

Tribunal meeting number: 264
Case reference: 161587
Level 2 provider: Salvatet Inversiones SL
Level 1 provider: N/A
Network operator: Telecom2 Ltd

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14th edition of the Code of Practice (the “**Code**”).

Background

The case concerned an Information, Connection and Signposting Service (ICSS) which operated on the number ranges 09040121XXX, 09040127XXX and 09040128XXX (the “**Service**”).

The Level 2 provider for the Service was Salvatet Inversiones SL (the “**Level 2 provider**”). The Level 2 provider has been registered with the Phone-paid Services Authority (the “**PSA**”) since 13 July 2018.

The Network operator for the Service was Telecom2 Ltd.

The Level 2 provider described the Service as follows:

“Salvatet Inversiones SL operate a Information, Connection and Signposting Service. As per ICSS Special Conditions this is a Type 1 Service: ‘‘Call connection’ services. Type 1 services offer connection to a small number of organisations, rather than the full range that a national Directory Enquiry (DQ) service provides [sic].”

It further stated that it had always followed the regulation in order to be 100% compliant with PSA rules and “for us the most important thing is to be clear regarding the service we provide as this is benefit for us and the users” and that “the service we offer is a call connection service with the added functionality of recording the call”.

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

“The ads that we use when promoting our service have always included Telephone Connection Service or Call Connection Service so that users know since the very beginning, that we are a call connection service. This is critical for us so that when users land in our site, see exactly what we are promoting and this is a telephone connection service and that in any case, we are the company they want to contact.

So as described, the first point where users get in touch with our service, can clearly see in the ads that we offer a call connection service, with call recording service.

Would also like to share screenshots of the ads we have in our adwords platform, as examples. It's confidential information but want to be 100% transparent regarding our marketing activities. These ads are examples of one landing page. What I want to reiterate is that in all of the ads that we have we always mention call connection service several times, as we want to be 100% clear to users regarding the service we offer [sic]."

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

Contact Phone Number | Call Connection Service | Customer Service Phone Number
uk-telephonenumber.com/Contact/Phone-N...
Call Helpline Support Team 24 Hours.
Immediate Support. Call Connection Service.
Call Now!

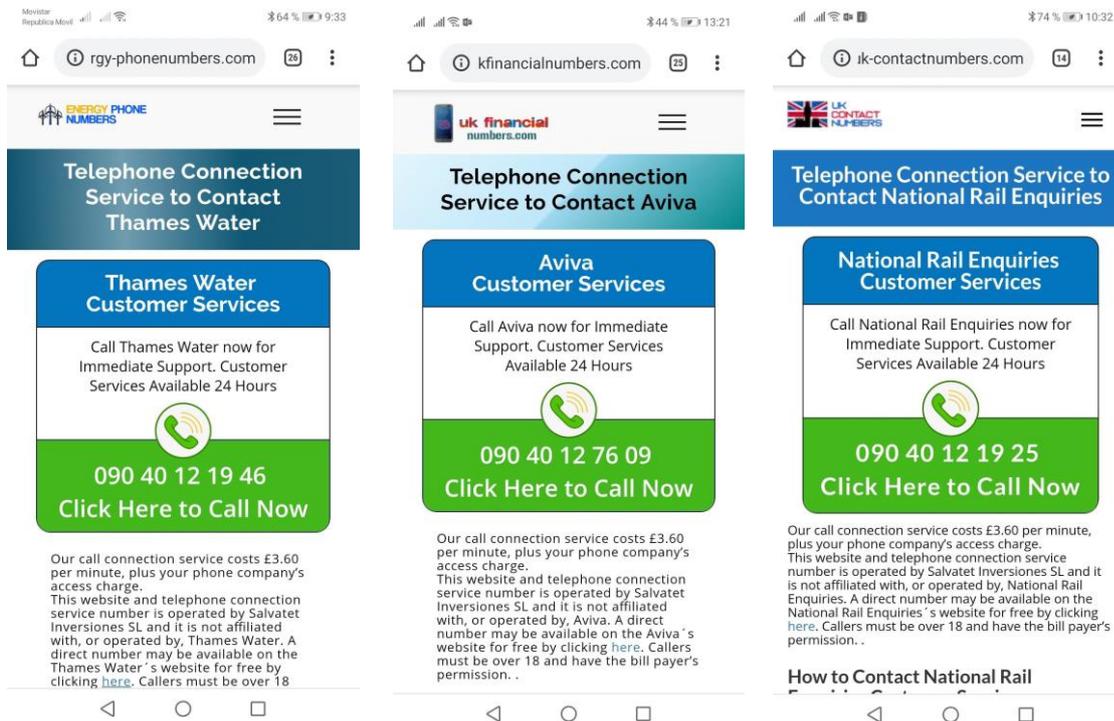
Customer Services Phone Number | Call Connection Service | Helpline Telephone Number 24H
uk-telephonenumber.com/phone/number
Call Customer Services Number. Customer Service Helpline Support 24h. Call Connection Service 24h. Call Now!

Contact Phone Number | Call Connection Service | Helpline Telephone Number 24H
uk-telephonenumber.com/Helpline/Phone-...
Call Customer Services Number. Customer Service Helpline Support 24h. Call Connection Service 24h. Call now!

The Level 2 provider stated the following in relation to the Service:

"Since the moment the users lands in our website, the first text they see, as Title and H1 (the most important content in the site), is Telephone connection service to contact the company they are looking for [sic]."

The Level 2 provider submitted the following screenshots of the Service:



In relation to the screenshots provided, the Level 2 provider added the following:

"This title explaining we are a call connection service, matches exactly what users have seen in our ads.

Right after the click to call button, we describe in depth, and very clearly that we are not the company that the user wants to contact with but a call connection service to contact that company. Price and Service are clearly described here, facilitating the user to access the company website, by clicking directly in the link "here" [sic]."

The Level 2 provider further advised that it operated a call recording service:

"We explain that we offer as well a call recording service and we allow the users to contact us by e-mail any time they want. Service is explained as part of our call connection service [sic]."

The service

The case concerned the ICSS operating on the number ranges 09040121XXX, 09040127XXX and 09040128XXX delivered by the Level 2 provider and costing £3.60 per minute.

The definition of ICSS outlined in paragraph 3.11.4 of the PSA Code of Practice creates two distinct categories of ICSS services: services that provide connection to organisations sought by consumers and those that provide information, advice and assistance on organisations.

The Executive asserted that the Service had fallen within the Type 1 category for ICSS as it was providing call connection to public or commercial organisations.

