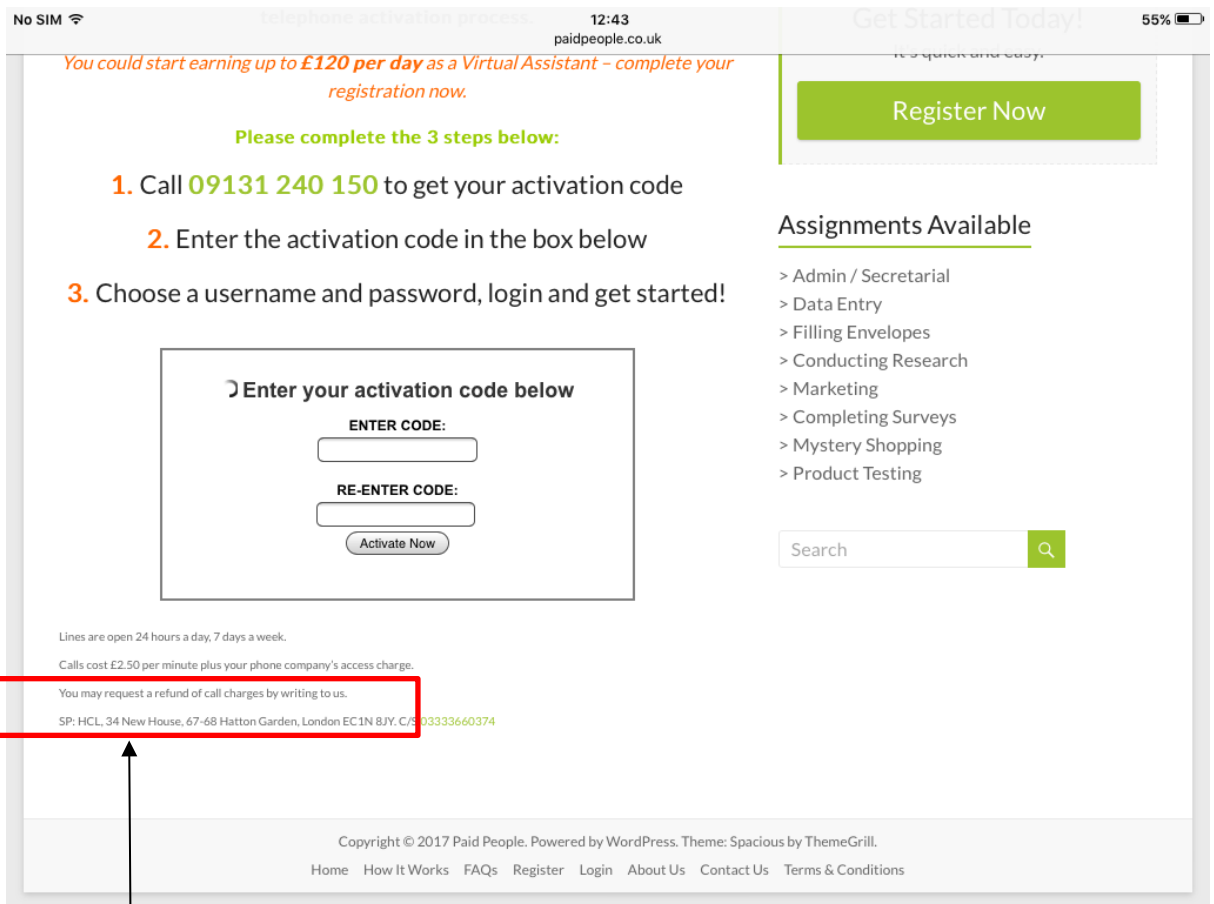
"You may request a refund of call charges by writing to us"

SP: HCL, 34 New House, 67 - 68 Hatton Garden, London, EC1N 8JY. C/S: 03333660374"

The Executive stated that the information regarding how to request a refund was given in a small grey font on a white background at the bottom of the page. The identity of the Level 2 provider Heart Communications Limited was given in an abbreviated format as "HCL", followed by a postal address and customer service telephone number.

The Executive further stated that the Level 2 provider stated in its promotional material that consumers needed to write a letter to a postal address in order to request a refund. The complainant accounts, together with the required method of requesting a refund suggested that redress was not provided quickly nor easily to consumers.

In support of these submissions, the Executive relied upon screenshot evidence provided by complainants (below):



You may request a refund of call charges by writing to us.

