TCS Combined Solutions Ltd Review Hearing

Case reference: 150301
Applicant: TCS Combined Solutions Ltd
Type of service: Discount Offers and Competitions

Background

1. TCS Combined Solutions Ltd ('the Applicant') has been registered with the Executive since 6 October 2017. The Applicant operated "DiscountMeDirect" ('the Service'), a premium rate service that offered alerts to consumers regarding discount offers and competitions.

2. Between 3 April 2018 and 7 January 2020, the Executive received 100 complaints from members of the public which alleged that they had received chargeable messages from the Service without having opted in to it.

3. The Executive wrote to the Applicant on 20 August 2018 to indicate that it was making preliminary enquiries into the Service. At this time, the Executive made an informal request for information regarding the Service and its promotion and operation.

4. On 15 November 2018, the case was allocated for a formal Track 2 investigation. Following allocation, the Executive issued a Warning Notice for interim measures to be imposed on 12 December 2018. On 14 December 2018 the Code Adjudication Tribunal (CAT) imposed interim measures with withhold £160,000 in funds.

5. On the application of the Applicant, the interim measures were subject to a review on 18 January 2019. On this occasion, the CAT rejected the Applicant's application and increased the total amount to be withheld to £510,000. On 27 June 2019, the Applicant requested a second review of the interim measures. This application was rejected.

Adjudication

6. The case regarding the Applicant was heard by way of an oral hearing between 9 December 2020 and 11 December 2020. Due to the pandemic, the oral hearing took place as a virtual hearing with all parties attending remotely.

7. The Executive raised the following breaches in relation to the Applicant pursuant to paragraph 4.5 of the 14th Edition of the Code of Practice ('the Code'):

    1) Charged consumers without their consent and/or failed to provide evidence which establishes that consent contrary to paragraph 2.3.3 of the Code.

2) In the course of promoting the Service, failed to ensure that the cost/pricing information was prominent, clearly legible, and proximate to the means of access to the Service contrary to paragraph 2.2.7 of the Code.

3) Failed to issue subscription reminder messages to customers contrary to paragraph 3.12.5 of the Code.

4) Knowingly or recklessly omitted to disclose information to the Executive contrary to paragraph 4.2.2.

5) Knowingly or recklessly provided false or misleading information to the Executive contrary to paragraph 4.2.2.

6) Failed to disclose when requested information that was reasonably likely to have a regulatory benefit in an investigation when directed pursuant to paragraph 4.2.1 contrary to paragraph 4.2.3.

7) Failed to renew registration annually or at intervals determined by the Executive contrary to paragraph 3.4.8.

8) Failed to register the Service numbers of the PSA Registration Scheme within two working days of the Service becoming accessible to consumers on those numbers contrary to paragraph 3.4.14(a).

8. The Applicant contested all of the breaches save for breaches 6 and 7 above which related to registration.

9. Following the oral hearing the Tribunal upheld all of the breaches raised by the Executive and assessed the case be "**very serious**" overall. The Tribunal imposed the following sanctions:

- a formal reprimand

- a prohibition on the Applicant from providing or having any involvement with premium rate services for a period of three years, starting from the date of publication of the Tribunal decision or the payment of the fine and the administrative charges, whichever is the later

- a requirement that the Applicant must refund all consumers who claim a refund for the full amount spent on them by 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 total fine of £885,000 broken down as follows:
    - Breach 1 £100,000
    - Breach 2 £40,000

- Breach 3 £175,000
- Breach 4 £250,000
- Breach 5 £125,000
- Breach 6 £100,000
- Breach 7 £20,000
- Breach 8 £75,000

10. The Tribunal decided that the Applicant should pay 100% of the Executive's administration charges.

11. In addition to its findings above, the Tribunal recommended that the Executive conduct a naming investigation in relation to Darren Hodes, the Director of the Applicant.