The Service operated across a number of web domain addresses, which included:

- www.taxphonenumber.com
- www.uk-customerservices.com
- www.ukfinancialnumbers.com
- www.uk-telephonenumber.com
- www.uk-contactnumbers.com
- www.energy-phonenumber.com
- www.call-phonenumber.com
- www.ukairlinephonenumber.com
- www.couriersphonenumber.com
- www.uk-appointments.com
- www.connectionphone24h.com
- www.ukcontactnumbers.com

Notably the web address 'www.taxphonenumber.com' had links to premium rate numbers for several government agencies and departments including, but not limited to, Her Majesty's Revenue and Customs, tax credits and the Department for Work and Pensions. All web domains were promoted via sponsored Google adverts.

The investigation

The Service commenced operation on 3 August 2018. The PSA received its first complaint in relation to the Service on 15 October 2018. In total the Executive received 109 complaints from consumers about the Service.

The complainants variously alleged that they were not made aware of the Service costs and that the promotional material for the Service was misleading.

A number of the complainants had received charges amounting to over £100.00.

Examples of such complaints are set out below:

My mother desperately needed a number for DHL and after doing a google search came across this number which has caused her to be charged £118 plus vat. It is outrageous a company like this is allowed to operate preying on vulnerable people who don't understand what is happening. Can this company be reported please.

I tried to contact the Trainline regarding a refund they needed to give me. I typed in Trainline contact number into google, it came up with "09040121926" I was disconnected from the call multiple times at around the time 8 minute mark. 3 days later, I got an excess charge on my phone bill of £241. As you can imagine, I was beyond upset. When I contacted the Trainline, they said this number was incorrect and in fact they were committing fraud. The Trainline said to contact you in the hope of getting a full refund of this amount as it turns out, whilst trying to get in contact with the Trainline, i was charged an extortionate amount.

I had to contact the Trainline in order to query them around a ticket they gave me the wrong customer reference number for. I called the number provided to you (0904), I was connected for around 8 minutes every time then hung up on. I was charged £241 on my phone bill. When i contacted the Trainline, they confirmed this was a fake website and would be entitled to claim this money back through your service. As you can imagine, this has been deeply upsetting. I hope this issue can be resolved as soon as possible and I get my refund

I had to call hmrc with the number provided but did not know it was a premium rate number I have now been charged £62 every time I called this number and spoke to someone it would cut off I'm not happy will this charge please can you look into this thanks

My son who has learning difficulties googled the number for sky and got the number above. He kept getting cut off so he had to phone it 4 times. Charge £126.07.

To whom this may concern, I've recently had my monthly phone bill via Vodafone and have been charged for three calls I have no idea about and been charged. The calls and details are as follows.. 12/3/2019 - 6minutes and been charged £27.94. 13/3/2019 - 8minutes and been charged £35. 13/32019 - 8minutes and been charged £35. The company is FedEx but I have never used this company in my life.

I was cut off sky when I shouldn't have been the 1st of April I phoned sky on the 2nd their sky customer number has charged my mobile phone over £100 I have spoken with EE it's sky that have coursed me these charges I was not aware of these charges when I made the call to sky im disgusted to be charged for phoning sky to which was there fault to start with cutting my sky off when they should not have please can you help as now my mobile as been turn off due to this high bill I can not pay and should no have to pay £100 to talk to someone from sky.

My partner was phoning 02 and I have been charged over £350 for phone calls to this number.

The Level 2 provider did not have a history of non-compliance with the PSA's Code of Practice, having never been subject to a Track 1 or Track 2 procedure previously.

Although the Level 2 provider advised the Executive that it was willing to make necessary changes to rectify any issues, the Level 2 provider failed to provide any evidence of the changes it intended to make, or indeed made, following its receipt of the PSA's compliance advice. The Level 2 provider stated that: "*I will get back to you as soon as we have the changes made, so that you can have a look at it*", but failed to provide anything to the Executive.

The Executive sent a formal direction for information in relation to the Service and its promotion on 29 April 2019 with a deadline of 6 May 2019 for a response. Due to Public Holidays in Spain and the UK at the beginning of May, the Level 2 provider requested an extension to provide the information. The Executive granted the extension until 8 May 2019.

On 8 May 2019, the Level 2 provider provided a full response to the formal direction.

The Executive sent two more formal directions to the Level 2 provider asking for further information. The Level 2 provider corresponded with the Executive and provided all of the requested information within the designated deadlines.

The Executive had carried out monitoring of the Service promotion on both desktop and mobile devices, and had called the Service numbers. This monitoring was undertaken on 23 May 2019 when several of the Interactive Voice Responses (IVRs) were listened to by the Executive and on 21 June 2019 when the Executive viewed the services provided and carried out its own consumer journey.

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 2.2.7 – Pricing Information
- Rule 2.3.1 – Fair and Equitable treatment
- Paragraph 3.11.3 – Special conditions ICSS 1
- Paragraph 3.11.3 – Special conditions ICSS 3

Preliminary issues

The Tribunal considered as a preliminary issue whether the Level 2 provider had been served with the Warning Notice and was satisfied that in the circumstances the necessary documents had been properly served by an email. The Tribunal noted that the Level 2 provider had acknowledged receipt of the correspondence by email dated 28 February 2020 and had engaged a company called Enarpee to act as a consultant on its behalf.

Proceeding in absence

In considering whether to proceed in the Level 2 provider's absence on this occasion, the Tribunal was provided with details of an email that had been sent by the Executive to the Level 2 provider and its consultant on 27 April 2020. The email outlined that no response had been received to the previous email and went on to explain that the Tribunal hearing will be held via Microsoft Teams and if the Level 2 provider wished to participate 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 the Level 2 provider and its consultant had confirmed receipt of the above correspondence dated 27 April 2020.

The Tribunal was also informed that the Executive had attempted to call the Level 2 provider's consultant to clarify whether he or his client wished to attend the Tribunal remotely in order to make informal representations. The Tribunal was provided with the email response from Enarpee to the Executive's voicemail clearly stating that its client had been asked several times if they wished to attend and had declined.

The Tribunal noted the observation raised in the correspondence from Enarpee about whether holding a remote Tribunal hearing was fair and transparent, but it did not accept the

consultant's argument. In the Tribunal's view remote hearings were reasonable in the current state of lockdown caused by the pandemic. Additionally, the Tribunal did not have any concerns that remote hearings made the procedure any less fair to either party as both parties equally had the opportunity to make representations remotely and were therefore on a level playing field.

