

## Tribunal meeting number 293

Case reference: 179345  
Network operator: Numbers Plus Ltd

This case was brought against Numbers Plus Ltd (“**the Network operator**”) under Paragraph 5.4 of the 15<sup>th</sup> Edition of the Code of Practice (“**the Code**”).

### Background

1. The case concerned the adequacy of the risk assessment and control (DDRAC) measures put in place by the Network operator between April 2015 and 18 February 2022.
2. The PSA became concerned regarding the DRACC conducted by the Network operator having:
  - conducted Track 2 investigations into the Network operator’s Merchant Providers and noting a sudden increase in informal enquiries open for the Network operator’s clients
  - received consumer complaints regarding a number of Merchant Merchants who were clients of the Network operator, complaining that the Services provider by merchants were misleading and the nature of the services did not match with their registration details. Of particular concern were indications that the Merchants were cold calling consumers about PPI refunds, reclaiming bank charges, and offering loans.
  - reviewed a concerning amount of Financial Conduct Authority (“FCA”) scam warning notifications relating to the Network operator’s number ranges
  - obtained monitoring which indicated that the Merchants who contracted with the Network operator were not operating compliantly and in accordance with their intended purpose
  - conducted online research capturing consumer complaints, highlighting missed calls (to entice consumer call backs), and cold calls regarding PPI refunds, reclaiming bank charges and offering loans.
3. During 2019 the PSA particularly noticed an upward trend in complainant reports surrounding Merchants where Numbers Plus Ltd was the Network operator. The consumer complaints led the PSA to monitor the Network operator’s clients in order to obtain further information. Although the complaint figures were generally low, there was a similar trend developing across the Merchants contracting with the

Network operator. The PSA conducted research and analysed the information obtained along with its internal data. This led the PSA to identify potential trends of malpractice.

4. The PSA identified concerns that consumers were being cold called about loans, PPI bank charges and they were being drop called by premium rate numbers (“PRN”) to entice them to call back. The PSA also noticed that the Merchants were relatively new to the market, registered as a technical support service, often had an unprofessional customer contact email address and typically resided in India. The PSA recognised that, more often than not, the Network operator’s clients were generating relatively small amounts of revenue over high price point PRNs (usually £2.50 per minute).
5. Given the above, the PSA became concerned about potential issues with the Network operator’s DDRAC processes.
6. On 16 September 2019, the PSA sent an informal enquiry to the Network operator asking for DDRAC information regarding twelve of its Merchants. The Network operator stated that all the Merchants were considered low risk. This immediately flagged concerns as the Merchants were almost all relatively new to the market and should not have been considered low risk.
7. Additionally, while the Network operator had automated monitoring systems in place with set parameters, it appeared that the Network operator failed to take adequate action when limits were exceeded, or when incidents occurred.
8. Overall, the Network operator's response strengthened the PSA's concerns. The PSA therefore considered that further investigation was necessary, and the case was allocated to a Track 2 procedure on 10 December 2019.

### Previous relevant cases

9. The Network operator was previously subject to a Track 2 DDRAC investigation and breaches were raised by the PSA under the 12<sup>th</sup> Edition of the Code, namely a breach of Rule 3.3.1 Due Diligence, and a breach of Rule 3.1.3 Risk assessment and Control. The breaches were upheld, and the adjudication was published on 2 April 2015.

10. That case centred around a client of the Network operator who purported to provide a technical support service. The Merchant had in fact been using the PRN to operate a recruitment service. When the true nature of the Service was brought to the attention of the Network operator, it delayed contacting the Merchant, and did not re-assess the risks. The Network operator also failed to conduct any monitoring of the service and failed to collect and assess any new promotional material.
11. In the case of another client of the Network operator, a Service was assigned high risk from the outset, but the Network operator did not review the promotional material and was unaware which numbers it had allocated to which Service and when.
12. For both Services, had the Network operator conducted a proper risk assessment, checking promotional material, registration, and conducting monitoring or had adequate controls in place, it would have been able to assess what reasonable steps should have been implemented to help pre-empt, where possible, the likelihood of consumer harm.
13. The Network operator accepted that the risk assessment and control compliance model was primarily reactive. Consequently, the failings were found to be systemic, but the Network operator had shown a willingness to comply with the advice and actively requested assistance from the PSA.
14. The PSA asserted that there are similarities between this case and the previous adjudication against the Network operator in 2015:
  - failure to give an appropriate risk rating to its Merchants
  - the Network operator being unaware of the type of service Merchants were conducting
  - failure to pay due regard to its own responsibilities
  - failure to recognise when special conditions were required
  - the adoption of a reactive rather than proactive stance
  - inadequate knowledge of how its Merchant(s) operated
  - inadequacy of the risk control systems.
15. A compliance audit sanction was imposed and conducted in June 2015. The Network operator overhauled its DDRAC processes. The Network operator invested in new reporting and tracking systems for recording details of clients, conducting risk assessment and scoring, put monitoring processes in place and had automated reminders systems in place for DDRAC issues. The compliance audit also provided answers and solutions to specific comments made by the PSA. The audit was agreed and signed off.
16. The PSA was of the view that the Network operator, despite its apparent willingness to comply and improve in 2015, had not continued to maintain the actions as

described and agreed in the compliance audit.

### Underlying cases

17. In addition to the consumer complaints, there were a number of underlying cases that led to concerns regarding the Network operator's DDRAC procedures in relation to their clients.
18. Some of the adjudications involved similar threads relating to consumers being contacted about loan services and/or receiving missed calls from premium rate numbers which enticed consumers to call back, generating revenue for the Service.
19. On 9 July 2015 an adjudication was published against the Network operator's client Blue Triangle Ltd<sup>1</sup>. The service was not registered with the PSA, but evidence indicated the PRN was provided to customers through Loanster Money UK and that complainant reports evidenced that they were receiving missed calls from the PRN to encourage consumers to call back in order to generate revenue.
20. The adjudication also found that the Merchants were misrepresenting the service type, usually purporting to be technical support services, when in fact they were not. An adjudication was published against the Network operator's client Himanshu Singh t/a Uplink IT Solutions<sup>2</sup> where it was found that the service was not acting as a technical support line and evidence suggested the service was offering bank refunds. Similarly, in the adjudication against Irich Info Technology Limited<sup>3</sup>, published in May 2020, concerns were raised that it was not operating as the technical support service it purported to be.
21. Between June 2015 and August 2019 adjudications for non-compliance were brought by the PSA against a number of the Network operator's clients for various breaches including pricing, misleading, undue delay and complaint handling, including the case brought against Heart Communications Limited.<sup>4</sup> The breaches were upheld and fines totalling £165,000.00 were imposed, in addition to a number of other sanctions including formal reprimands, requirements to remedy the breaches, and compliance audits.
22. Investigations and/or regulatory action was taken in relation to 15 Merchants. Where action plans were sent in some cases in order to bring the Merchants back into compliance, enforcement action was not taken, as the Merchants either complied with the action plan, or left the market. A referral was made to another regulatory agency in respect of one provider.

