

Tribunal meeting number 263

Case reference: 162375
Level 2 provider: Irich Info Technology Limited (UK)
Type of service: Technical Support
Level 1 provider: Numbers Plus Limited (UK)
Network operator: Numbers Plus Limited (UK)

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14th Edition of the PSA's Code of Practice (the "**Code**").

Background

The case concerned a technical support service (the "**Service**") which operated on the following premium rate numbers:

09131240311, 09131240322, 09131240344, 09131240366, 09131240433, 09131240444, 09131240455, 09131241180, 09131241190, 09131240555 and 09131240556

The Level 2 provider for the Service was Irich Info Technology Services (the "**Level 2 provider**"). The Level 2 provider registered with the Executive on 11 May 2018.

The Level 1 provider for the Service was Numbers Plus Limited.

The Level 2 provider described the Service as one which provided Technical Support and stated that the Service charged £2.50 per minute. The Level 2 provider described the Service as follows:

"The customers facings any issue with the software/hardware/troubleshooting of gadgets like mobile phones, tablets, laptops or smart home devices, call our service number(s) and seek the technical support."

"The number is provided verbally when asked for technical support. Also, the call cost is clearly stated at this time. Also, if the customer is not happy with any of our services a full refund is initiated within 24 hours of the complaint".

In relation to the promotion of the Service, the Level 2 provider said the following:

"The service is promoted by various communication details call/email/online promotions & customers are provided technical support for their various electronic details".

The Level 2 provider also provided the following promotional material in relation to the Service:

Hello,

Is this _____?

Good morning / afternoon.

I am _____ calling from Irich Info Technology.

This call is regarding our company's technical support services and offerings.

I would like to tell you that our company provides technical support / troubleshooting across all electronics devices available out there in the market.

We offer on demand data storage, restoration and cloud space sharing at affordable prices.

Our technical team consists of various technicians and technical engineers who have a vast experience across all domains of electronics market.

At any part of the time, if you come across any problem or need help regarding any of your electronics equipments be it mobile, fixed line, smart home systems, home appliances etc. and you wish to avail our services we are just a call away.

You can contact our company's premium numbers chargeable at two pounds and fifty pence per minute plus access charge.

Numbers: 09131240XXX

For any complaint / query you can write us at: irichinfotech@gmail.com Have

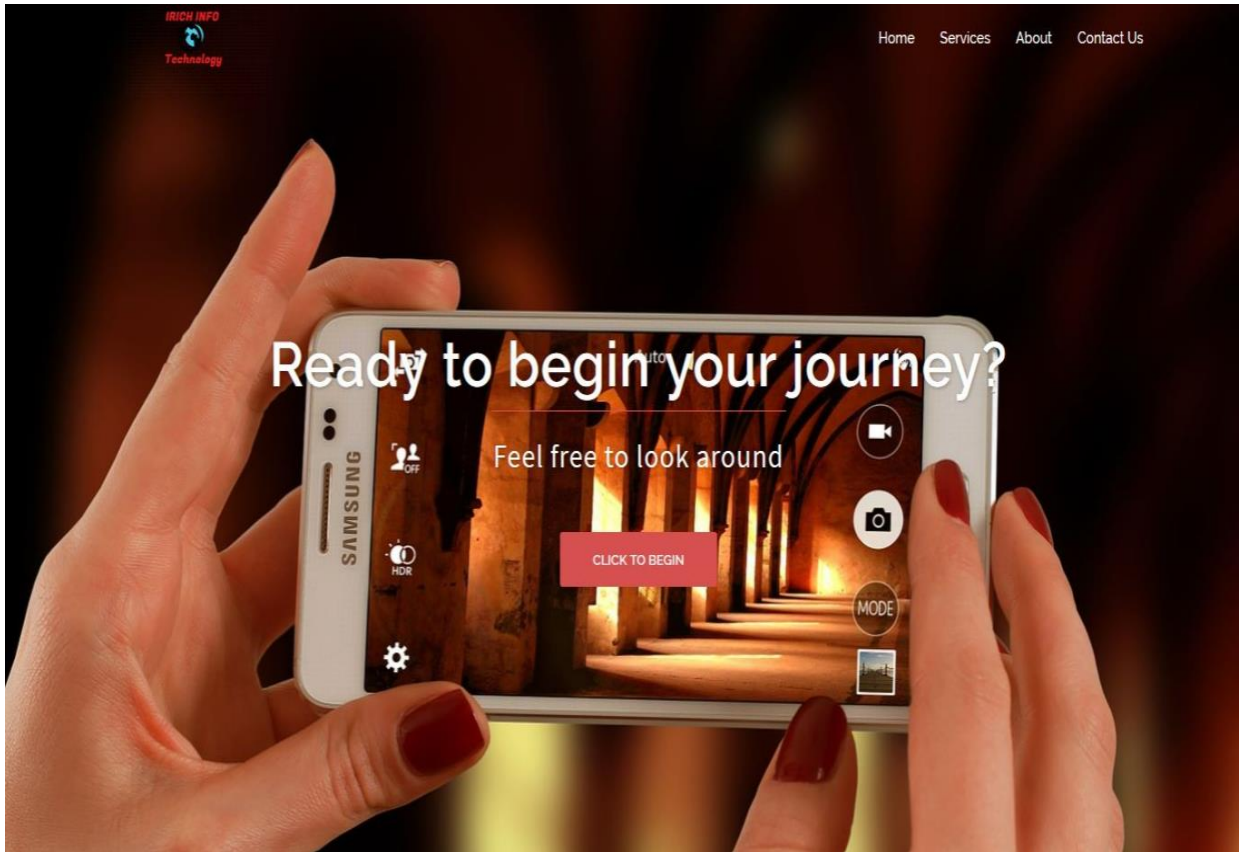
a great day.

