

Tribunal meeting number 296

Case reference: 188306
Merchant: Connect You Limited
Type of service: Information, Connection and Signposting Service (ICSS)
Network operator: Telecom 2 Limited

This case was brought against Connect You Limited (“**the Merchant**”) under Paragraph 5.4 of the 15th Edition of the Code of Practice (“**Code 15**”).

Background and investigation

1. This case concerns an Information, Connection and Signposting Service (“**ICSS**”) provided by the Merchant (“**the Service**”).
2. The Service was a Type 1 ICSS which connects consumers to 29 different organisations, including HMRC, DVLA, British Gas, O2 and Apple. The calls to the Service cost £3.60 per minute plus the network’s access charge.

Service operation and value chains

3. The Merchant has been registered with the Phone-paid Services Authority (“**the PSA**”) since 16 December 2019. The terminating Network operator for the service is Telecom 2 Limited (“**Telecom 2**”), who have been registered with the PSA since 20 July 2011.

Service promotion

4. This Merchant operated the Service on the following number ranges: 0904012 (09040120000 – 09040129969), 0904111 (09041111007 - 0904111969), 0901172 (09011721771 – 09011729450) and 0900828 (09008281710 – 09008287910). The Merchant confirmed that the Service was not actively promoted on the 0904111 number range. While investigating the Service, the PSA only obtained monitoring for the 0904012 number range .
5. The Service was advertised through Google Ads and could be accessed via searching for one of the twenty-nine organisations the Service connects to. The Service was registered with the PSA on 18 December 2019. The Service commenced operating on 2 January 2020.
6. On 8 May 2021 the advertising and promotion of the Service was voluntarily suspended by the Merchant because of the concerns raised by the PSA within the allocation

notification letter of 5 May 2021. Then on 1 June 2021, the Merchant requested Telecom 2 to disable the Service across the 0904012 number range. The Service recommenced operation on 1 September 2021. This was confirmed by Telecom 2 in its response to a PSA direction for information on 25 November 2021.

Previous relevant cases

7. The Merchant has not previously been the subject of a PSA Engagement or Enforcement case.

The investigation

8. The PSA received 408 complaints regarding the Service. The first complaint was received on 6 August 2020. The main complaint period was between September 2020 and May 2021. However, the most recent complaint was received on 11 October 2022.
9. The complainants alleged that they did not see pricing on the promotional material and landing page for the Service. They also allege that they thought they were contacting the advertised organisation directly.
10. The PSA has conducted online monitoring of the promotion of the Service on the 0904012 number range. The PSA has also obtained call recordings of the premium rate numbers (“PRNs”) connected to the Service.
11. The Merchant confirmed that the Service was not actively promoted on the 0904111 number range. Also, the Merchant did not supply the PSA with any example promotional material relating to the 0904111, 0900828 and 0901172 number ranges. While the Merchant accumulated revenue through all the number ranges, the vast majority of service revenue was generated on the 0904012 number range. The monitoring was captured via a desktop PC on between October 2020 and August 2022.
12. The PSA did obtain Visual Attention Software (“VAS”) report(s) to accurately predict how web, print, and environmental designs are seen by consumers in the first 3 - 5 seconds of viewing the promotional material used for this Service.

Apparent breaches of the Code

13. The PSA sent an enforcement notice to the Merchant on 06 January 2023, in which the following breaches of the 14th Edition of PSA’s Code of Practice (“Code 14”) and Code 15 were raised:
 - Rule 2.2.7 (Code 14) and 3.2.1 (Code 15) – Pricing
 - Rule 2.3.2 (Code 14) and 3.3.2 (Code15) – Misleading

- ICSS special condition 3, under Code 14 and requirement 3.2.2 (g) under Code 15 - failure to clearly and prominently state that the information was available at a lower cost.

Preliminary issues

14. The Tribunal was satisfied that service of the Enforcement Notice had been complied with.

Submissions and conclusions

Alleged breach 1

Rule 2.2.7 – Code 14

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

Rule 3.2.1 – Code 15

“Pricing information should be very easy to locate within a promotion, it should be presented in such a way that it stands out and cannot easily be missed. It should also be displayed close to the phone number, shortcode, button, or other means by which a charge may be triggered”.

15. The PSA asserted that the Merchant had breached Rule 2.2.7 of Code 14 between October 2020 and 4 April 2022 . The assertion was based on monitoring conducted in October 2020, on 9 September 2021, 29 November 2021 and 11 February 2022 . On each occasion, the PSA determined that the Merchant failed to display the cost of the Service in a way that was prominent, clearly legible, visible, and proximate.
16. In October 2020 the Service was found through a Google search for a contact number for the public organisation HMRC.



1.1 The screenshot shows that:

- the pricing information located in the middle of the landing page is below the second call-to-action button for the Service
- the pricing information located in the middle of the landing page is significantly less prominent compared to the call-to-action button for the Service. This is due to the smaller and fainter coloured font of the pricing information.
- the pricing information located at the bottom of the landing page is below the call-to-action button to the Service
- the pricing information located at the bottom of the landing page was less prominent compared to the call-to-action button to the service. This is due to the font being smaller in size and fainter in colour.
- the description of the price in both sections state that the "calls connection cost £3.60 per minute plus phone companies access charges" rather than "calls cost £3.60 per minute plus phone companies access charges".

17. The Merchant informed the PSA on 30 July 2021 that it intended to make changes to the landing page for the Service. The PSA asked the Merchant to describe the changes it wanted to make to which the Merchant responded, on 24 August 2021, that "the changes include new bold copy and terms that highlight pricing and service description in as clear a manner as possible for the consumer". After reviewing its response, the Merchant

was advised to seek compliance advice from the PSA regarding its proposed changes on 1 September 2021.