The Tribunal was satisfied that the Executive had made all reasonable efforts to try to secure the participation of the Level 2 provider or its representative at the Tribunal and that the Executive had provided clear details to the Level 2 provider on what steps it would need to take to participate in the proceedings remotely. In light of this, the Tribunal was satisfied that it was fair to proceed in the absence of the Level 2 provider who the Tribunal also determined had voluntarily absented itself.

Other preliminary matters

The Tribunal had some questions for the Executive and called the investigator to provide further explanation about the case. The Tribunal firstly wanted to know if the Executive accepted the validity of the Level 2 provider's argument that calls were disconnected at 500 seconds to comply with the PSD2 legislation.

The Executive directed the Tribunal to the relevant regulation within the case bundle. The Executive explained that the PSD2 regulation is transposed into the UK law where the €50 was converted into £40.

The Executive accepted the fact that in accordance with the above regulation, calls were disconnected after 500 seconds when they had reached the £40 cap. The Executive clarified that it was not questioning whether the regulation was applicable, but it was of the view that consumers had a right to be informed that their calls would be terminated if they went beyond 500 seconds. The Executive's view was that consumers would very likely have to wait in a queue before they were actually connected to the organisation they required and it was therefore probable that their call would not be completed within the 500 second timeframe. It was likely that they would be unclear as to why they had been cut off and would have to call back. In support of the above argument, the Executive highlighted the evidence of several complaints, as well as the logs provided by the Level 2 provider, which showed that after consumers were cut off, they called the same number again on numerous occasions, possibly to complete the same call.

The Executive stated that it was unfair that consumers were not informed about the possibility of the call cutting out if the call took longer than 500 seconds.

The Tribunal then asked the Executive what its generic view was about the market research survey results that had been submitted by the Level 2 provider.

The Executive advised that it was unable to attach any weight to the survey. It stated that it had contacted the Level 2 provider for additional information about the survey such as the methodology, terms of engagement, date range, information about the respondents and the

demographics of the survey and any relevant correspondence including the promotional material submitted to the agency.

The Executive stated that the provider's response was not satisfactory in its view. The Executive noted that 'influencers' had been asked to complete the survey. One of the survey results showed that 57% of the consumers had thought that the advert belonged to 'Apple' and not the Level 2 provider's call connection service. The Executive added that the survey was only based on the promotion landing page and not on the adwords platform and web promotion where consumers would usually access the service. The Executive stated that it did not consider the survey to be expert evidence.

The Tribunal asked the Executive if it was aware whether the survey was conducted on mobile phones or a desktop computer. The Executive advised that this was unclear from the information provided and that the Level 2 provider's consultant had advised that all of the respondents were online and therefore own a PC, laptop or mobile phone, but it was not clear if the survey was conducted via mobile phones or desktop computers.

Submissions and conclusions

Alleged breach 1

Rule 2.2.7 of the Code:

"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 had acted in breach of Rule 2.2.7 of the Code because the pricing on the Level 2 provider's website was not prominent to the premium rate number.

The Executive relied on the complaints that it had received to argue that consumers were not aware of the cost of the calls as the vast majority of the complainants stated they were surprised at the charges, implying they were unaware of the price point. The extracts from the complaints set out below demonstrate this:

"I had to call hmrc with the number provided but did not know it was a premium rate number I have now been charged £62 every time I called this number and spoke to someone it would cut off..."

"...whilst trying to get in contact with the Trainline, i was charged an extortionate amount."

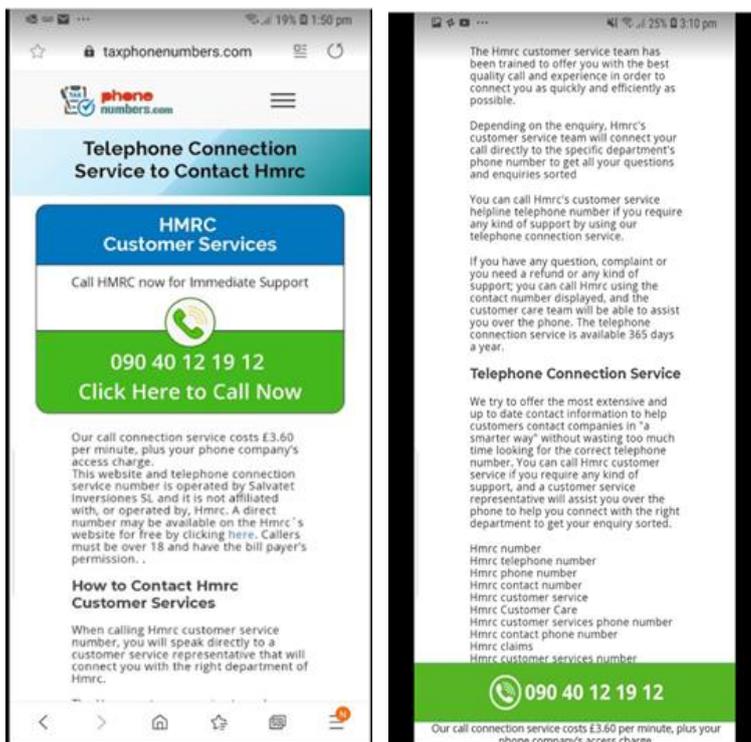
"My mother desperately needed a number for DHL and after doing a google search came across this number which has caused her to be charged £118 plus vat. It is outrageous a company like

this is allowed to operate preying on vulnerable people who don't understand what is happening....”

The Executive relied on the PSA’s Guidance on promoting premium rate services stipulating the pricing information should be easy to locate within a promotion and easy to read once located. It also states the pricing information should be put where consumers will easily see it and it should not be hard to find.

While monitoring the service, the Executive noticed that a second call to action banner appeared as the user scrolled down the page on a mobile device.

As the user scrolled down this box partially obscures the full pricing and key service information. Additionally the banner itself did contain a much smaller abridged version of the key service information at the bottom of the screen which stated, “Our call connection service costs £3.60 per minute plus your phone company’s access charge” however this was underneath the green call to action banner, in black font on a white background and it looked like it was part of the text behind the banner, as opposed to being part of the banner itself.





The Executive concluded from the above evidence that consumers were not making an informed decision to use the Service because the cost of the Service was not prominent and was not clearly legible prior to any purchase being made as well as not visible and proximate to the premium rate number and was presented in a similar fashion to the remainder of the other service information.

Accordingly, the Executive submitted that a breach of the Rule 2.2.7 had occurred.