The Level 1 provider stated the following in relation to the Service:

"The Service was a simple technical support line. Their website listed technical support as one of the services offered. Using a PRS number to charge for remote technical support is commonplace [sic]."

"Our understanding is that the promotion was via the website and through a contact centre. We were not given any samples of the service being promoted in print and as such we made sure that a suitable audio price warning was played at the start of each call."

The Level 1 provider submitted the following screenshots of the Service:



OUR SERVICES



Data Storage And Recovery

Data recovery is possible because a file and the information about that file are stored in different places. For example, the Windows operating system uses a file allocation table to track which files are on the hard drive and where they are stored.



Software like Anti-Virus

A Note About Free Antivirus. All of these companies are trying to make money. And handing out free antivirus isn't going to do that. So there are a few things you should be aware of. Many of these companies, for example, will try to get you to upgrade to their paid software.



Online/Technical Support

Affordable, fully UK based remote technical support services for home and IT services for your business. Click or call, we do it all.

[SEE SOME MORE SERVICES](#)

WANT TO KNOW MORE ABOUT OUR COMPANY? CURIOUS WHAT ELSE WE DO?

LEARN MORE

ABOUT US

IRICH INFO TECHNOLOGY is one of a kind service provider over a wide range of IT domains that includes Lead Generation, Social Media Marketing, Web Designing, Affiliate Marketing, Search Engine Optimisation, Data Storage & Recovery, Antivirus & Technical Support.

IRICH INFO TECHNOLOGY has been a pioneer into IT service industry for a long period due to it's most efficient and dynamic team of industry experts that work tirelessly to provide the best service and experience to their customers. All the technicians are highly qualified and have been serving the industry for many years now. Providing the best experience to the customer is the only vision our whole team lives upto.

Who we are?

IRICH INFO TECHNOLOGY provides the following services :-

- ☆ Lead Generation
- ☆ Social Media Marketing
- ☆ Software like Anti-Virus
- ☆ Online/Technical Support

Annex Page 70 of 128



Search engine optimization (SEO) is the process of optimizing your online content so that a search engine likes to show it as a top result for searches of a certain keyword.

When it comes to SEO, there's you, the search engine, and the searcher. If you have an article about how to make vegan lasagna, you want the search engine (which, in 90% of all cases, is Google) to show it as a top result to anyone who searches for the phrase "vegan lasagna."