Review application grounds

12. The Executive received an application for a review of the Tribunal's decision on 21 January 2021 pursuant to paragraph 4.10 of the Code. The Applicant submitted the following specific grounds:

    1) the Tribunal erred in refusing an in-person hearing and then by making findings which fairness required should be reached upon an in-person assessment of the witness

    2) the Tribunal failed to give adequate reasons for its decision

    3) the Tribunal made findings in respect of the Applicant on the basis of a lack of information although such information had not been requested from the Applicant and therefore the Applicant had not been provided with a fair opportunity to provide relevant evidence prior to an adverse finding being made against it

    4) the Tribunal had erred in finding that the Applicant had not ensured that pricing information was prominent, clearly legible, visible and proximate to the number shortcode without giving the Applicant an opportunity to provide evidence in respect of the aggregate approach that was to be taken

    5) the Tribunal erred in its definition of a "subscription service" and in holding that the Service operated by the Applicant fell into this definition

    6) the Tribunal erred in finding that the Applicant had deliberately concealed one of the short codes used by the Service from the Executive

    7) the Tribunal erred when it found that the Applicant had deliberately misled the PSA by providing message logs "without an explanation"

8) the Tribunal erred in finding that the Applicant culpably failed to disclose that which was reasonably likely to have a regulatory benefit, and that the breach was serious

9) the Tribunal's finding that the failure to register one of the shortcodes was serious was wrong

10) the Tribunal erred in excluding from its consideration of mitigating factors and/or sanction Mr Hodes' (the Director of the Applicant) remorse and insight

11) the Tribunal erred in imposing an unfounded/disproportionate sanction on the Applicant.

Review decision

13. The review application was considered by the Chair of the Code Adjudication Panel who made the following observations in respect of each of the grounds of review that were advanced:

Ground 1 - Failure to hold an in-person hearing

- *The hearing was not rendered unfair by the use of the Remote Hearing procedure and a review was therefore not merited as a result of this ground of review.*
- *Courts and Tribunals had demonstrated that this procedure could be adopted without rendering the hearing unfair even in complex cases.*
- *In this case Mr Hodes was able to give evidence, chaired by an experienced legally qualified Chair and it was the audit trail of documentary evidence which was relied on to resolve inconsistencies rather than judgements as to credibility based on demeanor; the Tribunal also made no reference to Mr Hodes' demeanor in its determination which further strengthened the point.*
- *The Applicant had not pointed to any aspect of Mr Hodes' evidence which it submits would have been different or evaluated differently had he been present in a "live" as opposed to remote hearing.*
- *Case management decisions were a matter for the Tribunal. Lengthy, detailed and helpful written submissions were also provided to the Tribunal.*

Ground 2 – Inadequate reasons

- *The Decision covered 25 pages and dealt with the alleged breaches, the procedural history and the evidence.*
- *Each allegation was dealt with in detail with the evidence in support from the Executive and the Respondent.*
- *There is no substance in this Ground of Review. Each breach is dealt with in sufficient detail with the evidence from both parties summarised and a reasoned decision delivered in fairly clear terms. The alternative contended for by the Applicant would make the Decision too long and complex.*

- *Accordingly, a review was not merited as a result of this ground of review.*

Ground 3 - The Tribunal made findings in respect of the Applicant on the basis of a lack of information although such information had not been requested from the Applicant

- *This ground was concerned with the Applicant's failure to provide evidence which was available to it at the Tribunal and which it may have produced had it been on notice.*
- *The Tribunal could only come to its judgment on the "migration explanation" on the evidence that it had before it.*
- *In relation to the admission and consideration of the new evidence at the review stage the principles of Ladd v Marshall [1954] EWCA Civ applied. This meant that the considerations were whether the evidence could not have been obtained without due diligence prior to the trial; secondly, whether the evidence was such that it would probably have an important influence on the case (though it need not be decisive) and whether the evidence was credible albeit it need not be incontrovertible.*
- *This issue of "migration of data" was relevant to the issue of consent. The parties were on notice of that from a very early stage of the proceedings and there had been no attempt by the Applicant to explain how the Ladd v Marshall principles had been met.*
- *Although the Ladd v Marshall principles could be departed from in exceptional circumstances where the interests of justice required (E and R v Secretary of State [2004] EWCA Civ 49 per Carnwath LJ), the existence of these exceptional circumstances had not been demonstrated in the grounds of review.*
- *Accordingly, this ground did not merit a review of the Tribunal's decision.*

Ground 4 - The Tribunal had erred in finding that pricing was not prominent, clearly legible, visible, and proximate without providing the Applicant an opportunity to provide evidence in the knowledge that an aggregation approach would be taken