2. The Level 2 provider did not admit that a breach of 2.2.7 had occurred.

The response submitted on the Level 2 provider's behalf included a PDF that included logos and numbers used in promotions and a report by Enarpee Services which had reviewed the Executive's compliance advice and further provided a comparison of the Service with others in the marketplace.

The report concluded that key concerns in relation to pricing prominence and proximity had been addressed and were clear and unambiguous. The report also noted that frequently "*consumers rarely decide to read the details of what they are accessing, however this does not avoid the fact in our opinion, Salvatet have been clear and addressed the main regulatory concerns which in many cases lead to a formal investigation into companies, for potential breaches of the Code of Practice*".

The report also highlighted that "*in our research, all providers had similar pricing proximity and prominence*".

Additionally, earlier on in the Executive's investigation, on 28 May 2019, the Level 2 provider advised the Executive that it had instructed an independent market research agency to undertake consumer research. At that stage the Level 2 provider advised that it was waiting for the full results and data but stated that the initial findings supported its position that the advertising of the Service was not misleading, that the consumer was fully aware of the pricing of the Service, and the consumer was fully aware the Service was a call connection service.

The survey was submitted as part of the Level 2 provider's response to the Executive's Warning Notice and included six multiple choice questions with a date range from 21 May to 25 May 2019 with the following conclusions:

- 73% of respondents correctly identified that “Click Here To Call Now” CTA on Salvatet Inversiones’ advertisement was for a telephone connection service number
 - when shown Salvatet Inversiones’ advertisement alongside SSE Energy Phone Numbers logos, only 10% of respondents associated SSE Energy’s branding with the image
 - when the advertisement was presented to respondents with SSE Energy references removed, only 9% connected it to the energy supplier, with the majority associating it with Energy Phone Numbers. This majority remained even when SSE Energy references were left in
 - when asked to identify URLs for major energy service companies, respondents successfully identified British Gas, First Utility and SSE Energy’s sites, and only 16% considered Energy Phone Numbers’ URL to be connected to an energy supplier
 - over 80% of people believed the price of making a call was clearly displayed in Salvatet Inversiones’ advertisement
 - 72% of survey takers could easily identify the link to SSE Energy’s website in Salvatet Inversiones’ advertisement.
3. The Tribunal carefully considered the Code, the Guidance on promoting premium rate services and all of the evidence before it, including the Level 2 provider’s responses.

The Tribunal was satisfied that although pricing information was present and was arguably sufficiently proximate, it was not sufficiently prominent and easy to read or apparent to the consumers.

Although the Tribunal perceived the pricing to be proximate in the sense that it was underneath the call to action, it expressed its concerns about the disparity between the clarity and the size of the various images. When considering the monitoring evidence supplied by the Executive, the Tribunal noted that the pricing was not clearly legible and visible when compared to the instruction to connect to the Service and observed that the pricing was significantly less visible than the call to action button.

The Tribunal disregarded the comparative evidence that had been provided by the Level 2 provider in respect of what other providers did regarding pricing prominence and proximity. The Tribunal did not consider that this evidence was relevant and highlighted that it had been appointed to consider whether the Level 2 provider had complied with the Code and was not there to adjudicate on the practices of other providers.

As a result of the above, the Tribunal was satisfied that the pricing information in respect of the Service was not prominent to the premium rate number and not clearly visible or legible and that, as a consequence, it was likely that consumers were unaware of the cost of the Service before using it.

Accordingly, the Tribunal was satisfied on the balance of probabilities that a breach of the Rule 2.2.7 of the Code had occurred.

Decision: **UPHELD**

Alleged breach 2

Rule 2.3.1 of the Code:

“Consumers of PRS must be treated fairly and equitably.”

1. The Executive submitted that a breach of Rule 2.3.1 of the Code had occurred as the Level 2 provider treated consumers unfairly by:
 - failing to supply them with key service information
 - failing to provide the expected service
 - failing to communicate accurate pricing information.

The Executive relied on consumers’ complaints regarding the termination of calls, with some consumers incurring high charges arising through redialling the premium rate number after their call was disconnected. Extracts from the complaints are set out below:

“DPD were days late delivering my parcel and I had to call them, little did I know I would be charged £112 for 5 phone calls to them. This is obscene and totally immoral”.

The Executive highlighted that it had received at least 40 complaints referencing the need to place multiple calls due to the termination of the calls before the caller had reached a satisfactory conclusion.

While randomly monitoring the premium rate numbers from the Service, the Executive identified the following issues:

- the initial IVR message stated that the ‘call costs £3.60 per minute, plus your network access charge’ then stated ‘call costs 7p per minute, plus your network access charge’
- the Service connected to a company other than the one the user was calling
- the call disconnected after the IVR
- the IVR followed by a recording stated: ‘Sorry your call cannot be completed’ before disconnecting
- following the IVR and at 23 seconds the call went to an engaged tone before being disconnected at 40 seconds.

The Executive noted that during one monitoring session on 23 May 2019, of the 25 PRNs monitored, eight did not provide the Service promoted on the IVR message. This equated to 32% of the Level 2 provider’s services where consumers accessed the Service and incurred premium rate charges, which the Executive asserted was a high proportion, especially when one considers ICSS is categorised as a high-risk service.

The Executive concluded that the Level 2 provider’s promotional material and IVR failed to state that the call would be automatically disconnected after 500 seconds (8.33 minutes).

As neither the Code nor the Special conditions impose a requirement for a Type 1 ICSS Providers to terminate calls after a certain time or spend, the Executive requested an

explanation for the call termination. The Level 2 provider responded stating the following:

“The calls are disconnected at 500 seconds to comply with the PSD2 legislation of max event billing. The Regulatory advice stated the following:

‘PSD2 has tightened the rules on phone billing meaning buying via the mobile phone and/or charging it to their phone bill will see the billing options curtailed. Under PSD2, single transactions will need to be capped to a maximum of €50 per transaction.’

This PSD2 based cut-off is triggered at 500 seconds, which is more restricted than the sum of €50 [sic].”

The Executive asserted that it was unlikely consumers would be able to complete their call within 500 seconds and noted that at least 40 of the 80 complainant accounts clearly demonstrated they were unable to complete their enquiry within 500 seconds as they had referenced placing multiple calls after being ‘hung up on’.

The Executive submitted that consumers had been treated unfairly because:

- they were not informed that calls would be terminated after 500 seconds, therefore requiring consumers to redial the premium rate number if they were mid-query and start the process over again, incurring further charges
- the Service was often not provided, either because of connection to a company other than the one the user is calling or disconnection of the call after the IVR
- the pricing information provided on the IVR was contradictory and confusing.