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<sup>1</sup> [Blue Triangle Technology Limited 57739 \(psauthority.org.uk\)](https://psa.gov.uk/cases/blue-triangle-technology-limited-57739)

<sup>2</sup> [Uplink IT Solutions 181007 \(psauthority.org.uk\)](https://psa.gov.uk/cases/uplink-it-solutions-181007)

<sup>3</sup> [Irich Info Technology Ltd 162375 \(psauthority.org.uk\)](https://psa.gov.uk/cases/irich-info-technology-ltd-162375)

<sup>4</sup> [Heart Communications Ltd 13383 \(psauthority.org.uk\)](https://psa.gov.uk/cases/heart-communications-ltd-13383)

23. The underlying cases contributed to the decision to conduct an investigation into the DDRAC processes and procedures being implemented by the Network operator.

### The investigation

24. The investigation focused on the Network operator's conduct after the last adjudication, between April 2015 and February 2022.

25. The PSA selected a sample set of 23 of the Merchants who contracted with the Network operator. The PSA considered a wide enough sample to gain a true understanding of the Network operators DDRAC processes.

26. In order to ensure fairness to the Network operator and to ensure that the PSA obtained a wide range of DDRAC information, the sample selected included Merchants that:

- were onboarded at different times since 2015
- operated a variety of different services
- were no longer active in the market
- were still active in the market
- were providing services for which the PSA had received complaints, and
- that had not generated complaints to the PSA.

### Apparent breaches of the Code

27. On 18 February 2022 the PSA sent a warning notice to the Network operator raising the following breaches of the Code:

- Rule 3.1.3 Risk assessment, and
- Rule 3.1.3 Risk Control.

28. As the PSA alleged that the breaches commenced in April 2015, they spanned the 13<sup>th</sup> and the 14<sup>th</sup> Edition of the Code, however the requirements on the Network operator relating to risk assessment and risk control remained the same.

29. The PSA raised two separate breaches of the Code, namely a breach of 3.1.3 in respect of risk assessment and, separately, a breach of 3.1.3 - Risk Control. Initially, when the investigation was allocated to a Track 2 procedure, the PSA was considering three breaches of the Code: 3.3.1 Due Diligence, 3.1.3 Risk Assessment and 3.1.3 Risk Control. However, having analysed the Network operator's responses, the PSA found that the Network operator had carried out satisfactory due diligence checks for the majority of its Merchant Providers. Therefore, the PSA only raised 3.1.3 - Risk Assessment and 3.1.3 - Risk Control.

30. The PSA recognised that risk assessment and risk control can be intertwined in that any failure to conduct adequate risk assessment could have an impact on the ongoing

steps required to control risk. However, having fully considered all the evidence in this case, the PSA determined that there was no overlap. The failures identified were not a chain of circumstances, in that they were interdependent upon each other. The impact was such that remedying the concerns in one process would not have resolved the issues found in the other. The PSA asserted that the two elements of Rule 3.1.3 represent two separate and distinct ongoing processes, which both take place throughout the duration of a commercial agreement. Therefore, the PSA raised two breaches of paragraph 3.1.3 to allow the distinct failures to be adequately addressed by the Tribunal.

## Preliminary issues

31. On 24 March 2022 the Network operator wrote to the PSA requesting an extension of the 30 minutes permitted to make informal representations, to one hour. The Network operator submitted that the extra time was required:
  - given the extent of the enforcement/warning notice, accompanying documents, and correspondence which followed, together with other points of mitigation, and that
  - the response included arguments and mitigation that may need qualifying or that would benefit from further explanation.
32. The application was considered by the Chair of the Tribunal and the application was granted.
33. An additional request was made by the Network operator. The request surrounded the attendance of an individual at the hearing, who it was stated would be in an observatory and supportive role, but who was not a legal representative. Attendance was permitted by the Chair, having particular regard, on the facts of this particular case, to the reason given in relation to the supportive role of the individual . The individual was permitted to observe the hearing, but not to address the Tribunal.

## Submissions and conclusions

### Alleged breach 1

#### Paragraph 3.1.3

*In relation to Risk assessment, all Network operators, Level 1 Merchants and Level 2 Merchants must: "Assess the potential risks posed by any party with which they contract in respect of:*

*(a) the provision of PRS; and*

*(b) the promotion, marketing and content of the PRS which they provide or facilitate and take and maintain reasonable continuing steps to control those risks."*

34. The PSA alleged that the Network operator did not conduct adequate risk assessments and failed to properly identify, or consider, the range and types of risks associated with its clients and the services they provide. Due to the number of trending issues across the Merchants, and the evidence which indicated that the Network operator had not adequately followed its own risk assessment process, the PSA alleged that there was an overall systemic failing.
35. The PSA submitted that the risk assessment conducted by the Network operator was inadequate and did not meet the standard the PSA would expect in order to satisfy the requirements of the Code. The breach of the requirement to carry out adequate risk assessment was alleged to have taken place in the following ways:
- the Network operator did not fully complete its risk assessment
  - the Network operator did not follow its own risk assessment process or score its clients according to its own risk matrix
  - the Network operator did not consider the increased risks posed by a Merchant who has not previously operated premium rate services (“**PRS**”)
  - the Network operator did not consider the increased risks posed the types of service being launched
  - the Network operator failed to adequately assess promotional material
  - the Network operator failed to adequately assess how the proposed Service would operate and be marketed.

**Reason 1 – The Network operator did not adequately complete its risk assessment and did not follow its own processes**

36. The PSA submitted that the Network operator did not follow its own risk assessment process, despite the fact that it should have been in place following the compliance audit imposed by a Tribunal in 2015.
37. The Network operator submitted the following when the PSA requested evidence of the risk assessment process:

SECTION 7: PLEASE DETAIL BELOW PROPOSED SERVICE
<p>Please give an explanation of how your proposed service will operate. Please include copies of promotional material or details of how the service will be promoted</p> <p>Certain premium rate services have special conditions which apply. If your service falls under one of these categories you will be asked to complete an additional form to ensure compliance.</p> <p>TV/Radio broadcast; Live entertainment including psychic and adult services; High call charges exceeding £1.50 per call or per minute; Consumer credit services; Signposting or connection services to third party companies; Professional advice or counselling; Pay-per-View, TV quizzes, Gambling services; Subscription text services; Recurring donations..</p>

38. The PSA s expected the additional compliance forms to have been completed, given that most of the sample Merchants’ services cost £2.50 per minute. However, no additional compliance forms were completed, in contravention of the Network operator’s own policy.