- *Rule 2.2.7 of the Code did not require a minimum or maximum number of instances of non-compliant promotions; any promotion needed to be compliant.*
- *No reasons had been provided as to why any evidence that was capable of supporting the Applicant's case in relation to the alleged breach of Rule 2.2.7 of the Code was not mentionedat the time of the Tribunal.*
- *For the same reasons as above therefore, this new evidence would not be considered as part of the review.*
- *In light of the above, this ground did not merit a review of the Tribunal's decision.*

Ground 5 – The Tribunal erred in its definition of a "subscription service"

- *It was common ground amongst the parties that subscription services were required to send spend reminders at specific intervals under PSA Guidance issued under paragraph 3.12.1(c). The Applicant argued that it was an alert service, rather than a subscription service, because charges were made upon a consumer receiving a text,*

which were not sent at regular intervals. Mr Hodes gave evidence that his system was set up to send spend reminders, but he disabled this function because he did not consider the service to be a subscription service.

- *The Applicant's own promotional material referred to users "subscribing to the service". It was difficult to see how the Service, as contended by the Applicant, could be considered to be an alert service.*
- *The Tribunal was entitled to adopt a purposive approach to the Code, and it did not err in law.*
- *Therefore, this ground did not merit a review.*

Ground 6 – The Tribunal erred in finding that Mr Hodes had "deliberately concealed" the use of the shortcode 78484

- *This ground again raises the issue of new evidence. The issue around shortcode 78484 was raised in pre-trial exchanges between Mr Hodes and the PSA; therefore, it was an issue identified very early in the proceedings. Further, it was reiterated and identified as an issue in PSA's Statement of Case and the witness statement for the Executive.*
- *None of criteria set out in Ladd v Marshall regarding the admission of new evidence had been met to justify the admission of new evidence; in any event it is unlikely that any new evidence could dislodge the finding of deliberate concealment given the exchanges between the Executive and Mr Hodes.*
- *The only issue was therefore whether, on the evidence before it the Tribunal could make findings of deliberate concealment. The Tribunal's decision dealt with the issue fully and accordingly this ground did not merit a review of the decision.*

Ground 7 – The Tribunal erred when it found that Mr Hodes deliberately misled the PSA by providing message logs without explanation

- *The decision provided a clear and cogent explanation for the Tribunal's decision. There was no evidence that the Tribunal relied on findings from preceding allegations to support this one.*
- *The Decision demonstrated (i) there was no evidence of reliance on previous findings (ii) there was an evidential foundation (tested in cross-examination) for the finding. Mr Hodes accepted that the unedited messages could have been sent with an explanation which he chose not to do.*
- *It is unlikely that a different decision would have been reached had the hearing taken place in person and Mr Hodes had given the same answers in a "live" cross examination.*
- *There was no unfairness in the proceedings and the ground did not therefore merit a review.*

Ground 8 - The Tribunal erred in finding that TCS culpably failed to disclose information and that the breach was "serious"

- *The Tribunal's approach was clearly set out in its decision. The Executive, an Industry Regulator, has powers to require the provision of information which it deems necessary to perform its functions. Whether an individual then chooses to comply with this type of a request or direction for information or not is a matter for the individual.*
- *The Tribunal determined that it was essential and of regulatory benefit for the unredacted bank statements to be provided. The question of moral culpability does not arise in its reasoning. A failure to comply with a Regulator's request for important and relevant information (bank statements which show revenues generated) which is of regulatory benefit, can properly be classified as serious under the Code.*
- *This ground did not therefore merit a review.*

Ground 9 - The Tribunal in finding that TCS's failure to register 78484 was "serious"

- *The Decision of the Tribunal and the context was relevant and helpful in understanding why it deemed the breach to be serious.*
- *There had been a delay of more than nine months between the lapse of Registration and review of registration. In the circumstances, it was entirely proper to describe the breach as serious.*
- *This ground did not therefore merit a review.*

Ground 10 – The Tribunal erred in excluding from its consideration of mitigating factors and/or sanction the remorse and insight shown by Mr Hodes