As noted above, in response to the Tribunal’s questions, the Executive clarified that it was not challenging the validity of the Level 2 provider’s argument that the PSD2 legislation applied but that it took issue with the fact that consumers were not informed that the call would be terminated at 500 seconds.

Accordingly, the Executive submitted that a breach of the Rule 2.3.1 had occurred.

2. The Level 2 provider did not admit the breach.

In response to the Executive’s direction in relation to a potential breach of Rule 2.3.1, the Level 2 provider stated the following:

“The calls are disconnected at 500 seconds to comply with the PSD2 legislation of max event billing. The Regulatory advice stated the following:

‘PSD2 has tightened the rules on phone billing meaning buying via the mobile phone and/or charging it to their phone bill will see the billing options curtailed. Under PSD2, single transactions will need to be capped to a maximum of €50 per transaction.’

This PSD2 based cut-off is triggered at 500 seconds, which is more restricted than the sum of €50.”

In response to the Executive’s compliance advice, the Level 2 provider stated:

“...Would like reiterate the fact that was mentioned regarding the 24 hours. We have added 24 hours as this is our service, as the 09 numbers are available 24 hours, and we were not referring to the companies phone number. Some of the companies do have a 24 hours phone number as well, but having said that, we take your recommendation and as mentioned in the previous email, we have taken out 24 hours from all the landing pages to try to be more clear on this [sic].”

In its response to the Warning Notice, the Level 2 provider provided written representations, information about the logos and numbers used by the Level 2 provider in promotions, which was titled “Salvatet Brands search facts”, a consumer market research survey and a report by Enarpee Services which reviewed the advice provided by the Executive alongside the Level 2 provider’s current services and those of competitors.

The Level 2 provider further submitted that *“while there may be examples of some companies looking to confuse companies with misleading advertising, they are in the main, a minority. Salavatet has invested resource, time and money into ensuring its services are as compliant as possible, whilst still allowing for the possibility of a positive ROI [sic]”*.

It was further submitted by the Level 2 provider that the report completed by Enarpee Services *“showed evidence of other competitor services operating in a far worse manner than Salavatet and which have not (knowingly) been acted on by the PSA”*.

3. The Tribunal carefully considered the Code and all of the evidence before it, including the Executive’s monitoring in respect of the pre-recorded IVR messages and the complainant evidence.

The Tribunal noted that in some cases the IVR messages stated that calls were charged £3.60 a minute followed by the second message stating calls were charged 7p a minute. The Tribunal further observed that some calls were redirected to another call connection company called ‘UK Contact numbers’ which then connected consumers to their sought organisation.

The Tribunal concluded that the Level 2 provider failed to communicate the accurate pricing of their service as it was unclear for consumers whether they had been switched to a lower fee or were paying £3.60 on top of the 7p charge. The price on the initial link stated £3.60 and it was unclear whether consumers were aware of any additional charges and if they would be redirected to somebody else.

The Tribunal further considered the Level 2 provider’s explanation about the 24/7 service that was offered as personalised assistance. The Tribunal Panel was of the view that the Level 2 provider had misled consumers into believing that the service would connect them to the sought organisation’s customer service line 24/7 which was not always the case. Additionally, the Tribunal noted that 32% of consumers were connected to the wrong organisation or their call was cut off or they received the engaged tone.

The Tribunal was of the opinion that the fact that calls were cut off after 500 seconds completely undermined the whole service that the Level 2 was providing. The Tribunal considered that the Level 2 provider would more than likely recognise that a large number of callers would not get through to the customer service line within the allocated time due to lengthy queue waiting.

Finally, the Tribunal agreed with the Executive's submission that the Level 2 provider had treated consumers unfairly as it had failed to provide the key service information, accurate pricing information and failed to provide the Service that was expected by consumers.

In conclusion the Tribunal Panel was satisfied that, on the balance of probabilities, a breach of the Rule 2.3.1 of the Code had occurred.

Decision: **UPHELD**

Alleged breach 3

Rule 3.11.3. of the Code:

"A breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code"

Special condition ICSS 1:

"Web-based promotions should not use internet marketing or optimisation techniques (such as metadescrptions or metatags) which mislead a consumer into believing (a) that their service is the actual service the consumer is seeking; or (b) that they are providing advice or information that is not already available from a public or commercial organisation (unless they genuinely are providing advice or information that is not available in this way).

In addition, web-based promotions should contain metadescrptions which make the nature of the service clear and do not mislead the consumer into believing that they are the helpline or information the consumer is seeking. The Search Engine Marketing (SEM) should therefore clearly display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as "Premium rate connection service" or "Call connection service" within the result displayed for a Type 1 ICSS; and for example "Premium rate assistance service" or "Information assistance service" for a Type 2 ICSS. Such a phrase must be positioned to ensure it is clearly on-screen when the consumer views the search engine results. For the avoidance of doubt alternative phrases may be used where they meet the above SEM description requirement."

1. The Executive asserted that the Level 2 provider had breached Rule 3.11.3 of the Code as Special condition 1 applicable to ICSSs had not been adhered to.

The Executive relied upon its monitoring and the content of the Notice of Special conditions for Information, Connection and/or Signposting Services ("**ICSS Special conditions**").

The Executive asserted that the Service fell within the Type 1 category for ICSS since it provided a call connection to public or commercial organisations.

The Executive has conducted monitoring of the Service's promotion via Google sponsored adverts and had recognised number of issues.



The Executive noted the following:

- the word '24 Hours' appears several times. '*Helpline Telephone Number 24H*' appears in the title tag followed by '*Customer Services Helpline 24H*', and '*Telephone Connection Service 24H*' and '*24H Hour Call Support*' appear in the SEO
- the use of the words 'Immediate Support', 'Excellent Quality Service' and 'Personalised Assistance'
- the title tag of the Google Sponsored advert states, '*BT Customer Services Number Helpline Telephone Number 24H*' and it is only in the body of the text (as shown above in fig. 3) that the phrase '*Telephone Connection Service 24h*' is shown. This is not clear and the entirety of the description under the title tag (the SEO) states and implies the service is available 24 hours a day when the actual BT service connected to is not.

The Executive noted the provider explanation of their use of the term '24 hours' in their promotional material stating this referred to the fact their 09 number is available 24 hours a day. However, the Executive considered that this was misleading, unless the telephone connection service offers '*24H Hour Call Support*', a '*Customer Services Helpline 24H*', or a '*Helpline Telephone Number 24H*' (which it does not). The 090 numbers only offered connection to a company and therefore did not offer, for example, '*24 Hour Call Support*'. Furthermore, the title tag of the Google sponsored advert was misleading as it stated the service was 'BT Customer Services Helpline' number.