39. The Network operator's risk assessment process provided that a full risk assessment of Merchants should have been conducted at regular monthly intervals (one, three or six months) to check on promotions, and to ensure that marketing material was compliant. The process provided that if the Network operator was unable to obtain the information after a follow-up email and call, it would suspend the Service. A full audit trail was required.
40. The PSA asserts that for the majority of the sample Merchants, the Network operator did not make the checks that the risk assessment process required, either prior to the PRN becoming live or throughout the lifetime of the premium rate service.
41. Furthermore, the PSA provided several examples of Merchants where the Network operator determined that the Service was low risk in the absence of all the information required by sections of its own risk assessment. The PSA submitted that the Network operator was therefore incorrectly categorising Merchants as low risk. It was also incorrect to continue to deem the Merchant as low risk without conducting regular and thorough risk assessment.
42. Furthermore, the automated system used by the Network operator would have scored the Merchants as high risk if it was completed correctly. Failure to properly categorise Merchants who were new to PRS as high risk, was contrary to the PSA's guidance and led to the incorrect category being generated by the Network operator's own automated system. Had the Merchants been categorised correctly the Network operator would have been required to conduct checks more frequently.
43. Additionally, the PSA asserted that the Network operator did not collect sufficient information to confirm that consent to market had been obtained in respect of some of the sample Merchants. Given the nature of the Merchants involved and the services provided, it is likely that had the Network operator carried out a full assessment, the overall risk ratings would have been high, giving rise to a need for more frequent risk assessment.
44. Overall, the fundamental checks that were required by the Network operator's own risk assessment process were not completed. The PSA submitted that the Network operator disregarded its own process in assessing the risk posed by the Merchants it contracted with. The failures are, therefore, twofold: failing to complete a full risk assessment which led to the inaccurate classification of risk and failing to conduct regular assessments.
45. Out of the 23 merchants, 18 of them did not have all required sections of the risk assessment form completed and none of the Risk assessments were kept up to date or regularly checked. Therefore, the PSA submitted that these failings were systemic, over a large proportion of its Merchants, and for a lengthy period of time.



## **Reason 2 - The Network operator did not consider increased risks posed by a Merchant who has not previously operated PRS or is unknown**

46. A large proportion of the 23 merchants sampled were scored “low risk” even though they had never operated PRS and were not known to the Network operator.
47. The PSA, relying upon its DDRAC guidance under paragraphs 3.5 and 3.10, submitted that this was a failure on the part of the Network operator to comply with their risk assessment obligations. As the Merchants were not known to the Network operator and had never operated within the premium rate services’ market before, the PSA’s DDRAC Guidance states that the Merchant should have been regarded as high risk from the outset, regardless of the low cost of the service.
48. The PSA provided evidence that one of the Merchants was subject to numerous A1 retention notices<sup>5</sup> soon after commencing the Service, and eventually suspended for suspected missed call promotions. This amounted to clear non-compliance with the Code on the part of the Merchant, but the PSA asserted that had the Network operator conducted adequate risk assessment, properly considering the risks associated with a Merchant who had no experience operating with PRS, and who was not known to the market, the Merchant would have been assessed as high risk in the first instance.
49. The PSA submitted that the Network operator repeatedly failed to adequately consider the increased risks of Merchants being new to the industry. Of the 23 sample merchants, 18 had no experience in operating PRS and were not known to the Network operator, yet were all deemed as low risk from the outset. The PSA stated that this failing, to appropriately assess risk, was systemic and over a lengthy period of time.

## **Reason 3 - The Network operator fails to adequately assess promotional material**

50. The PSA reviewed the promotional material provided by the Network operator for the sample Merchants and found that the Network operator had not adequately assessed the risks posed by the promotion.
51. The PSA provided several examples where the Network operator stated that there was no promotional material available from the Merchants at the time of setup, therefore forcing them to rely on what they were told by the Merchants as to what the Service would be. The Network operator then assessed the risk as being low.
52. On other occasions, the material that was provided to the Network operator was not actual promotional material, in that, it did not show the PRS being promoted. The Network operator failed to take action to obtain the actual promotional material.

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<sup>5</sup> A1 retention notice is a written notice of retaining funds submitted by Network operator’s when there is reasonable suspicion of Artificially Inflated Traffic (AIT)

53. There were also incidents where the display of the cost in the promotion was not prominent, but the Network operator failed to take any action.
54. Overall, the PSA stated that the Network operator's approach to assessing the risk posed by the Service based on the promotional material was inadequate. The PSA asserted that the Network operator failed to adequately assess its client's promotional material, and that it was clear from the promotional material that, they were not of a nature that ensured that the outcomes required in the Code were met.

**Reason 4 – The Network operator failed to obtain sufficient information to fully understand how the proposed Service will operate and be marketed.**

55. The PSA submitted that the Network operator failed to obtain sufficient information from the Merchants to fully understand the Services and how they were intended to be marketed. This demonstrated that the Network operator disregarded the need to fully understand the risks of its Merchants, and failed to adequately assess risk as a result.
56. The PSA provided several examples of Merchants where the Network operator should have obtained further information in order to fully understand the provision of the Service, and how the Merchant obtained consent to market. In some cases, the information provided was minimal, or the information provided did not adequately explain how the service was to be marketed. This was particularly pertinent as the Network operator had no previous history with some of the Merchants.
57. The PSA also pointed out that this was a feature highlighted in the previous compliance audit.
58. Additionally, there were issues regarding the fact that Merchants should have been registered with the Financial Conduct Authority ("FCA") and the Network operator failed to ensure that this registration had taken place.
59. The PSA asserted that within the sample Merchants, a consistent pattern had emerged whereby poor risk assessments had taken place, which were based upon extremely limited information, that did not allow for the risk to be adequately assessed.
60. The majority of the Merchants within the sample were sole traders based in India, with no PRS experience, no websites, unprofessional applications (PRS checklists) and unprofessional business email addresses (which appeared to be personal email addresses). The PSA asserted that the Network operator did not obtain sufficient information about the Merchants, to understand how the provision of PRS were facilitated. As such, the risk assessments carried out by the Network operator were not of a nature that helped ensure the outcomes required by the Code were met.

61. The PSA submitted that the four reasons, detailed above, demonstrated that the Network operator failed to adequately conduct risk assessment for Merchants they contracted with.
62. In response to the allegation, the Network operator stated that some of the areas highlighted in the Network operator's risk assessment system were not relevant to the service, thereby giving the impression that they were high risk when in fact they should have been greyed out. The Network operator also asserted that Merchants were always categorised as high risk if they were newcomers to the premium rate industry. The Services they offered were initially rated as low risk, but this had no impact on the initial high-risk rating that was attributed overall. With the exception of some oversight regarding the font size of pricing on two websites, the Network operator took steps to ensure that pricing would be communicated in both verbal promotions and at the start of premium rate calls. The Network operator submitted that there was a misunderstanding as to the nature of credit broking, which was rectified as early as 2018 and stated that some of the evidence cited by the PSA was up to six years old.
63. During the hearing, the Tribunal questioned the PSA as to why two separate breaches had been raised, as opposed to one, encompassing all aspect of the failure relating to risk assessment and risk control. The PSA accepted that in certain scenarios there could be an overlap that would result in it being appropriate to raise only one breach covering both risk assessment and risk control, but in this case, it was appropriate to raise two separate breaches as there was no overlap between the reasons put forward by the PSA for inadequate risk assessment and the inadequate risk control performed by the Network operator. The PSA also relied upon the precedent set by previous cases.
64. The Network operator admitted the breach during the hearing, as raised by the PSA. Additionally the Network operator stated that when a Merchant joined their network, they were taken through the requirements of the Code and applicable guidance. The Network operator felt that they were somewhat duped by the Merchants. As complaints were going directly to the PSA, the Network operator stated that they were presented with a false picture of the Merchants. It was only in May 2020 that the "penny dropped" for them, due to an adjudication against Irich Info Technology Ltd<sup>6</sup>. They then paid particular attention to the nature of some of the complaints that were being received about the Service.
65. The Network operator accepted that they had "blocked out" a lot of the issues and the complaints should have been investigated sooner. They terminated the non-EU services once they obtained the results of their own investigation in by June 2020. However the Network operator stated that they relied upon the Merchants contractual obligations to comply with the Code and when they were aware of complaints they, as the Network operator, processed refunds. They relied on