IRICH INFO TECHNOLOGY

23 SHAFTON PLACE LEEDS HOLBECK WEST YORKSHIRE LS119LT

8000488167

info@irichinfotechnology.co.uk

The investigation

The Executive received two complaints from members of the public and one from industry concerning the Service as of November 2018. The complaints suggested that the Service was not in fact operating as a technical support line. A sample of the complainant accounts have been provided below:

I received first an email then by telephone from 02031293328 which is now a disconnected number. On phoning the 09131240444 number the call was answered by a woman and I could here kids screaming in the background before the woman disconnected and subsequent calls received the same treatment [SIC]

Live finical - Cost of call £90 - 09131241190 (I have called this number and it gives pricing of £2.5 per min plus access charge)
Consumer filled in a form for short term loan - this was done online but consumer cannot remember URL
Consumer was called back and asked to call 09131241190 to discuss loan options - 2 calls were made on lasting 40 mins and the other lasting 14 mins - Consumer states they asked advisor if call was charged and they were told no. They were also given a toll free number but this number only took them through to a toll free number reseller. [SIC]

We have intercepted indications of extremely high call charges to a large number of our customers for 1 call. When we have checked with our customers, it appears that an overseas call centre believed to be in Pakistan is calling both business and consumer customers informing them that they have evidence that they have an amount of money which has to be returned to them. They then very quickly give the customer a number to call back on while they get the file.

Unwittingly the customers call them, and after a period of time are informed they will receive the paperwork in the next 5-10 days and to fill in details and return in the pre-paid envelope provided. Both consumers and Business customers are being caught by this, especially if an office is busy. Consequently for a single call its cost over £115. They state that they will possibly call the next week to confirm receipt of the documents. No doubt to ask them to call the same number again and run up another huge bill.

Police have been informed and they have advised this is on the rise, and unless detected early, it can cost the provider a large amount of money as the customer may not be able to pay the bill at the end of the month. The telephone number used in this case was 09131240455 which is answered by a Pakistani who does everything to avoid giving the company name.

The Executive sent a formal direction for information in relation to the Service and its promotion on 11 March 2019 with a deadline of 18 March 2019 for a response. The Level 2 provider responded with some information but did not provide a full response to the formal direction.

The Executive sent a second formal direction to the Level 2 provider on 27 March 2019 asking for the information which had not been provided by the Level 2 provider. The Level 2 provider responded on 6 April with more information in relation to the Service, but did not provide all of the information that had been requested. The Executive sent a further formal direction on 30

July 2019, asking for a response by 7 August 2019. No response was received from the Level 2 provider.

The Executive contacted the Level 1 provider on 7 August 2019 to see if it could assist in securing a response to the direction from its client, the Level 2 provider. On 12 August 2019 the Level 1 provider confirmed to the Executive that it had not received a response from the Level 2 provider.

Apparent breaches of the Code

The Executive sent a Warning Notice to the Level 2 provider in which the following breaches of the Code were raised:

- Rule 2.4.2 – Consent to market
- Paragraph 4.2.3 – Failure to disclose information

Preliminary issues

Service of notice and proceeding in absence (2 April 2020)

The Tribunal was originally listed to take place on 2 April 2020 at 14:00. The Tribunal considered whether notice of the Tribunal had been properly served on the Level 2 provider. The Tribunal noted that a copy of the Warning Notice had been served on the Level 2 provider on 17 February 2020 and that no response had been received.

When questioned, the Executive confirmed that the Level 2 provider had been emailed on 19 March 2020 to inform them of the date of the Tribunal and to confirm that the Tribunal would be taking place using a video conferencing.

The Tribunal considered whether notice of the Tribunal hearing had been properly served. The Tribunal noted that the Executive had not informed the Level 2 provider with the start time for the Tribunal hearing and had only provided the date. The Tribunal considered the provisions within the Code and the accompanying Supporting Procedures and concluded that there was no explicit requirement for a provider to be informed of the time of a Tribunal and that the Executive had complied with the rules regarding service.

The Tribunal then went on to consider whether it was fair to proceed with the case in the absence of the provider. The Tribunal was mindful of its duty to ensure that all hearings are conducted properly, fairly and in accordance with good practice and the relevant law. The Tribunal noted that while the Executive had informed the Level 2 provider of the date that the Tribunal hearing would take place using a virtual conferencing service, the Executive had not informed the Level 2 provider of the time of the Tribunal or given the Level 2 provider any instructions on how to join the virtual meeting.