- *Notwithstanding the multiple breaches that the Tribunal found proven, the conduct over a long period of time, failure to co-operate fully and there were three very serious breaches and an overall finding of seriousness to be very serious, having read Mr Hodes evidence, it seems to me that the Tribunal fell into error in not giving proper weight to Mr Hodes remorse and insight into his conduct and importantly, his future behaviour.*
- *The Tribunal's approach could not be described as one which no reasonable Tribunal would not have taken but on the particular facts relating to Mr Hodes mitigation, that feature should have been considered more fully.*
- *This ground did therefore merit a review which could be accommodated by written submissions limited to this point and it was capable to impacting on sanction and may lead to an overall reduction in sanction.*

Ground 11 – The sanction was disproportionate

- *Save for ground 10 and mitigation, which affect the level and extent of sanctions imposed, the Decision demonstrated that the approach to the Sanctions followed the framework of the Code and the accompanying Supporting Procedures.*
- *Proportionality was clearly demonstrated particularly in the approach to levels of fines imposed (which were lower than contended for by the Executive).*

- *The decision demonstrated sound analysis and reasons and it could not be said that further reasoning was necessary.*
- *Accordingly, this ground did not merit a review save for what was said in relation to Ground 10 above which could impact on sanction.*

14. The Chair's decision on the review stated that the review was limited to the discrete point raised in ground 10 of the review application, namely whether the personal mitigation and insight demonstrated by Mr Hodes impacted on the overall sanction imposed. The Chair's decision also recommended that the review Tribunal could be assisted through the use of written submissions.

Review Tribunal

15. The review hearing took place using the paper-based procedure before a freshly constituted Tribunal on 14 June 2021.

Preliminary issue

16. The Applicant attended accompanied by Counsel. The investigator for the Executive was present but the Executive was not legally represented. In advance of the Tribunal, the Applicant submitted further evidence.

17. The Tribunal was asked to consider whether both the Applicant and Counsel should be permitted to make informal representations to the Tribunal in respect of the review.

18. The Tribunal considered this application and noted that paragraph 4.10.6(b) of the Code allowed the Tribunal a discretion to "*invite or allow the relevant party or the PSA to make oral representations to clarify any matter for the Tribunal*". The Tribunal further noted that paragraph 179 of the Supporting Procedures clarified that the review process was not a "full re-hearing of the original case" and that it could decline to hear further evidence or re-examine evidence previously submitted to a Tribunal where the evidence was not relevant to the permitted ground of the review.

19. The Tribunal considered that the Executive was not legally represented and that neither party had requested that the review take place as an oral hearing in line with paragraph 4.10.6 of the Code. The Tribunal was of the view that given the narrow scope of the review, there was no reason for the Tribunal, of its own motion to decide that the matter should proceed by way of an oral hearing.

20. The Tribunal went on to decide whether, given that the review would be proceeding as a paper-based review, whether it should permit the Applicant and Counsel for the Applicant to make representations to the Tribunal.

21. The Tribunal was of the view that, taken together, the Code and the Supporting Procedures allowed it a discretion to hear representations for the purposes of clarifying matters that were limited to the permitted ground of the review.

22. The Tribunal considered whether there would be any unfairness to the Executive to proceed on this basis where the Executive was not legally represented. The Tribunal observed that in correspondence prior to the review Tribunal, the Executive had indicated to the Applicant that it did not object to the Applicant and/or the Applicant's Counsel making representations. The Tribunal further noted that it had been the choice of the Executive to not instruct Counsel or to otherwise arrange for legal representation. Accordingly, the Tribunal was of the view that there was unlikely to be any unfairness arising from allowing the Applicant and Counsel for the Applicant to make representations.

23. In light of the above the Tribunal decided that it was in the interest of justice to allow the Applicant and their Counsel to make informal representations to the Tribunal for the purposes of clarity. The Tribunal was of the view that these informal representations were not to be considered as evidence (as the representations would not be subject to cross-examination). The Tribunal also decided that the representations should not last longer than 30 minutes in line with the normal process for informal representations set out at paragraph 149 of the Supporting Procedures. This was due to the narrow nature of the permitted ground of the review and as a result of the detailed and helpful written submissions that had been produced by Counsel for the Applicant in advance.

Representations

24. Having decided that the Applicant and Counsel for the Applicant should be permitted to make informal representations to the Tribunal went on to hear from the Applicant and Counsel for the Applicant.