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<sup>6</sup> [Irich Info Technology Ltd 162375 \(psauthority.org.uk\)](https://psa.gov.uk/irich-info-technology-ltd-162375)

assurances from the Merchants that they would be doing everything they could regarding compliance and minimising any consumer harm and the Network operator had no reason for any suspicion. No evidence was presented to them that the Merchants were acting badly.

66. The Tribunal noted the Network operator's admissions in respect of the breach as it had been put by the PSA and therefore upheld the breach.

Decision: UPHELD

## **Alleged breach 2**

Paragraphs 3.1 and 3.1.3. together state:

*"3.1 All Network operators, Level 1 Merchants and Level 2 Merchants must:*

*3.1.3 Assess the potential risks posed by any party with which they contract in respect of*

*(a) the provision of the PRS; and*

*(b) the promotion, marketing and content of the PRS which they provide or facilitate and take and maintain reasonable continuing steps to control those risks."*

67. The PSA submitted that the Network operator's risk control process was inadequate and that there was a widespread, systemic breach of paragraph 3.1.3, which occurred in the following ways:

- the Network operator did not take action after its risk control system highlighted issues and failed its own process
- the Network operator did not adequately monitor its clients
- the Network operator did not adequately act on consumer complaints
- the Network operator failed to acknowledge when incidents occurred, investigate them or put adequate control measures in place
- the Network operator failed to take appropriate action following issues highlighted by the FCA.

### **Reason 1 – The Network operator's did not take any action after its automated Risk Control system highlights issues**

68. The Network operator's risk control process was put into place following the compliance audit imposed by a Tribunal in 2015. The automated system alerted the Network operator when there were particular issues with a Service such as long call durations, repetitive calls and traffic spikes. When a parameter was broken, an email alert was sent to the Network operator.

69. When reviewing the information provided by the Network operator, the PSA found that no action was taken when the automated systems highlighted issues for the sample Merchants. Even where the parameters were being surpassed as a result of

Artificial Inflated Traffic notices from other Network operators, consumer complaints or when it had recognised complaints online, no action was taken by the Network operator. This was contrary to the Network operator's risk control process.

70. Given the size of the sample, the PSA asserted that this represented a wider systemic failure, spanning over a lengthy period of time across the client base. Furthermore, the Network operator failed to provide any evidence that this issue had been remedied so the PSA asserted that this failure was ongoing.
71. Within the sample of merchants, the PSA provided examples that demonstrated that a Merchant exceeded its maximum limit on repeat calls almost immediately after the Service began operation and that there were 78 exceeded call limit notifications between March and September 2019. The Network operator should have assessed whether this was caused by non-compliant behavior and put adequate measures in place to address the risk. However there was no evidence that the Network operator took any action as a result of any of these exceedances, despite receiving a complaint regarding the Service, a call from the PSA on 27 March 2019, and an A1 retention notice on the 12 April 2019, less than a month after the Service had started. Additionally, the PSA noted that call spikes were prevalent.
72. The Network operator only took action once an informal enquiry for DDRAC had been raised against it by the PSA.
73. Therefore, although the Network operator's automated systems recorded instances of breaches of the set restrictions, the Network operator took no action once these parameters were breached. The PSA asserted that it was unsatisfactory to have systems in place that highlight issues, if the Network operator ignores the systems when the issues are highlighted. The failure on the part of the Network operator to take action to control the risk presented by the Merchants extended to other areas such as call caps, which went directly towards consumer harm in the form of excessive bills. Had the Network operator acted when these parameters were breached, consumer harm would have been minimised.

#### **Reason 2 – The Network operator's Risk Control process did not include reasonable monitoring on its clients**

74. The Network operator was directed to provide its monitoring file for each of the sample of Merchants. The Network operator confirmed that for the 23 Merchants they made no Service monitoring checks; and that it had only checked to see if compliant warnings (IVR) were in place (however, no evidence was provided to support this statement). The PSA asserted that this was a breach of the requirements of the Code as this did not adequately control the risk presented by the Merchants to consumers.

75. The PSA asserted that the fact that the Network operator checked whether compliant warnings (IVR) were in place did not, on its own represent adequate risk control, particularly as the Network operator supplied the IVR and had direct control of this aspect of the service.
76. The Network operator was not able to demonstrate that it had been conducting regular, consistent checks for online complaints since the 2015 adjudication. It was not until the PSA sent an informal enquiry regarding its DDRAC procedures, that the Network operator made some attempts to check online complaints in some of the cases.
77. The PSA submitted that the failure to carry out adequate monitoring was a feature of the case previously brought against the Network operator in 2015 and that the Network operator had no excuse for the failure to conduct any Service monitoring, given that the 2015 adjudication and compliance audit both highlighted the importance of such monitoring.
78. The PSA stated that the Network operator failed to conduct monitoring procedurally, meaning it was a systemic issue across the Network operator's client base. The evidence suggested that the Network operator only reacted to incidents in certain circumstances, for example where funds were withheld (in the context of artificial inflation of traffic) or where the Network operator was notified by the PSA. The Network operator failed to act on the monitoring obligations laid out in the compliance audit from 2015, specifically the need for proactive monitoring.