The Tribunal was of the view that the Executive should have given the Level 2 provider more detail in relation to the Tribunal as the Tribunal was being held remotely. In particular, the Tribunal was of the view that the Executive should have made it clear to the Level 2 provider that the Tribunal was due to take place at 14:00. The Tribunal was also of the opinion that the Executive should have provided the Level 2 provider with clearer instructions to ensure that they were aware of how to participate in the Tribunal remotely to make informal representations.

As this information had not been given to the Level 2 provider, the Tribunal concluded that the Level 2 provider could potentially have been deprived of the opportunity to make informal representations through not knowing how to participate remotely. Accordingly, the Tribunal decided that it would be unfair to proceed in the absence of the Level 2 provider in those circumstances. The Tribunal therefore adjourned the hearing to 22 April 2020.

Service of notice and proceeding in absence (22 April 2020)

Following the adjournment from 2 April 2020, the Tribunal reconvened on 22 April 2020 to consider the case. The Tribunal remained satisfied that the Warning Notice had been properly served on the Level 2 provider on 17 February 2020 and that the Level 2 provider had been given sufficient time within which to respond.

In considering whether to proceed in absence on this occasion, the Tribunal was provided with details of two emails that had been sent by the Executive to the Level 2 provider. The first, which was sent to the Level 2 provider on 3 April 2020 set out that the Tribunal of 2 April 2020 had been adjourned and that it had been rescheduled to take place at 9:30am (London time) on 22 April 2020. The email went on to explain that the Level 2 provider could still make informal representations to the Tribunal but that it would need to inform the Executive of its intention to do this so that it could be sent details on how to join the virtual meeting.

The second email was sent to the Level 2 provider on 14 April 2020 and outlined that no response had been received to the first email. This email re-iterated that if the Level 2 provider wished to participate in the Tribunal, it would need to let the Executive know as soon as possible so that it could be sent instructions on how to join the virtual meeting. Both emails indicated that if no response was received, the Tribunal might go on to consider the case in the absence of the Level 2 provider. The Tribunal was also informed that the Executive had attempted to call the Level 2 provider but that the call had not been answered.

When questioned, the Executive confirmed that it had sent the emails using a secure mail delivery system and had requested delivery receipts and read receipts. The Executive confirmed that the email had bounced back from one address, but that confirmation of delivery to the second email address had been received. The Executive confirmed that it had requested read receipts but had not received any.

The Tribunal was satisfied that the Executive had made all reasonable efforts to try to secure the participation of the Level 2 provider at the Tribunal and that on this occasion it had provided clear details to the Level 2 provider on what steps it would need to take to participate in the proceedings remotely. The Tribunal found that the Level 2 provider had not engaged with the Executive despite the Executive's attempts to secure its participation. In light of this, the Tribunal was satisfied that it was fair to proceed in the absence of the Level 2 provider and that adjourning the case would not secure the participation of the Level 2 provider.

Submissions and conclusions

Alleged breach 1

Rule 2.4.2 of the Code:

“Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a PRS, the Level 2 provider of that service must be able to provide evidence which establishes that consent”

1. The Executive submitted that the Level 2 provider had acted in breach of Rule 2.4.2 of the Code by failing to ensure that they had gained consent from consumers before contacting them.

The Executive relied on the complaints that it had received to argue that consumers were being contacted without their consent as set out in the extracts from the complaints set out below:

“I received first an email then by telephone from 02031293328 which is now a disconnected number....”

“We have intercepted indications of extremely high call charges to a large number of our customers for 1 call. When we have checked with our customers, it appears that an overseas call centre believed to be in Pakistan is calling both business and consumer customers informing them that they have evidence that they have an amount of money which has to be returned to them. They then very quickly give the customer a number to call back on while they get the file.”

The Executive relied on the following paragraphs of the PSA’s Guidance on Privacy and Consent to Market:

Soft opt-in

3.1 Where a provider markets to a consumer using a soft opt-in obtained during a sale or negotiations for a sale, we consider there is less potential detriment, although not an absence of detriment, than where a provider charges the same consumer. As such, we do not consider that the need to provide auditable verification of opt-in is as great as with charging. However, this is subject to the following criteria:

- The consumer was given a clear opportunity to opt out of marketing on each occasion, and was opted out of all future marketing, if they exercised this option. An example would be a promotional SMS that contains the words "to stop future marketing reply STOP".