SP: HCL, 34 New House, 67-68 Hatton Garden, London EC1N 8JY. C/S:03333660374

For the reasons set out above, the Executive submitted that the provider had failed to ensure that consumers of the service were able to have complaints resolved quickly, easily and fairly and that any redress was provided quickly and easily.

2. The Level 2 provider did not respond to the Warning Notice but had previously stated “For the avoidance of doubt, we refute all the claims and allegations in your document.”
3. The Tribunal considered the Code and all the evidence before it.

The Tribunal was satisfied, for the reasons advanced by the Executive, that consumers had not been provided with an adequate way to have their complaints quickly, easily and fairly resolved. This was clearly demonstrated by the Executive’s monitoring and the content of the consumer complaints received. The Tribunal was also satisfied that redress had not been provided quickly and easily. The Tribunal did not accept the provider’s explanation that this was an isolated incident. The view of the Tribunal was that complainants had been required to wait for refunds for a significant period. In addition, the Tribunal noted that there was no evidence before it of any other refunds having been issued, other than those issued to PSA complainants.

For the reasons set out above, the Tribunal was satisfied that complaints had not been resolved quickly, easily and fairly and that the redress was not provided quickly and easily. Accordingly, the Tribunal upheld a breach of Rule 2.6.1 of the Code.

Breach upheld

Revenue

The Executive submitted that the Level 2 provider's gross revenue accrued from the service was £118,558.99. The Executive submitted that the entirety of the revenue flowed from the apparent breaches of Code paragraph 2.2.7 pricing prominence, 2.3.2 misleading and 2.3.4 undue delay.

The Executive had come to this position on the basis that the Service was fundamentally misleading, as demonstrated by the complaints received. The combined effect of the breaches was that consumers were misled into dialling an expensive premium rate number and were then kept on the call for an excessive period of time. The Executive's view was that consumers would have been unlikely to call the premium rate number had they known that they:

- were not dialling an employment service
- would not be given an activation code immediately
- would be kept on the call for up to 15 minutes at a rate of £2.50per/minute.

Sanctions

Initial Assessment

1. The Executive's initial assessment, before any potential adjustment in light of aggravating or mitigating features or for proportionality, was that the following sanctions were appropriate:
 - a formal reprimand
 - a requirement that the Level 2 provider remedy the breaches
 - that access to the service be barred pending the Level 2 provider seeking and implementing compliance advice on the service and its promotions, and remedied the breaches to the satisfaction of PSA, such compliance advice to remain in operation unless otherwise agreed with the PSA
 - a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
 - a fine of £695,000, the breakdown being as follows:

Rule 2.2.7 - £175,000

Rule 2.3.2 – £250,000

Rule 2.3.4 – £250,000

Paragraph 2.6.1 – £20,000

based on a preliminary assessment of the breaches as follows:

Rule 2.2.7 – Serious

Rule 2.3.2 – Very serious

Rule 2.3.4 – Very serious

Paragraph 2.6.1 – Moderate

2. The Tribunal’s initial assessment was that overall the case was Very Serious. In coming to this assessment, the Tribunal found the following:

Rule 2.2.7

- this breach was Serious
- the breach was likely to severely damage consumer confidence in premium rate services and to impact on consumers
- consumers had incurred unnecessary cost. The breach was at the heart of the consumer harm caused by the Service. Even if a consumer had seen the pricing information, there was no way for a consumer to know how much the call was likely to cost.
- The breach was committed intentionally in that the pricing information was deliberately not supplied to consumers, who were subsequently kept on the call for as long as possible by the call operator.

Rule 2.3.2

- this breach was Serious
- there was a significant impact on consumers who had incurred an unnecessary cost as a result of not understanding the true nature of the service
- although a disclaimer was present in the promotions, the conduct of the provider in using misleading language was, at best, reckless.

Rule 2.3.4

- this breach was Very Serious

- The breach was deliberate in nature and consumers had incurred a wholly unnecessary cost. The call operator had clearly been provided with a “script” designed to keep a consumer on the call. The information requested was not necessary.

Rule 2.6.1

- this breach was Significant
- the failure in customer care was significant in nature. It was not an isolated incident and had lasted for a significant duration
- there was no evidence that any refunds had been offered other than those requested by the PSA.

The Tribunal agreed with the Executive’s initial assessment of the appropriate sanctions.

Assessment of mitigating and aggravating factors

The Executive submitted that the following were mitigating factors:

- the Level 2 provider had suspended the Service within 48 hours of receiving the Executive’s preliminary enquiry letter on 17 August 2017
- PSA complainants had eventually been refunded by the provider.