**Reason 3 – The Network operator did not properly acknowledge incidents or take adequate action/monitoring when an incident has occurred**

79. The PSA asserted that the Network operator did not acknowledge, investigate or act appropriately when incidents relating to risk of consumer harm occurred. Had the appropriate steps been taken, consumer harm would have been avoided or at the very least minimised.
80. When refunds were requested, it was important for the Network operator to understand why consumers had requested refunds and, to retain that information to help identify trends of non-compliance. The PSA alleged that the Network operator failed in both respects and therefore did not adequately control risk, even when that risk was identified through indirect means, such as refund request.
81. On 5 June 2021 the PSA received the following complaint regarding a Merchant operating on the Network:

*“billed £140 , wasn't advised that it was £2.50 a min till checking on your site, apparently it was for a loan but going on the website looks 10times different I was forwarded a number by a different company to give this number a call on the*

12<sup>th</sup> may, in doing so I was told by one of your reps that the call was free ( which I can now see isn't ) I was speaking to someone for about 10 mins they took all my details bank details home address etc. as soon as giving my bank details, they laughed and put the phone down.. I then called back and told them I was just speaking to someone in regards of what happen they then said we can take the details again, as sooooooon as I said my name and postcode they put the phone down again, this happened on the 3<sup>rd</sup> time where I then said you have taken all my personal details telling me I have been accepted and that if the phone went again I will be making a big complaint and calling the police.... after that the phone was then put down on me where on my bill I made 19 attempts to get through with no one picking up but allowing the phone to answer but putting it back down straight away !!!!! after all of that I have now been left with a £300 debt on my phone bill nothing I was promised Crime reference number as I am terrified that someone is GOING TO take my money from my account on payday im distraught and the fact no one even called back to say anything or find out what happens leaves me in a position to think it was fraud  
I just don't understand could someone please contact me asap as I this isn't fair, that I was left to have to deal with the stress AND now have to pay a 300 pound bill !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
copy of the email I sent them over 25 times in the last week of may  
Have you contacted the Service Provider: Yes”

82. Less than two weeks later, the PSA received a further complaint which stated the following

"Charge for one call lasting 17mins 53sec comes to £46.78. It was a fake loan company called silver solutions,they had no intention of giving me a loan they just kept me on the phone as long as possible to bill me as much as possible. Have you contacted the Service Provider: Yes"

83. The PSA also checked online for complaints about the Merchant and despite the fact that the Network operator had stated to the PSA 'There were no adverse comments found online', the following reports were found:

### 5 User reports

The ratings for 09131240241 are based on real reports of visitors to this web site. Please add your comment to improve accuracy and help others.

Report this number now

01/05/2020	these people claim to be a loan company but its a total scam, a woman rang me originally from 07492884123 she then sent me a code and told me to ring the 0913 number. the cost of the calls are ridiculous and they keep you on the phone asking numerous questions purely for the call charge. they are absolute parasites praying on people already in need in this hard time dont fall for there bull!!
16/05/2018	is 0913240245 who are these people
19/05/2017	a company called silver solution.emailed me to ring a premium number to get a loan.
19/05/2017	i've been hit with £65.89 charged to my landline - i don't have a phone plugged in so no idea how this has happened.
05/05/2017	scam!! left an email telling me they would give me a loan, i've checked various sites about this company which calls itself instant solutions, every person who has left feedback about them warns that it's over £5 per min to call them and they never give out loans! do not call these people, do not give them any personal info especially bank accounts etc. they email from the address ukfinder786@gmail[###].



84. The PSA claimed that the Network operator did not check for online complaints throughout the entire time the Service was operating (which it should have been doing procedurally) and when incidents (complaints/refunds) occurred.
85. The PSA received the following complaint about Irich Info Technology which was sent to the Network operator.
- "Live finical - Cost of call £90 - 09131241190 (I have called this number and it gives pricing of £2.5 per min plus access charge) Consumer filled in a form for short term loan - this was done online but consumer cannot remember URL Consumer was called back and asked to call 09131241190 to discuss loan options - 2 calls were made on lasting 40 mins and the other lasting 14 mins - Consumer states they asked advisor if call was charged and they were told no. They were also given a toll free number but this number only took them through to a toll free number reseller."*
86. While the complaint was recorded by the Network operator, no investigation had been conducted by the Network operator and no control measures were put in place. Additionally, no notes were made regarding the complainants direct contact with the Network operator.
87. The PSA submitted that this manner of complaint handling highlights that despite the evidence of the Merchant operating in breach of the Code, the Network operator took no action to control the risk. The Network operator's attitude to what constitutes reason for concern was particularly alarming. In the PSA's opinion a refund request is likely to be due to a complaint, the Network operator should have obtained reasons for the refund from the Merchant, but failed to do despite actioning some requests for refunds. All customer enquiries, refunds and complaint handling are specific information that Network operators should have obtained and retained as per the data retention guidance.
88. The Network operator also failed to provide proper information about the refunds it paid out or the nature of the complaint that the consumer raised for a particular Service. In another example, in relation to the Network operator's clients, the PSA demonstrated that, despite the Network operator stating that it found no issues with the Merchant's Service, it received three consumer complaints from the PSA and one refund was made. A number of incidents occurred which the Network operator failed to respond to.
89. There were also instances where the Network operator failed to obtain call recordings or perform checks on the Services being provided, even when issues suggesting non-compliance arose. For one Service there was a clear audio warning in place and calls were capped at £40.00. The Network operator stated it issued 23 refunds totalling £1439.00, but made no regular checks for online complaints.
90. Additionally, complaints indicated that some Merchants were registered as technical support lines however, they were in fact operating as credit brokers without being FCA registered or adhering to the PSA's special conditions. In relation to one Merchant, the call charges fell into the excessive spend category and while the consumer confirmed the IVR stated the cost of the call, the complainant stated that the advisor told the consumer the call was not charged.



91. The PSA relied upon monitoring evidence it obtained concerning a PRN that had no IVR in place. Additionally, during the call, the advisor did not confirm any costs of the call and proceeded to ask whether the caller wished to proceed with a loan application. The Merchant was not authorised or registered to provide this type of credit brokering. The PSA conducted online research and found websites promoting the PRN for pay day loans and found numerous reports online stating that people had been cold called, stating they were owed money back from bank charges or PPI refunds. The PSA alleged that this was a prime example of why monitoring was a fundamental part of risk control measures the Network operator should have been adopting. Had the Network operator monitored the Service itself, it would have been made aware that the Merchant was operating non-compliantly.
92. The PSA asserted that these are potentially serious issues, and the Network operator should have investigated these concerns, conducted a new risk assessment and increased its monitoring of the Service.
93. The PSA asserted that the Network operator failed to adequately control risk even in the face of A1 retention notices. While there were customer notes on the Network operator's system regarding the A1 retention notices and the notice stated that there were various online reports regarding the Service, there was no indication that the Network operator took any action to investigate the concerns or put any additional control measures in place. The Network operator did not provide the full audit trail, stating that the A1 retention notice was eventually withdrawn, but did not disclose the audit trail.
94. Another Merchant was found to be taking part in Wangiri Fraud which is where a Merchant makes outbound calls to consumers and hangs up prior to receiver answering; the calls are generally made in succession and in the early hours of the morning to entice people to call back the number (for a charge). On 27 March 2019, the PSA forwarded a consumer complaint in relation to Wangiri Fraud to the Network operator . The Network operator responded on 27 March 2019, but the PSA believed, from the response received, that the Network operator did not fully consider the complaint. The complainant was not complaining about a charge, it was a complaint about being successively call dropped. It was evident from the Network operator's response and the customer notes on the Network operator's system, that no action was taken to put control measures in place, or monitor the Service.
95. The PSA received the following complaint about a Service, which was sent to the Network operator.