Hard opt-in

3.4 In order to reach a greater number of consumers, a provider may trade or purchase consumers' personal data. In these circumstances, further protection is necessary because the connection between the consumer and the business they first interacted with, and subsequently with the provider who is now marketing to them, is remote and indirect.

3.5 Sharing of data in these circumstances includes any transfer – including renting, or trading or even disposing free of charge. A third party is any other, distinct legal person – even in the same group of companies or partners in a joint venture.

3.6 For this reason, promotions designed to gain a hard opt-in must draw each consumer's attention specifically to the issue of consent, and that consent must involve a positive step beyond mere purchase of the service by the consumer, to be valid.

3.7 For example, if one provider wishes to purchase a marketing list from an unrelated provider, then evidence of a hard opt-in for each number on that list should be obtained.

3.8 When obtaining consent via a website, using a pre-checked tickbox is not sufficient for this purpose.

3.9 In this context, a compliant example is an empty box that a consumer must tick in order to consent. Next to this, a clear explanation should be made of how the data will be used in future. If this explanation is not clear enough, then the hard opt-in is likely to be invalid.

3.10 A good example of compliant consent is: "I want to hear from companies X, Y and Z so that they can send me offers to my phone. Please pass my details onto them so that they can contact me."

Where this text is placed next to an unchecked box which the consumer checks, and where there is a robust and independent audit trail of the data which supports the consumer having provided their consent, then it is likely this would be regarded as compliant.

3.11 A hard opt-in can also be obtained via a conversation. However, a recording of the conversation, or of key-presses during the call, should be retained to provide robust verification.

3.12 Providers using marketing lists should ensure that each number marketed to has a valid opt-in, gathered no more than six calendar months ago. Providers should ensure that they can robustly verify (see the whole of section 5 of this General Guidance Note) each and every consumer's opt-in, and ensure that none are currently suppressed. Please note that, where a hard opt-in is used to market to consumers who have not previously purchased from a provider, or been in 'negotiations for a sale', then we will expect opt-in to be robustly verifiable in the event of any complaints, no matter how small or large the scale; this is in contrast to the approach to soft opt-in set out at paragraphs 5.1-5.3 of this General Guidance Note.

The Executive observed that the Level 2 provider had been directed to provide a summary of the way that the Service was intended to operate which included the full consumer journey. The Level 2 provider initially responded on 18 March 2019 as follows:

"The service is promoted by various communication details call/email/online promotions & customers are provided technical support for their various electronic devices"

Following a further request from the Executive to provide all copies of promotional material, including the transcript of call promotions, copies of promotional e-mails and copies of online promotions, the Level 2 provider sent the following script to the Executive on 6 April 2020:

Hello,

Is this _____?

Good morning / afternoon.

I am _____ calling from Irich Info Technology.

This call is regarding our company's technical support services and offerings.

I would like to tell you that our company provides technical support / troubleshooting across all electronics devices available out there in the market.

We offer on demand data storage, restoration and cloud space sharing at affordable prices.

Our technical team consists of various technicians and technical engineers who have a vast experience across all domains of electronics market.

At any part of the time, if you come across any problem or need help regarding any of your electronics equipments be it mobile, fixed line, smart home systems, home appliances etc. and you wish to avail our services we are just a call away.

You can contact our company's premium numbers chargeable at two pounds and fifty pence per minute plus access charge.

Numbers: 09131240XXX

For any complaint / query you can write us at: irichinfotech@gmail.com Have a great day.

On the 30 July 2019 the Executive directed the Level 2 provider to supply clear evidence of consent to market which demonstrated that the Level 2 provider had permission to promote the Service via telephone calls and emails to the complainants. No response was received from the Level 2 provider.

The Executive explained that it had been unable to establish which method of marketing the Level 2 provider had used when contacting consumers as described in the complainant accounts and when using the telephone script. The Executive argued that regardless of whether the Level 2 provider had used a soft or hard opt-in method it had not provided any evidence to suggest that it had obtained consent as required in the guidance from the consumers involved to market to them.

Accordingly, the Executive submitted that a breach of the Rule 2.4.2 had occurred.