The Tribunal did consider the suspension of the Service to be a mitigating factor.

The Tribunal did not consider the refunding of complainants to be a mitigating factor, as there had been a delay in refunding the complainants and therefore the provider had not proactively issued refunds.

The Executive submitted that the following were aggravating factors:

- the Level 2 provider had failed to follow PSA Guidance
- the Level 2 provider had failed to heed previous PSA adjudications in respect of pricing information and misleading promotions
- the Level 2 provider had failed to implement compliance advice given by the Executive on 31 July 2017
- the Level 2 provider had been subject to 3 previous Track 1 procedures in respect of similar services.

The Tribunal considered the factors outlined by the Executive to be aggravating factors, with the exception of the provider’s alleged failure to implement compliance advice. On this, the Tribunal found that the provider had not failed to implement compliance advice because it had, in fact, suspended the Service very shortly after the advice was given.

Having considered the circumstances of the case, the Tribunal concluded that it should be regarded, overall, as Very Serious.

Proportionality Assessment

The Executive submitted that the Level 2 provider revenue generated from the apparent breaches of Code rules 2.2.7, 2.3.2 and 2.3.4 was £118,558.99.

The Executive argued that there was a need to remove the financial benefit to the provider which had accrued as a result of the breaches, and a need to deter the provider and the wider industry from breaching the Code in this way in the future.

The Executive argued that the lack of pricing prominence, the misleading nature of the promotion and the undue delay in the delivery of the Service were in their totality Very Serious, both in terms of the actual and potential harm caused to consumers and the damage to the reputation of phone-paid services as a whole

The Executive noted that the service was suspended on 20 August 2017 but given the seriousness of the breaches and the need to deter conduct of this nature, the recommended initial sanctions were proportionate and justified.

The Executive did however consider the fact that the recommended fine far exceeded the revenue generated and acknowledged the financial impact this might have on the provider in combination with the recommended non-financial sanctions

Considering this, the Executive's recommendation was that the recommended fine should be adjusted downwards from £695,000 to £200,000 but that none of the other initial recommended sanctions should be adjusted.

The Tribunal accepted the Executive's calculation of the revenue flowing from the breaches. The Tribunal was satisfied that the figure had been correctly calculated. The Tribunal's reasoning was that consumers who had understood the true nature of the service were unlikely to have called the premium rate number and therefore were unlikely to account for the revenue generated. The Tribunal was therefore satisfied, on a balance of probabilities, that all of the relevant revenue flowed from the breaches of rule 2.3.2 and 2.3.4 in combination.

The Tribunal decided that it was necessary to remove the financial benefit made as a result of the breaches and a need to deter the reoccurrence of such breaches by the Level 2 provider, as well as those in the wider industry.

The Tribunal agreed with the Executive's sanctions recommendations. It also agreed with the Executive's submission that, as the fine amount in its initial assessment exceeded the revenue held to have flowed from the breaches, that it ought to be reduced to ensure that the combination of sanctions imposed was proportionate.

The Tribunal considered it to be particularly aggravating that the provider had been subject to three previous Track 1 procedures. It was particularly concerning to the Tribunal that the most

recent Track 1 procedure had been strikingly similar to the current case. The Tribunal therefore decided that it was necessary and appropriate to impose a compliance audit sanction on the provider, requiring that an audit be conducted of its operations, with a focus on the provider's compliance around rules governing pricing transparency, misleading information, undue delay and complaints handling.

Sanctions adjustment

The Tribunal determined that it was appropriate to reduce the fine amount to ensure that the final sanctions imposed were proportionate in their totality. The Tribunal decided that a fine in the amount of £165,000 was appropriate, given the likely combined impact of the sanctions, including the compliance audit sanction for which the provider would incur a cost. The Tribunal considered that a fine in this amount was the minimum necessary in order to achieve the sanctioning objective of achieving credible deterrence.

Final sanctions

Considering all circumstance of the case, the Tribunal decided to impose the following sanctions:

- an aggregate fine of £165,000
- a requirement that the provider remedy the breaches
- a formal reprimand
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made
- access to the Service be barred until the Level 2 provider has sought and implemented compliance advice on the Service and its promotions to the satisfaction of the PSA, and remedied the breaches to the satisfaction of the PSA
- a requirement of a compliance audit of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the provider with rules governing pricing transparency, misleading promotions, undue delay in service delivery and complaints handling.

Administrative charge recommendation: 100%