The Executive submitted that the Level 2 provider had breached Paragraph 3.11.3 of the Code, as Special condition ICSS 1 had not been adhered to. The Executive asserted that:

- the advert suggested the companies that had been contacted were available 24 hours a day while they were not
- the title tag stated the organisation was BT Customer Services rather than a call connection service to BT Customer Services.
- whether read in isolation or, with the other text that appeared alongside it, the claims 'Immediate Support', 'Excellent Quality Service' and 'Personalised Assistance' suggested they were related to, or were linked to, the actual organisation had being contacted. The Executive noted that the Level 2 provider could not guarantee immediate support, excellent quality service or personalised assistance in relation to the service provided by all/any of the organisations contacted via the Service.

- separately, if the claims ‘Immediate Support’, ‘Excellent Quality Service’ and ‘Personalised Assistance’ relate to the 090 Service itself, then the Executive asserted that these claims were still misleading as the 090-connection consisted of a pre-recorded IVR and connection service to a public organisation specifically selected by the user e.g. BT. With connection its only function, the Service did not provide any ‘immediate support’ or any ‘personalised assistance’ to the user.
- the Executive accepted that there may be some occasions where links did not work, but it was the provider’s responsibility to minimise this risk, especially where they relate to a high-risk service like an ICSS.

Consequently, the Executive asserted that a breach of 3.11.3 has occurred.

2. The Level 2 provider did not admit the breach.

In response to the Executive’s compliance advice, the Level 2 provider stated:

“...Would like reiterate the fact that was mentioned regarding the 24 hours. We have added 24 hours as this is our service, as the 09 numbers are available 24 hours, and we were not referring to the companies phone number. Some of the companies do have a 24 hours phone number as well, but having said that, we take your recommendation and as mentioned in the previous email, we have taken out 24 hours from all the landing pages to try to be more clear on this [sic].”

In its response to the Warning Notice, the Level 2 provider submitted a report by Enarpee Services which stated:

“We conducted a number of searches, and all results found for Salvatet services clearly stated that they were call connection services within the search engine results. Two examples, one from a search for a Vodafone contact number, and one for EE contact number, resulted in promotions for Salvatet’s services UK-Customer Services Ltd/ Both of the results stated “Telephone Connection Service”...

As mentioned above, all results found for Salvatet clearly stated that they were call connection service within the search engine results. In comparison to other companies listed in the search engine results, not all were clear that they were promoting a call connection service. This can be seen in the examples below, found when searching for a contact number for Vodafone. We also identified results which referenced our search i.e. Vodafone and EE, in the url which we did not see in a URL via Salvatet [sic].”

The Level 2 provider further submitted a consumer research survey that it had instigated earlier on in the Executive’s investigation.

3. The Tribunal carefully considered the Code and all of the evidence before it, in particular the Service’s promotional material, screenshots, the complainant evidence, and the Level 2 provider’s representations and supporting evidence.

The Tribunal carefully analysed the Service’s promotional material. It considered that a Google sponsored advert with the title tag “BT Customer Services Number Helpline Telephone Number 24H” implied that consumers would be connected to the company itself as opposed to a call connection service. It further considered the use of the word ‘24 hours’ in both the title tag and the search engine optimisation, and the use of the words ‘immediate support’, ‘excellent quality service’ and ‘personalised assistance’, which were also found in the search engine optimisation, as being misleading.

The Tribunal considered the consumer market research that had been procured by the Level 2 provider. The Tribunal believed that the report had limited evidential value and did not consider the survey to be expert evidence. The Tribunal was concerned that leading questions were asked, and some questions were not mutually exclusive. The Tribunal further opined that only a small sample of people participated in the survey. Furthermore, the Tribunal noted that 57% of the people surveyed thought that they were contacting ‘Apple’ directly and not a call connection service to ‘Apple’, which supported the Executive’s case that consumers were misled into thinking that they were directly contacting the organisation they were seeking.

When considering the screenshot evidence, the Tribunal accepted the Level 2 provider’s response that the information stating it was telephone connection service was present on its website. However, the Tribunal noted that the call to action button was much larger than the reference to the service being a telephone connection service. The Tribunal concluded that although information that this was a telephone connection service was on the website, it wasn’t effectively communicated to the consumers because of the box underneath.

Lastly, the Tribunal determined that an overwhelming number of complaints referred to consumers not realising that they had called a call connection service. The Tribunal was of the view that that some of the consumers who used the Service might be considered as vulnerable people by virtue of their financial circumstances and were attempting to contact government bodies about welfare benefits.

Accordingly, the Tribunal was satisfied and persuaded by the Executive’s submissions that the Special condition ICSS 1 had not been adhered to and upheld a breach of Rule 3.11.3 of the Code.

Decision: **UPHELD**

Alleged breach 4

Rule 3.11.3. of the Code:

“A breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code”

ICSS Special condition 3:

“Promotional material must clearly and prominently state (where this is factually the case) that the information (including the number), advice or assistance provided by the PRS is available direct from the relevant public or commercial organisation at no 3 or lower cost. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists.”

1. The Executive relied upon its monitoring and the content of the ICSS Special conditions.

The Executive monitored the website provided by the Service and tested links directed to the genuine website homepages for the organisations it offered a call connection to.

The Executive noted that the provider had provided a live link to every website but not all of those links directed the consumer to the correct organisational web page.

The Executive provided the examples of websites that had been directing the user back to the page they were navigating away from.

Promoted URL	PRN	Company/Department	Clicking on the link:
http://taxphonenumber.com	09040121910	Child Tax Credits	Page redirected back to the current page
http://taxphonenumber.com	09040121917	Budgeting Loans	Page redirected back to the current page
http://taxphonenumber.com	09040121922	Dart Charge	Page redirected back to the current page

The Executive further noted that all the agencies referenced above had websites or webpages with a free contact number available.

The Executive submitted that in light of the above the Level 2 provider had acted in breach of Rule 3.11.3 of the Code through its failure to adhere to ICSS Special condition 3, as they had failed to provide links to the homepages of the websites of the organisations in question.

2. The Level 2 provider did not admit the breach. Although the Level 2 provider did not provide a specific response in relation to this breach, it relied on the report by Enarpee Services, the market research survey, the screenshots it had provided, and the correspondence and representations it had made to the Executive.