*"I was looking for a pay day loan online and had entered my contact details into a few different websites for this purpose. I received an email from one website approving my loan and asking me to call them to complete the application and transaction. I called and spoke to them and as they were taking my details I realised it was an absolute scam and threatened the person I spoke to delete all the details I had provided. I have the entire email exchange proving this. I have now received this exorbitant charge on my bill.*

96. The PSA submitted that this complaint highlighted the following concerns that the merchant could have been operating in breach of the Code:
- the merchant was registered to operate assistance services however, the complaint indicated that it was operating as a credit broker
  - the merchant conducted promotions by contacting consumers via email. The Network operator had not received and reviewed the contents of the promotion
  - the call charges could have fell into the excessive spend category.
97. The Network operator contacted the Merchant and the Merchant explained that it had two separate businesses operating and the number for remote computer services had been mixed up with another service it operated for lead generation. The Merchant confirmed it has taken strict action to ensure that this does not happen again. There is no evidence to suggest that the Network operator increased its monitoring of the Service or put any additional control measures in place.
98. The PSA notes that the Service continued to operate and continued to receive complaints to the PSA and online (which specifically mention loans) which the Network operator appears to have overlooked for a considerable amount of time.
99. The PSA notes that the Network operator did provide a screenshot of the FCA register showing that individual linked to the Service was an approved person for the FCA. However, the PSA notes that the individual could only perform tasks within an authorised firm. The Merchant was registered as a sole trader and was not authorised to act independently and did not adhere to the credit brokering special conditions. The PSA asserts that the Network operator failed to put adequate controls in place to ensure the Service was operating compliantly and to avoid further issues of the same nature.
100. Further examples were provided by the PSA where the Network operator informed the PSA that no Service checks or monitoring were conducted on Merchants. The Network operator stated to the PSA that there were clear audio warnings in place. However, the evidence submitted by the Network operator to the PSA suggested that no test calls were ever made.
101. Overall, the PSA conducted online research on the initial sample of merchants and found that 17 of them had online complaints indicating that they were operating non-compliantly. Additionally, 16 of the merchants seem to have been offering credit and refunds, (which never materialized) to vulnerable people, in poor financial situations. The cost of the calls was high and many complainants' concerns indicate undue delay.
102. The PSA relied on examples of complainants that demonstrated vulnerable consumers were targeted:

*"I was looking on line for a pay day loan. I was contacted by the people at the above number who said they could help, took all my personal details and gave me a reference*

*number to call to verify who I was and to get the funds released. When I call Ed the number (019131240266) they proceeded to ask me all the same questions. The call continued for a long time with no mention of funds being released until I realised I was being conned and put the phone down. I immediately called O2 only to find that not only was the charge for the call around £40, but that O2 would not help me or do anything to stop this from happening to other customers. I would like to retrieve this money as I am struggling at the moment but also because these criminals are preying on the people who can least afford to be scammed. I believe they may be in India judging by the accent of the operative I spoke to but hope you can help me further.”*

*“company is based in delhi its a con promised a loan at the end of it but this does not happen,why would she ring delhi. she was kept on the phone 15 mins and 24 seconds and charged £39.14 not knowing what she was getting charged ,skyline solutions is the company its unacceptable preying on people.”*

*“Hi there, on April the 14th I have received a call asking me to confirm my details for a loan application, then they have asked me to call this number with a reference they have given to me to secure the loan, and then i was back and forth with them.*

*I was surprised when i received a call from EE advising that I was being contact by a fraudulent number. EE have advised me that my bill would be very high.*

*I have explained that due to current situation working less hours I do not have enough to cover the cost of the bill. EE have advised me to get in contact with you in order to take charges off my bill. I have called on the 22 of April I have been advised to send an email when the bill is ready.*

*I would appreciate if you look into my matter with consideration as I cannot afford to pay £91.36.*

*Thanks”*

103. The PSA asserted that had the Network operator put in place risk control processes, that assisted in ensuring that the outcomes of the Code were able to be met, it would have been aware of how its clients were operating, and should have taken appropriate steps in response to incidents to avoid non-compliant behaviour and consumer harm.

104. The PSA submitted that there were many incidents that should have prompted the Network operator to conduct investigations. Although there was some evidence of the Network operator administering refunds, it was not enough to rectify the harm for individual consumers, in isolation. The Network operator should have been using this information as a trigger to investigate whether there were underlying compliance concerns, and, using the information to determine the appropriate measures and additional checks for any new clients that seemingly followed that trend.

#### **Reason 4 - The Network operator did not take adequate action when warnings were issued by the FCA**

105. PRS Merchants that are involved in the provision of consumer credit services are known (and registered with the PSA) as credit brokers and they are subject to special conditions, including being registered with the FCA. Credit brokers must also notify the PSA of certain information within 48 hours of making the services accessible to the public.
106. Given the serious impact on consumer harm that FCA warnings and their contents highlight, it should have immediately raised suspicion with the Network operator that its Merchants were not operating compliantly with the Code, given the amount of FCA warnings that had been issued against the Network operators' clients.
107. Between June 2018 and November 2020, the FCA published a number of warnings stating that finance and loan companies were cloned and that fraudsters were using the details of firms they authorise, to try to convince people that they work for a genuine, authorised firm. It was confirmed that the Services were operating using Network operator's PRNs. It is unclear as to whether the Network operator investigated, but notes suggest that the Network operator did not acknowledge or carry out any investigation into any of the Merchants, or how they were linked to the fraudsters, despite the FCA warning.
108. Furthermore, an FCA warning was published in September 2017, according to the Network operators customer list a Merchant, unregistered with the PSA for 9 months, started operating using the PRN in December 2017. The PSA would have expected the Network operator to have taken notice of the warning at the time and realised that the Merchant was operating non-compliantly, without being registered. Had the Network operator investigated the issue and put control measures in place, consumer harm would have been avoided.
109. Overall, the PSA considered it alarming how many times the FCA have issued warnings to the public regarding the Network operators clients, ten merchants in less than three years. The merchants were promoting services that they were not authorised to run, and from the customer notes that had been made, it appeared to the PSA that the Network operator failed to carry out an investigation despite the FCA warnings.
110. The PSA further asserted that it appeared that the Merchants were generating revenue from targeting vulnerable people that may have been in financial difficulties. The consumer harm that resulted was two-fold, firstly the costs of the calls and secondly, when the loan or PPI refund did not materialise. The PSA asserts that the Network operator did not take adequate steps to control the issues of non-compliance, causing significant consumer harm.
111. In response to the allegation, the Network operator stated they contacted merchants when the parameters on the automated system were exceeded, but this was via telephone calls and the notes of the system may have lacked the required detail. The Network operator also stated that regular monitoring did take place, but

records demonstrating this practice have greatly improved since this investigation by the PSA commenced. The Network operator stated that they were provided an explanation in relation to the incidents and complaints by the merchants and they believed them.