2. The Level 2 provider did not respond to the breach.
3. The Tribunal carefully considered all of the evidence before it. The Tribunal observed that while the complainant accounts differed in their nature, they all suggested that the initial calls had been to consumers without their consent. The Tribunal also considered the content of the promotional material which had been sent to the Executive by the Level 2 provider including the script of the telephone call. The Tribunal noted that the wording of the script indicated that the call was unsolicited.

In addition to the above, the Tribunal also noted that the Level 2 provider had been directed to provide both the full consumer journey for the Service and evidence of consent to market to the complainants by the Executive. The Tribunal observed that the Level 2 provider had provided only very brief details of the promotion and consumer journey and that it had not responded to a request by the Executive on 30 July 2019 for information in relation to consent to market.

The Tribunal was of the view that as a result of the above there was no information before it to suggest that the Level 2 provider had obtained any consent to market through the hard or soft opt-in methods as envisaged by the Executive's published Guidance on Privacy. The Tribunal was also satisfied that there was no evidence which was capable of undermining the complainants' accounts which indicated that unsolicited calls had been made to consumers.

Accordingly, the Tribunal was satisfied on the balance of probabilities that a breach of the Rule 2.4.2 of the Code had occurred.

Decision: UPHELD

Alleged breach 2

Paragraph 4.2.3 of the Code:

"Where a direction is made pursuant to paragraph 4.2.1 a party must not fail to disclose to the PSA, when requested, any information that is reasonably likely to have a regulatory benefit in an investigation"

1. The Executive submitted that a breach of Paragraph 4.2.3 of the Code had occurred as the Level 2 provider had failed to provide the information which the Executive had requested in a number of formal directions. The Executive further submitted that this information would have had a regulatory benefit as it would have allowed the Executive to fully investigate the Service.

The Executive noted that a formal direction for information under Paragraph 4.2.1 of the Code had been sent to the Level 2 provider on 11 March 2019 with a deadline of 18 March 2019 for a response. Within the direction the Executive had asked for the for the following information:

7. Please provide evidence of the following information in relation to the Level 2 Provider from the start date of the Service to date. All documents should be complete and unredacted:
 - i. Audited accounts (for the avoidance of doubt the audited accounts should include balance sheets and profit and loss accounts)
 - ii. Bank statements.
 - iii. Details of any overdraft facility
 - iv. Evidence of sources and amounts of recent/projected income
 - v. Any other information that you consider may assist the Executive
8. Please confirm whether the Level 2 provider has other revenue streams separate to that of the Service. If yes, please provide evidence of all other revenue streams available to the Level 2 provider.
9. Please confirm if the Level 2 provider operates any other businesses in any other jurisdictions. If so, please list the nature of the business(es) conducted and the jurisdictions in which the business is undertaken.

The Executive observed that on 18 March 2019 the Level 2 provider responded with “n/a” to the three questions set out above. The Executive sent a further formal direction on 27 March 2019 which said:

“Further to the Executive’s direction for information you do not appear to have provided all the requested information. Please ensure you provide all the information requested”

On 6 April 2019, the Level 2 provider responded fully to questions 8 and 9 as set out above, however the Executive noted that the Level 2 provider answered question 7 by stating that the information was confidential.

The Executive noted that the formal direction of 27 March 2019 also asked the Level 2 provider for the following information:

Please provide full details of terms and conditions (T&Cs) for the service. (You have provided the URL link <http://irichinfotechnology.co.uk/> but it is a blank page with no T&Cs provided).

The Executive submitted that while the Level 2 provider responded to the Executive’s request, it failed to provide any of the information that had been requested and that the response from the Level 2 provider just stated the following:

“The number is provided to the customer verbally when asked for technical support. Also, the call cost is clearly stated at this time. Also, if the customer is not happy with any of our services, a full refund is initiated within 24 hours of the complaint.”

The Executive sent a further formal direction on 30 July 2019 requesting all of the outstanding information, which by this stage included information in relation to consent to market, the terms and conditions of the Service, financial information and also a response to the complainant accounts that had been received. The Executive noted that in addition to the requests for information, the Executive also provided the Level 2 provider with the relevant provisions within the Code regarding confidentiality

and data protection in order to try to secure a full response from the Level 2 provider. No response was received from the Level 2 provider.

The Executive observed that while the Level 2 provider had initially provided some information as requested in the formal directions by the Executive, the information provided was either incomplete or missing altogether. The Executive submitted that the information in relation to consent to market, the terms and conditions of the Service and financial information from the Level 2 provider had not been supplied by the Level 2 provider at all.