The Enarpee Services report summarised that:

“Overall we consider the Salvatet services to address the key concerns continually expressed by the PSA in relation to pricing prominence, proximity but in particular, with a clear and unambiguous references to it being a call connection service with links to how to access directly at less or no cost, should the consumer wish.

We do note frequently that consumers rarely decide to read the details of what they are accessing, however, this does not avoid the fact in our opinion, Salvatet have been clear and addressed the main regulatory concerns which in many cases lead to a formal investigation into companies, for potential breaches of the Code of Practice.”

Screenshots were also provided of the promotions, some of which referred to a direct number for the organisation sought by the consumer being available at no or a lower cost and included a link for the consumer to click on for redirection.

3. The Tribunal considered the Code, ICSS Special condition 3, and all the evidence before it, and in particular the Executive’s monitoring of the Service website and the representations and supporting evidence provided by the Level 2 provider.

The Tribunal was satisfied with the Executive’s submission that the live link directing the consumer to the actual organisational web page did not always work. The Tribunal was satisfied that the Executive’s monitoring demonstrated that some sites redirected the user back to the page they were navigating away from. Conversely, the Tribunal was not persuaded by the evidence provided by the Level 2 provider that the promotional material clearly and prominently stated that the information, advice or assistance was available directly from the organisation itself. The Tribunal noted that the screenshots that had been provided by the Level 2 provider referred to a direct number for the organisation sought by the consumer being available at no or a lower cost, but it was of the opinion that this was neither clear nor prominent and the information was instead buried and lost within pages of other information.

Accordingly, the Tribunal was satisfied and persuaded by the Executive’s submission that the Special condition ICSS 3 had not been adhered to and upheld a breach of Rule 3.11.3 of the Code.

Decision: **UPHELD**

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 2.2.7 Pricing information

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

The Tribunal considered that the breach was committed intentionally and considered that the pricing was deliberately presented in small font underneath the large coloured box with the call to action number, and that represented a fundamental disregard for the requirements of the Code.

The Tribunal noted that the breach was repeated and was of a significant and lengthy duration.

Additionally, the Tribunal was of the view that the Service was likely to take advantage of consumers in a vulnerable position since many of the complainants had been trying to contact government bodies and were potentially vulnerable due to their financial circumstances. The Tribunal acknowledged, however, that the Service was not targeting vulnerable individuals.

The Tribunal also established that at certain times of the day, the Level 2 provider was incapable of providing any service despite its advertisement of a personalised 24/7 service.

The Tribunal considered the breach had a clear and highly detrimental impact directly on consumers as there had been evidence that the Service had generated an unnecessary cost for 99% of consumers.

The Tribunal also considered that for the same reasons, the breach was likely to severely damage consumer confidence in premium rate services.

Rule 2.3.1 Fair and equitable treatment

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 and had been committed intentionally.

Paragraph 3.11.3 – Special conditions ICSS 1

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

The Tribunal considered that the breach had a clear and highly detrimental impact on consumers and that consumers had incurred very high and wholly unnecessary costs and the service was incapable of providing the purported value to consumers.

Paragraph 3.11.3 – Special conditions ICSS 3

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

The Tribunal was of the view that the breach had a clear and highly detrimental impact on consumers, consumers had incurred very high and wholly unnecessary costs and the service was incapable of providing the purported value to consumers.

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 recommendation that the access to the Service is barred for a period of two years and until the Level 2 provider had paid its fine and administration charges in full, and sought and implemented compliance advice to the satisfaction of the Executive, in relation to the Service
- 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 £925,000 comprised as follows:

Rule 2.2.7 £175,000 (serious)

Rule 2.3.1 £250,000 (very serious)

Paragraph 3.11.3 ICSS 1 £250,000 (very serious)

Paragraph 3.11.3 ICSS 3 £250,000 (very serious).

The Tribunal agreed with the Executive's initial assessment of sanctions save for the fine. The Tribunal considered that the breach of Rule 2.2.7 was very serious and that accordingly the appropriate fine for this breach was £250,000. The Tribunal therefore considered that the overall initial fine should amount to £1,000,000.

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 'Promoting premium rate services' and Guidance on 'Misleading promotions' that pricing information should be prominent and proximate and not misleading. The Executive further submitted that prior to these breaches occurring, the PSA gave relevant Notice to Industry, such as publication of the 'Compliance Update' or adjudications. The Executive cited that numerous previous adjudications concerning high price point ICSS services had made clear the importance of adhering to Special conditions, as well as the importance of pricing prominence and services not being misleading.

The Executive also argued that the Level 2 provider had been given compliance advice which recommended that the prominence of the pricing information should be greatly increased and

should not be hidden within a paragraph of text but it should appear 'standalone' and in close proximity to the number. Additionally, the compliance advice strongly recommended amending the wording in the call to action box to clearly state that the service was a call connection service rather than saying "Click here to Call Now".

The Executive noted that the Level 2 provider did not make all of the recommended changes and stated instead: "*I will get back to you as soon as we have the changes made, so that you can have a look at it*", but failed to do so.

Furthermore the Service continued to be marketed, promoted and continued to generate revenue even after the Executive's outlined the alleged breaches of the Code in its Warning Notice and the Executive invited the Tribunal to consider this to be an aggravating factor.

The Executive further submitted that it was an aggravating factor that many consumers were trying to access organisations like the Department for Work and Pensions and Tax Credits and such organisations were likely to be used by people who could reasonably be deemed to be vulnerable in light of their financial circumstances.

The Tribunal did not agree with the Executive that failing to follow the Guidance on 'Promoting premium rate services' and Guidance on 'Misleading promotions' as being an aggravating factor because it considered this was part and parcel of the breach. The Tribunal Panel expressed the same view regarding previous adjudications and accordingly did not agree that this was an aggravating factor.

The Tribunal accepted it was an aggravating factor that the Level 2 provider appeared to have disregarded the compliance advice given by the PSA and failed to implement all changes, if any. The Tribunal considered that if its response to the compliance advice was to instruct an agency to carry out market research, the Level 2 provider should have carried on corresponding with the Executive about this and the findings, which it did not until the Warning Notice stage.

The Tribunal agreed with the Executive that the breaches, which it had now found proven and upheld, had continued after the Level 2 provider was aware of them, and that this was an aggravating factor.

The Tribunal considered that to some extent vulnerable people had been swept up in using the Service because of the types of organisations that it was connecting consumers to. The Tribunal therefore considered that the demographics of people who might be misled could be termed as vulnerable.