25. Mr Hodes on behalf of the Applicant stated that he was sorry for the consumer harm that had occurred and that he now understood the importance of ensuring that consumers were adequately protected. Mr Hodes also outlined that having been new to the industry, he had not fully appreciated the importance of adherence to the regulatory regime but now understood that it was of vital importance to ensure that the rules and regulations were followed to ensure consumers were protected and received a good service.

26. Mr Hodes also reiterated that it had never been his intention to deliberately cause any consumer harm and that he now also understood the importance of fully co-operating with the regulator. Finally, Mr Hodes explained that he wished to remain in the industry and would make any changes required to ensure compliance with the Code and regulations. Mr Hodes confirmed that the existing sanction would have a highly detrimental impact on the business and that it would mean that he could not effectively return to industry.

27. Counsel for the Applicant submitted that the regulatory scheme should be targeted so as to ensure that it only took action that was proportionate and/or necessary to ensure the protection of consumers. Counsel further submitted that any sanction imposed should take proper account of the remorse shown by Mr Hodes and that it should note

that he had been new to the industry, had been solely responsible for the Service and that it was disorganisation and ignorance, rather than a deliberate intention to act dishonestly, that led to the breaches.

28. Counsel stated that Mr Hodes had taken corrective action such as sending spend reminders and providing refunds which demonstrated his willingness to address the issues with the Service and that Mr Hodes was willing to work with the regulator to ensure compliance.

29. Counsel emphasised that any sanction imposed should be forward-looking and should take account of the insight that Mr Hodes had shown into the failings of the Applicant. Counsel highlighted that the totality of the financial penalty (the fine and administrative charges) was in excess of £1,000,000 and that this, in combination with the three-year prohibition, would mean that Mr Hodes could in effect not return to industry and that this was disproportionate. Counsel submitted that in light of Mr Hodes' insight and remorse, that a fine of £250,000 was proportionate (and in keeping with other comparable cases) and that a bar to the service accompanied by a compliance audit would be proportionate in ensuring that consumers were protected.

30. Counsel also argued that it was disproportionate for the Tribunal to have recommended that a naming investigation in relation to Mr Hodes take place and that this recommendation should be removed.

31. The Applicant submitted that the Executive's administrative charges should be capped at £150,000.

32. The Executive did not make any further representations.

Review decision

33. In making its decision, the Tribunal considered the following material:

    - the original Tribunal bundle containing all of the evidence and statements of case for both parties in respect of the original oral hearing
    - the video/audio recording of the oral hearing
    - the review application put forward by the Applicant
    - the Executive's submissions in response to the review application
    - the decision of the Chair in respect of the review
    - the correspondence between the Executive and the Applicant prior to the review Tribunal
    - written submissions by Counsel for the Applicant prepared for the review Tribunal
    - the representations by the Applicant and Counsel for the Applicant made at the review Tribunal.

34. As a preliminary matter, the Tribunal carefully considered the remit of the ground of review that had been permitted. The Tribunal noted that ground 11 of the review

which related to the overall proportionality of the sanction imposed had not been permitted save for the extent to which it related to ground 10.

35. The Tribunal was therefore of the view that it was not its role to fully reconsider the sanction that had been imposed. Instead, its role was limited to considering the extent to which the level of insight demonstrated by the Applicant was a mitigating factor to the case and how this affected the overall proportionality of the final assessment of the sanction imposed.

36. In light of the above, the Tribunal did not consider it to be within its remit to re-assess the breach severity nor the calculations used to arrive at the revenue figure which resulted in the initial assessment of sanction (prior to proportionality considerations).

37. The Tribunal considered the extent to which Mr Hodes had demonstrated remorse and insight. The Tribunal was of the view that Mr Hodes had expressed genuine remorse and regret for his actions both during the course of the oral hearing and through his representations to the Tribunal. The Tribunal noted that the original Tribunal had taken into account a number of factors raised by the Applicant (for example his inexperience in the sector) in reaching its decisions regarding the seriousness of a number of the breaches found proved. However, The Tribunal considered that the issue of insight was pertinent to its assessment of the proportionality of sanction.

38. The Tribunal was mindful that the Applicant had only admitted two breaches at the outset of the oral hearing which were both related to registration. The Tribunal considered that despite this and in line with authorities in the regulatory jurisdiction, that the lack of an admission to the breaches did not automatically equate to a lack of insight (*Karwell v GMC [2011] EWHC 826* and *Amao v NMC [2014] EWHC 147)*.