The Executive explained that the information requested would have had a regulatory benefit in the investigation as it would have allowed the Executive to properly assess the Service and to understand the nature the Service and the issues that had been raised by the complainants. The Executive argued that as a result of the lack of co-operation by the Level 2 provider, key information regarding the Service was still missing.

The Executive submitted that in light of the above the Level 2 provider had acted in breach of Paragraph 4.2.3 of the Code, as they had failed to provide information that had been formally requested by the Executive pursuant to a direction under Paragraph 4.2.1. of the Code.

2. The Level 2 provider did not respond to the breach.
3. The Tribunal carefully considered all of the evidence before it.

The Tribunal agreed with the Executive's submission that while the Level 2 provider had initially provided some information in response to the directions under Paragraph 4.2.1 of the Code on 11 March 2019 and 27 March 2019 from the Executive, this information was either vague, irrelevant or incomplete. The Tribunal was also of the view that the Level 2 provider had failed to respond at all to the direction of 30 July 2019 without any further explanation.

The Tribunal was of the opinion that the information requested by the Executive was vital to understanding the nature of the Service. In particular, the Tribunal noted that the Executive had requested information about the full consumer journey and details of how consent to market had been sought and gained from consumers, both of which were central to the investigation. In light of the above the Tribunal concluded that the information which had been requested by the Executive had a clear regulatory benefit to the investigation and that the failure of the Level 2 provider to provide this information had the potential to impact detrimentally on the ability of the Executive to investigate the Service.

The Tribunal was therefore satisfied that on the balance of probabilities, the Level 2 provider had failed to disclose information that was reasonably likely to have a regulatory benefit to the investigation despite being formally directed to do so

Assessment of breach severity

The Tribunal's initial assessment of the breaches of the Code was that they were overall **very serious**. In making this assessment, the Tribunal found the following:

Rule 2.4.2 consent to market

This breach was **very serious**.

The Tribunal considered the breach had a clear and highly detrimental impact directly on consumers as there had been no evidence in this case to suggest that consent to market had been obtained from consumers at all. The Tribunal considered the invasion of consumers' privacy to be particularly serious. The Tribunal also considered that for the same reasons, the breach was likely to severely damage consumer confidence in premium rate services.

The Tribunal was also of the view that the breach was repeated and of a significant and lengthy duration as it appeared as though the Service had not gained consent to market to consumers from its inception.

The Tribunal was also satisfied that the breach demonstrated a fundamental disregard for the requirements of the Code in relation to respecting consumers' privacy and that it had been committed intentionally.

Paragraph 4.2.3 failure to disclose information

The Tribunal considered that this breach was **very serious**.

The Tribunal was of the view that the breach demonstrated a fundamental disregard for the requirements of the Code as the Level 2 provider had not provided any explanation for failing to provide the information that had been requested by the Executive under Paragraph 4.2.1 of the Code.

The Tribunal was also of the view that the breach was repeated, as while the Level 2 provider initially provided some information in response to the directions sent by the Executive, these responses were incomplete from the outset and no attempt was made by the Level 2 provider to comply with the subsequent direction from the Executive on 30 July 2019.

The Tribunal was satisfied that this breach had been committed intentionally in the absence of any explanation from the Level 2 provider as to why it could not provide the information that had been requested.

Sanctions

Initial assessment of sanctions

The Executive's initial assessment of sanctions before any potential uplift or downgrade in light of aggravating and mitigating factors was that the following sanctions were appropriate:

- formal reprimand
- a requirement that the Level 2 provider seeks compliance advice
- a requirement that the Level 2 provider remedies the breach by ensuring compliance advice on the Service and its promotions is implemented to the satisfaction of the PSA. Compliance advice must remain implemented for the duration of the Service remaining in operation unless otherwise agreed by the PSA
- a recommendation that the Service is barred until all sanctions have been complied with
- 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
- a fine of £500,000 comprised as follows:

Rule 2.4.2 £250,000 (very serious)

Paragraph 4.2.3 £250,000 (very serious).