The Tribunal was of the view that the financial loss by using the Service in comparison to the Service's beneficial value was disproportionate and that this should also be treated as an aggravating factor. The Tribunal was of the view that the Service had the potential to cause, and had potentially caused, a high degree of individual harm to consumers since the cost of calls to the Service was very high.

Mitigation

The Executive submitted that there were no mitigating factors.

The Tribunal did not accept the Level 2 provider's explanation that other companies had not made clear that they were promoting a call connection service and that all providers of ICSS services that it had found when conducting its own research had similar pricing and proximity.

The Tribunal considered whether it was a mitigating factor that there had been some reference to the Service being a call connection service but it considered that this was a limited mitigating factor by virtue of the fact that the reference was not clearly legible. The Tribunal further considered the fact that the Level 2 provider had instructed a market research agency to conduct a survey as a possible mitigating factor. The Tribunal considered this step to be a limited mitigating factor in order to establish an independent picture and public perception about the Service it was providing and whether it was clear and transparent enough.

Financial benefit/Need for deterrence

The Executive noted that the Level 2 provider had generated a gross revenue of £2,317,922.81 between August 2018 and April 2020.

The Executive argued that the revenue flowed directly from the apparent breaches of the Code as £2,317,922.81 is a provider gross revenue generated since August 2018. Accordingly, the Executive submitted that there was a need to remove the financial benefit from the Level 2 provider accrued from the breaches and impose sanctions which have deterrent effect in order to prevent the re-occurrence of the such breaches both by the provider and the wider industry.

The Executive submitted that it was likely that no consumers would have used the service had they been privy to prominent and proximate pricing information and understood that they were going to be charged £3.60 per minute and that, in addition, their call would be terminated after 500 seconds, risking them being unable to resolve their queries with the organisations concerned within that timeframe.

Considering the seriousness of the breaches and the need to deter conduct of this nature, the Executive's view was that it was proportionate to impose a substantial financial sanction.

The Level 2 provider expressed concern about the Executive's presentation of its evidence in its Warning Notice and stated through its consultant that it was in effect 'leading' or 'coercing' Tribunal members by way of recommending what the level of sanctions should be. The Level 2 provider stated that it had rejected the notion that the Executive had exercised any proportionality whatsoever and had observed that "it may as well be £10m or a £100m fine. The outcome will be the same".

The Level 2 provider further advised that: "It is our submission that the total fine in the region of £1m is not proportionate and bears no chance of settlements." It submitted that the Executive's investigation was flawed and that "the high levels of fine being levied by the PSA are producing record levels of non-payment...and businesses closing" and that "...there should be a return to the principles of Code 12 and the levying of a proportionate fine that will be paid and allow providers to

learn from their mistakes, rehabilitate by amending their promotions and carry on trading under certain regulatory agency monitored conditions, in order for consumers to be presented with a choice of service and allow the market to determine whether it succeeds or fails. Instead we are presented with an out of touch regime that would prefer anything other than encouraging the company collapse syndrome that occurs every time there is a large financial sanction issued. The question here is what's the point of operating in a measured way if the likely punishment is 100's of times your profits?"

The Level 2 provider further submitted that the proposed sanctions were completely disproportionate and that the supporting evidence it had produced demonstrated that it had been considerate and diligent and had gone a long way to proving beyond doubt that consumers were not harmed by the Service. It submitted that it had invested significant costs into providing this via independent channels and it did not therefore correlate to a provider out to cause harm. It submitted that any potential fine should be significantly smaller and much reduced and that the Tribunal must consider whether its actions were deliberate or wilful and stated that clearly its actions were not and that this was supported by the results of the market research survey it had undertaken.

The Tribunal agreed with the Executive that the revenue of the Level 2 provider flowed directly from the breaches of the Code, as it was highly probable that consumers would not have engaged with the Service in the way that they did had the breaches not occurred.

In light of this finding, the Tribunal was satisfied that the entirety of the Level 2 provider's gross revenue was relevant to the investigation. The Tribunal was mindful of 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

Given the aggravating factors present in this matter, the Executive had recommended that the bar access to the Service sanction be uplifted to a prohibition on the Level 2 provider for a duration of two years.

It was the Executive's case that it was likely that no consumers would have used the Service had they been given prominent and proximate pricing information and understood that they were going to be charged £3.60 per minute and that, in addition, their call would be terminated after 500 seconds.

The Executive submitted that the Tribunal might wish to consider uplifting the initial proposed fine to ensure that the provider was not seen to benefit financially from the breaches of the Code, coupled with the need to achieve credible deterrence to prevent the re-occurrence of such breaches by the Level 2 provider itself and the wider industry.

The Executive had stated in its proportionality assessment that the Level 2 provider's relevant revenue far exceeded its proposed fine and therefore the fine it had proposed might not be substantial enough to have an impact on the Level 2 provider which would deter it from any future misconduct, and which would provide credible deterrence to other providers that misconduct by them would result in penalties having a similar impact.

The Tribunal accepted that the recommended fine would not remove the entirety of the Level 2 provider's gross revenue.

The Tribunal took into consideration the facts that the Service was still live and continuing to bill consumers, a large number of consumers potentially did not receive any service due to the cut-off point after 500 seconds, and there was a high price point on the Service. The Tribunal highlighted that the Service continued to operate without appearing to implement any changes during the investigation despite its request for and subsequent receipt of compliance advice from the Executive.

For these reasons as well as the very serious aggravating factors also identified above, the Tribunal decided that a prohibition for two years would not achieve credible deterrence and that the duration of the prohibition should be increased to five years. The Tribunal considered that this was in line with previous adjudications. It further cited the extensive aggravating factors present in this case that warranted such penalties being imposed and which the Tribunal deemed were appropriate and proportionate taking into account all of the circumstances of the case.

The Tribunal was of the view that there was a need to set the fine at a level that was higher than recommended by the Executive 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. For this reason, the Tribunal did not choose to adjust the financial sanction it had imposed at the initial sanctioning stage. In determining whether the sanctions were in combination sufficient to reduce the financial gain attributable to the breaches, the Tribunal took into account all the circumstances of the case, including the likely impact of the totality of sanctions on the provider, and considered that it had sufficiently and proportionately addressed the totality of the sanctions.

Taking into account all of the above considerations, the Tribunal considered that a fine of £1,000,000.00 combined with a five-year prohibition, formal reprimand and general refunds sanction was proportionate and appropriate in achieving the sanctioning objective of credible deterrence whilst also taking into account the 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 prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges have been made in full, whichever is the later.
- 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 £1,000,000.00.

Administrative charge recommendation: 100%