39. The Tribunal considered that Mr Hodes had developed some insight albeit this had only become apparent during the evidence that he gave during the oral hearing (which had been clarified before this Tribunal). The Tribunal agreed that Mr Hodes now understood the need to ensure that consumers were protected and the importance of compliance with the regulatory regime for this purpose.

40. However, the Tribunal remained concerned that Mr Hodes nonetheless appeared to minimise some his actions by stating that they had resulted from his inexperience and his sole responsibility for the Applicant. The Tribunal also noted that while Mr Hodes had taken some steps to rectify matters through offering refunds and sending out spend reminders, he had not taken any other proactive measures to ensure compliance of the Service.

41. The Tribunal was therefore of the view that while Mr Hodes had demonstrated a degree of insight, he had not demonstrated that he had full insight. The Tribunal did however take the view that insight which had been developed by Mr Hodes was a mitigating factor to the case that should properly be taken into account in determining the appropriate sanction to impose.

42. The Tribunal then went on to consider the effect that this mitigating factor had on the proportionality of the sanction. The Tribunal was mindful that the purpose of sanction in this regulatory environment was not solely to protect consumers, but also to achieve credible deterrence and to uphold the standards in industry. The Tribunal was of the view that while the issue of consumer protection was therefore important to its assessment of the proportionality of the any sanction, it was not the only consideration.

43. Taking all of these matters into account in addition to the submissions made by the Applicant as to the proportionate sanction, the Tribunal decided that the sanctions should be revised as follows:

- formal reprimand
- a requirement that the Applicant seek compliance advice regarding the Service and its promotion and that compliance advice is implemented to the satisfaction of the PSA
- a prohibition on the Applicant from providing, or having any involvement in, any premium rate service for a period of three years, starting from the date of the publication of the original Tribunal decision, or until payment of the fine and administrative charges in conjunction with the implementation of the compliance advice to the satisfaction of the PSA whichever is the earlier
- a requirement that the Respondent 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 £750,000 broken down as follows:

    - Breach 1 £85,000
    - Breach 2 £33,000
    - Breach 3 £145,000
    - Breach 4 £215,000
    - Breach 5 £110,000
    - Breach 6 £85,000
    - Breach 7 £17,000
    - Breach 8 £60,000.

44. The Tribunal gave careful consideration to the sanctions put forward by the Applicant. The Tribunal considered that a lower fine would be proportionate however it was mindful that it needed to balance the additional mitigating factors to the case (namely Mr Hodes' insight and remorse) with its sanctioning objectives which included not just consumer protection but credible deterrence. The Tribunal decided that the figure of £250,000 would not be sufficient to achieve the objective of credible deterrence given the nature of the breaches that had been upheld which included breaches related to consumer harm as well as co-operation with the regulator. The Tribunal was of the

view that a reduced fine of £750,000 was proportionate in balancing the additional mitigation put forward by the Applicant with the sanctioning objectives.

45. The Tribunal also considered that a prohibition remained proportionate given the nature of the breaches that had been found proved. However, the Tribunal considered that given the mitigation put forward by Mr Hodes, the sanction should provide a means by which Mr Hodes could return to the industry in a shorter period than three years.

46. The Tribunal therefore amended the sanctions to include an additional requirement for compliance advice to be sought and implemented to the satisfaction of the PSA but amended the prohibition sanction so as to allow the prohibition to come to an end sooner if this requirement was met (as well as the requirement of payment of the fines/administrative charge). The Tribunal considered that although this introduced a new sanction, the totality of the sanctions was lower as it provided the Applicant with a means by which it could re-enter the market.

47. The Tribunal considered the Applicant's submission that the Executive's administrative fees for the case be capped to £150,000 was reasonable. This was in light of the Applicant having succeeded in respect of one ground of the review.

48. As a final matter, the Tribunal considered the Applicant's submission that the naming investigation recommended by the original Tribunal should no longer stand. The Tribunal noted that this was not a sanction within the meaning of paragraph 4.8.3 of the Code and noted that it was simply a recommendation. The Tribunal was of the view that as the naming investigation was only a recommendation, it did not need to consider this matter as part of the review and that the decision to pursue the naming investigation was one for the Executive.

Administrative charge recommendation: 100% but capped to £150,000.