112. The Network operator also stated that when the PSA received complaints they should have sent them directly to the Network operator. The Network operator also asserted that they did undertake monitoring as a result of the A1 retention notices, but it was unreasonable to expect the Network operator to have knowledge of the FCA warnings as they were not notified directly. However the Network operator is now conducting regular checks on the FCA website for these alerts.

113. During the hearing the PSA stated that a holistic approach should have been adopted in respect of monitoring. The aim was to demonstrate the consumer journey as part of the Network operator's risk control processes.

114. The Network operator admitted the breach as presented by the PSA during the hearing. The Network operator also accepted that monitoring should have been completed, and stated that this holistic approach will be adopted moving forward and expressed regret at their failure to adopt this approach previously. However, the Network operator pointed out that they did not think that this was compulsory under the Code and they tried to understand the consumer journey as best as they could. The Network operator stated that they would now refuse clients if they did not feel they had been provided with sufficient information. They also stated that the complaints were not seen at the time as the complaint were going directly to the PSA, but accepted that the complaints that they did see should have been investigated.

115. The Network operator also pointed out that they required merchants to have a refund policy and they processed refunds on behalf of the merchants too.

Decision: UPHELD

## Sanctions

### Representations on sanctions made by the PSA

#### Assessment of breach severity

116. 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 3.1.3 – Risk assessment

117. This breach was **very serious**.

118. The Tribunal considered that the failings were widespread and demonstrated a systemic issue with the procedures adopted by the Network operator.

119. The failings have severely damaged consumer confidence in premium rate services.

120. The Merchants were supplying a service that caused distress to, and took advantage of, consumers who were in a position of vulnerability, which the Tribunal found contributed to the severity of the Network operators failure to carry out adequate risk assessments.

121. The Tribunal also considered that the breach was repeated and of a very lengthy duration, committed on a reckless basis.

### **Rule 3.1.3 – Risk control**

122. This breach was **very serious**.

123. The Tribunal considered that the breach was committed recklessly and demonstrated a fundamental disregard for the Code.

124. The Tribunal found that the breach was widespread and demonstrated a systematic issue with the procedures and risk controls the Network operator should have implemented.

125. The Tribunal found that the breach has severely damaged consumer confidence in premium rate services and the breach was of a lengthy duration.

126. The Merchants were supplying a service that caused distress to, and took advantage of, consumers who were in a position of vulnerability, which the Tribunal found contributed to the severity of the Network operators failure to carry out adequate risk control.

### **Initial overall assessment**

127. The PSA's initial assessment, before any potential uplift or downgrade in light of any aggravating or mitigating factors, was that the following sanctions were appropriate based on a preliminary assessment of the breaches as **very serious**:

- a requirement that Networks Operator remedy the breach through ensuring that it's DDRAC processes and procedures are being followed, including regular monitoring, ensuring that incidents are responded to in line with the Code
- a formal reprimand

- a requirement that the Network operator seeks and implements compliance advice to the satisfaction of the PSA in respect of its DDRAC processes
- a requirement that the Network operator is prohibited from providing and having involvement in PRS for one year and until the PSA is satisfied that the breaches have been remedied and the compliance advice is fully implemented
- a fine of £500,000 broken down as follows:  
Breach 1 – paragraph 3.1.3 risk assessment - £250,000  
Breach 2 – paragraph 3.1.3 risk control - £250, 000.

128. The Tribunal noted that Network operator admitted that the breaches had occurred, but stated that they wanted to remain in the PRS market and the imposition of financial sanctions at the level now proposed by the PSA would have such a financial impact on the Network operator, that they would be forced out of business. This would not only force the Network operator into liquidation, it would also heavily disrupt the business of the 600 customers who rely on the telecommunications services of the Network operator, all of whom would be forced to switch to new Network operators thereby incurring significant disruption and costs to change promotional material.

129. The Tribunal's initial assessment, before any potential uplift or downgrade in light of any aggravating or mitigating factors, was that the following sanctions were appropriate based on a preliminary assessment of the breaches as **very serious**:

- a requirement that Network operator remedy the breach through ensuring that it's DDRAC processes and procedures are being followed including regular monitoring, ensuring that incidents are responded to in line with the Code
- a formal reprimand
- a requirement that the Network operator seeks and implements compliance advice to the satisfaction of the PSA in respect of its DDRAC processes
- a requirement that the Network operator is prohibited from providing and having involvement in PRS for three years and until the PSA is satisfied that the breaches have been remedied and the compliance advice is fully implemented
- a fine of £500,000 broken down as follows:  
Breach 1 – paragraph 3.1.3 risk assessment - £250,000  
Breach 2 – paragraph 3.1.3 risk control - £250, 000.

## Proportionality assessment

### Assessment of mitigating and aggravating factors



## Aggravation

130. The PSA submitted that the Network operator failed to follow the DDRAC and retention guidance, which would have avoided the breaches occurring. The PSA also stated that the breaches continued after the Network operator became aware of them. There was no evidence of remediation, apart from the suspending non-EU/UK Merchants. The Network operator failed to provide any evidence of how the processes had been uplifted or were followed adequately.
131. The PSA also submitted that it believed that the Network operator has not been following its DDRAC process, which was implemented as a result of a compliance audit sanction from an adjudication in 2015. This has resulted in (but was not limited to) some of the reasons advanced by the PSA for breaches of the Code in this case. The PSA considered that had the processes detailed in the compliance audit been adequately followed (and not disregarded), along with a proactive approach to the warnings from the systems, consumer harm would have been prevented.
132. The PSA submitted the previous adjudication in 2015 for similar breaches of the Code amounted to an aggravating feature.
133. The Tribunal agreed with the PSA and found the above as aggravating factors. Additionally, the Tribunal noted that the Network operator had blamed other parties for the risk assessment and risk control failures during the Hearing. The Network operator suggested that it should have been notified of the non-compliance by the PSA, which the Tribunal felt suggested it was obfuscating their compliance obligations.
134. The Tribunal also noted that the contracts between the Network operator and the Merchants had a built-in mechanism that allowed the Network operator to take action when the Merchants acted in a manner that was not compliant with the Code. The Network operator failed to take any action. Instead, the Network operator took what the Merchants said at face value without carrying out adequate risk assessment or risk control.
135. In addition to the above factors, the Tribunal found the failure of the Network operator to provide evidence of the implementation of the changes to their processes and procedures as an aggravating factor. The Tribunal stated that evidence of the implementation would have been helpful to assist in demonstrating that the Network operator had taken action to address the concerns regarding consumer harm.