Proportionality assessment

Assessment of mitigating and aggravating factors

Aggravation

The Executive submitted that it was an aggravating factor for the Level 2 provider to have not followed the Guidance on Privacy that had been issued by the Executive and to have not co-operated with the investigation. The Executive further submitted that the Service continued to be marketed, promoted and to generate revenue even after an initial enquiry outlining the Executive's concerns was sent to the Level 2 provider on 16 November 2018 and that this should also be treated as an aggravating factor.

The Executive also argued that as consumers were charged a high amount for making calls to the Service, there was evidence of a high level of individual harm and that this should be treated as an additional aggravating factor.

The Tribunal agreed with all of the aggravating factors that were identified by the Executive.

Although the Tribunal noted that there was some overlap between the breach of Paragraph 4.2.3 of the Code and the identification of a general failure to co-operate with the investigation, on the facts of this case the Tribunal was of the view that the failure of the Level 2 provider to co-operate with the investigation went beyond the failure to respond to directions for information. The effect of this was that it was still unclear as to how the Service actually operated and the Tribunal noted that an investigation by the Executive had only been possible due to the provision of information from the Level 1 provider. The Tribunal was therefore satisfied that the failure to co-operate with the investigation amounted to an aggravating factor which was additional to the breach of Paragraph 4.2.3 of the Code.

The Tribunal also agreed with the Executive that the Service had caused a high degree of individual harm to consumers as the cost of calls to the Service was so high.

Mitigation

The Executive submitted that there were no mitigating factors.

The Tribunal agreed with the Executive that there were no mitigating factors.

Sanction:

Financial benefit/Need for deterrence

The Executive noted that the Level 2 provider had generated an estimated revenue of £98,088.82 between January 2018 and July 2019. The Level 1 provider informed the Executive that after July 2019 there had been very little activity on the account.

The Executive argued that the revenue flowed directly from the breach of Rule 2.4.2 of the Code as consumers had been contacted by the Service without their consent. Accordingly, the Executive submitted that there was a need for the entirety of the financial benefit to be removed from the Level 2 provider in order to deter conduct of this nature and to uphold the reputation of the industry as a whole.

The Tribunal agreed with the Executive that the revenue of the Level 2 provider flowed directly from the breach of Rule 2.4.2 of the Code as consumers had been contacted without their consent from the inception of the Service and it was wholly unclear as to whether consumers would have engaged with the Service in the way that they did had it not been for this breach.

In light of this finding the Tribunal was satisfied that there was a need to remove the entirety of the financial benefit from the Level 2 provider in order to achieve the overarching objective of sanctioning, including that of credible deterrence, and to ensure that the Level 2 provider did not gain financially from the breach.

Sanctions adjustment

The Executive stated that the recommended initial fine amount far exceeded the revenue generated by the Level 2 provider and that the totality of all of the proposed sanctions would be likely to have a highly detrimental impact on the Level 2 provider. Accordingly, the Executive submitted that the fine amount should be lowered to £250,000 in the interests of achieving a proportionate outcome.

The Tribunal accepted the Executive's submission that the recommended fine, in conjunction with the totality of the other recommended sanctions, would be likely to have a highly detrimental impact on the Level 2 provider, particularly as the level of the initial fine that had been recommended far exceeded the revenue of the Level 2 provider.

The Tribunal was of the view that given the severity of the breaches there was still a need to set the fine at a level that was higher than the revenue which had been generated by the Level 2 provider, in order to ensure that the severity of the breaches was adequately reflected and to ensure that other providers were deterred from similar conduct going forward.

Taking into account all of the above considerations, the Tribunal was persuaded that a fine of £250,000 as recommended by the Executive was proportionate and appropriate in achieving the sanctioning objective of credible deterrence whilst also taking into account the likely impact on the Level 2 provider.

Final overall assessment

Sanctions imposed

Having regard to all of the circumstances of the case the Tribunal decided to impose the following sanctions:

- formal reprimand
- a requirement that the Level 2 provider seeks compliance advice
- a requirement that the Level 2 provider remedy the breach by ensuring compliance advice on the Service and its promotions is implemented to the satisfaction of the PSA
Compliance advice must remain implemented for the duration of the Service remaining in operation unless otherwise agreed by the PSA
- a recommendation that the Service is barred until all sanctions have been complied with
- 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.
- a fine of £250,000.

Administrative charge recommendation:

100%