## Mitigation



136. By June 2020 the Network operator chose to suspend all Services operated by Merchants based outside the UK/EU. This reduced consumer harm, demonstrated by the fact the PSA did not receive a consumer complaint regarding the Network operator's clients since this action was taken, which the PSA suggested amounted to mitigation.
137. An additional mitigating factor surrounds the Network operator's level of engagement. The Network operator fully engaged with the PSA. It also provided relevant information, beyond what was requested by the PSA.
138. The Tribunal agreed that the above factors amounted to mitigation.
139. The PSA stated that the examples provided by the Network operator that demonstrated the implementation of risk assessment and risk control measures amounted to mitigation. This was despite the fact that most of the examples provided were from 2015 to 2017. There was one example from 2019, but no further examples were provided. The Tribunal did not agree that this amounted to mitigation, pointing to the Network operator's duty to comply with the Code.
140. The Tribunal noted that the Network operator stated it had decided to ensure that the remaining clients were reviewed, ensure compliance was maintained, and, investigate the appointment of a specialist, experienced consultant to oversee and assist further in the DDRAC compliance. However, insufficient evidence of these actions were supplied to the PSA or the Tribunal. The Tribunal therefore agreed with the PSA that they could not consider this to be a mitigating factor.
141. During the hearing, the director of the Network operator was present and spoke on behalf of the company. He stated that they were sorry that consumers were tricked into contacting PRN and that if they were able to stay in the market they would ensure that it does not happen again. The Network operator stated that they were caught out by the people they worked with, who were able to work out where the weaknesses were in their processes. They now understand what they need to do, but stated that further information from the PSA when they are going wrong would have been helpful as they were out of the loop. The Network operator suggested more involvement in the complaint process alongside the PSA, and requested sight of a copy of the enforcement notices sent to their clients once enforcement action has commenced.
142. The Tribunal, after considering the informal representation, found that the Network operator had failed to demonstrate genuine insight and remorse. The Network operator demonstrated a tendency to blame third parties for the non-compliance, without taking responsibility for their own failings.

#### **Financial benefit/Need for deterrence**

143. The PSA stated that the relevant revenue generated from the Service for the Network operator was £538,336.04, but accepted that all the revenue did not flow directly from the breaches, as they related to DDRAC. The revenue the Network operator obtained emanated from its contracts with the Merchants through which it facilitated and enabled the Merchants to provide services to customers. Had the Network operator carried out robust risk assessment and control processes, and taken appropriate action, non-compliant behaviour would have been identified and could have been addressed. As such the breaches contributed to the consumer harm arising from non-compliant behaviour carried out by the Merchants.
144. The Tribunal considered the written submissions regarding the Revenue that the Network operator had submitted. The Network operator stated that during the offending period they had generated “*less than £100,000.00 of revenue per year*”, bringing the total to approximately £400,000.00 over a four-year period.
145. Taking into consideration the submissions of both parties and the evidence before the Tribunal, it was found that the revenue was approximately £400,000.00.
146. The Network operator stated that the financial sanction proposed was disproportionate taking into account the size of their business. They also stated that they did not intend or encourage consumer harm and therefore asked that this be taken into consideration when determining the appropriate level of fine.
147. The Tribunal agreed that the revenue did not flow directly from the breaches, but found that the breaches were committed on a reckless basis. The Tribunal therefore concluded that there was a clear need for a deterrent, which was specific to the Network operator in addition to the wider PRS market. The previous non-compliance was at the forefront of the Tribunal’s considerations, particularly the compliance audit sanction and the similarities within the breaches that had been upheld in this case.
148. The Tribunal found that there was lack of attention to DDRAC after the compliance audit was signed off and there were real concerns that a similar attitude would be adopted by the Network operator if a compliance audit sanction was imposed again. Quite frankly, the Tribunal, after hearing the informal representations, were of the view that the Network operator would not comply, which strengthened the need for a deterrent impact.
149. The Tribunal also noted that the Network operator stated that they were staffed entirely by four people and that the net assets of the company were only around £100,000.00. The Network operator asserted that a fine of £400,000.00 would put the company into liquidation and it could never be paid
150. However, the Tribunal subsequently concluded that it would not be disproportionate if the level of the financial penalty removed the Network operator

from the market because there was a great need for a deterrent effect taking account of the severity of the breaches, and the duration over which they were committed. The systematic failings had led to a great deal of consumer harm and there was an absence of the required level of change in the behaviour of the Network operator, which would have been expected from the previous adjudication. The consumer harm was heightened because of the vulnerability of some of the consumers.

### **Sanctions adjustment**

151. The Merchants were operating non-compliant services that caused consumer harm, which could have been avoided had the Network operator adequately conducted risk assessment and control. Considering the seriousness of the breaches; that systemic nature of the failings, and the need to ensure that the Network operator and others in the industry do not repeat conduct of this nature, the PSA formed the view that it was proportionate to impose a significant financial sanction.
152. However, given the level of cooperation from the Network operator and the actions it took on its own accord to mitigate consumer harm after the investigation was allocated to a Track 2 procedure, the PSA found it appropriate to require that the Network operator submits a third-party compliance audit for its risk assessment and control procedures rather than enforcing a prohibition sanction.
153. It was the PSA's view that a compliance audit would help ensure a high standard of compliance. However, the PSA remained concerned that the Network operator had failed to comply with the processes implemented following the previous compliance audit.
154. The PSA recognised the cost of a third-party compliance audit and the financial impact on the Network operator, and therefore recommended that this should have been taken into account in adjusting the level of any financial penalty imposed. The PSA therefore recommended a reduction in the final penalty of £100,000.00 bringing the recommended financial sanction down to £400,000.00.
155. The Tribunal noted the PSA's submission and recommendation, but had at the forefront of their consideration the previous adjudication against the Network operator. The Network operator was previously required to undergo a compliance audit but it appeared to the Tribunal that while the Network operator had gone through the process and implemented the recommendations into the written procedures, they had failed to comply with it and breached the Code as a result of similar DDRAC failures. The Tribunal had grave concerns regarding the effectiveness of a further compliance audit and the Network operator's willingness to comply with the requirements based on the previous history.
156. The seriousness of the breaches, their duration and the consumer harm that arose from the merchants' non-compliance, led to the Tribunal seriously considering whether the recommendation from the PSA was in fact proportionate, or whether a more serious penalty was required.

157. The Tribunal did form the view that there was a slight overlap between the two breaches so decided to reduce the fine amount by £100,000.00 to reflect this.

### **Final overall assessment**

158. The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

### **Sanctions imposed**

- a formal reprimand
- a requirement that the Network operator remedy the breach by ensuring that its DDRAC processes and procedures are in line with the requirements of Code 15, in particular conducting regular monitoring and ensuring that incidents are responded to
- a requirement that the Network operator submits some or all categories of its services and/or promotional material to the PSA, or a third party, for compliance advice and for prior permission from the PSA for a period of three and a half years. Any compliance advice given by the PSA must be implemented within a specified period to the satisfaction of the PSA.
- a requirement that the Network operator is prohibited from providing or having any involvement in any PRS or promotion for three years and until the PSA is satisfied that the breaches have been remedied and the compliance advice is fully implemented. The prohibition sanction is suspended for three months in accordance with paragraph 496 of the Supporting Procedures for existing clients only.
- a requirement that the Network operator is prohibited from contracting with any specified person registered (or who should be registered) in the PSA Register at all, for a period of three years
- a fine of £400,000.00.

The Network operator is required to pay 100% of the administrative charge.