18. On 9 September 2021 the PSA conducted further monitoring on the Service, which evidenced identical issues to those that were present within the promotional material in October 2020, namely that the location of the pricing information, the small size of the font used for the pricing information and the description of the price.
19. The PSA informed the Merchant, between 30 September 2021 and 11 November 2021, that there were still aspects of the landing page that required amending to fully comply with Code 14 such as amending the key information to state that the organisation “*can be*” contacted directly elsewhere as the information was still not prominent in comparison to the multiple call-to-action buttons. The pricing information also needed amending as it was still not prominent in comparison with the multiple call-to-action buttons.
20. On 29 November 2021 and on 11 February 2022, the PSA conducted further monitoring on the Service and the non-compliance was still evident. The screenshot demonstrated that the issues identified earlier remained within the promotional material.
21. On 8 April 2022 the PSA conducted further monitoring on the Service and obtained video recordings of a consumer journey and screenshots of a landing page of the Service. The PSA discovered that the Merchant had continued to advertise the Service with the same promotion the PSA had obtained during their monitoring on 11 February 2022, with no alterations.
22. Relying upon the monitoring evidence, the PSA asserted that the Merchant had breached Requirement 3.2.1 of Code 15, which came into force on 5 April 2022, in that the Merchant had failed to display the cost of the Service in a way that is prominent, clearly legible, visible, and proximate.
23. The monitoring evidence obtained by the PSA on 25 April 2022 identified that there were similar problems with the landing page:
 - there were only two call-to-action buttons in the middle of the page which were significantly more prominent than the other information on the landing page, and
 - the pricing information was below the second call-to-action button. While it had been made bolder, it was still not prominent or proximate to the call-to-action buttons above it. This was due to the font size being smaller than that of the call-to-action buttons, combined with the placement of the pricing information on the page.
24. On 9 May 2022, the Merchant informed the PSA that it had worked on a new improved website design, which it believed went beyond the requirements of the Code. The Merchant supplied a link to the website and stated that the new design will go live that week. When the PSA viewed the new design and the changes the Merchant had made, the PSA observed that issues that were raised by the compliance team in September 2021, had still not been adequately addressed. Despite being advised to seek further compliance advice, the Merchant did not.

25. On 10 May 2022, while conducting routine monitoring, the PSA discovered that the website the Merchant informed them about the day before had gone live, and was being advertised in addition to the previous website, despite the fact that the Merchant had failed to incorporate all the advice provided.
26. The monitoring evidence from 12 August 2022 identified similar issues with the promotional material.
27. The PSA used VAS to identify where a consumer's attention was likely to be drawn to on the page, and to establish whether a consumer was likely to see the pricing information. The examination of the promotional material using VAS suggested that the consumers were more likely to be drawn to the call-to-action button rather than the pricing information.
28. The PSA asserted that the pricing information, on all variations of the landing page for the Service, has continuously been significantly less prominent compared to the call-to-action buttons on the page. This is due to the bolder, larger in size text and eye-catching colour of the call-to-action buttons on the landing page, compared to the smaller in size and less eye-catching colour text of the pricing information.
29. The PSA also pointed out that the pricing information was not sufficiently proximate to the call-to-action buttons as it was placed below the buttons rather than immediately before or above the buttons.
30. Additionally, the PSA relied upon the call and revenue data the Merchant provided to the PSA as part of the thematic review into ICSS. The data covered the period from 1 July 2021 to 30 June 2022.
31. Analysis of the data showed that:
 - out of a total of 321,405 calls made during the period,
 - 177,757 (55%) calls were disconnected within 60 seconds
 - 136611 (42%) calls were disconnected within 10 seconds
 - The Merchant earned a total revenue of £100,571.29 from consumers who disconnected a call within 60 seconds.

Please see the table below, showing a breakdown of the number of calls lasting 60 seconds or less and the consumer spend:

Duration	Calls	Consumer spend
0-10s	136611	£37,636.63
10.1-20s	19364	£15,556.27
20.1-30s	7267	£10,853.74
30.1-40s	7749	£16,227.92
40.1-50s	3383	£9,072.42
50.1-60s	3383	£11,224.31
Total	177757	£100,571.29

32. The PSA submitted that in this period (under both Code 14 and Code 15) the pricing information was not sufficiently prominent nor proximate to the call-to-action buttons, which is key information for a customer to consider before deciding to use a service. In circumstances where this information is not prominent enough, it is likely to lead to consumers (who would not otherwise use the Service) dialing the Service and being charged.
33. The analysis of the call data shows that a large number of consumers (55%), disconnected their call within the first 60 seconds of the call. It was within this first 60 seconds that key pricing information was made available to them in the Interactive Voice Recording (“IVR”). The PSA asserted that upon hearing this information consumers disconnected from the call, even though they had not connected to the organisation they sought to contact.
34. The PSA stated that the fact that 177,757 calls disconnected from the Service indicates that a large number of consumers only became aware of the pricing information during the first 60 seconds of the call and not from the promotional material for the Service. This assertion is strengthened when the call data relating to the number of calls that disconnected within the first 10 seconds is considered, as the IVR is 8–12 seconds long. Had the pricing information within the promotional material been sufficiently clear, proximate, and prominent the number of calls that disconnected within such a short time of commencing the call, would be significantly lower.
35. Had pricing information been sufficiently clear, proximate, and prominent fewer consumers would have dialled the PRN because they would have been aware of the cost of the Service upfront and would have been able to make an informed decision about using the Service. This would reduce the call drop rate and ensure that only those who actively choose to use the service are charged. Over 50% of consumers using the Service have been affected by the inadequate way the pricing information had been displayed. The PSA asserts that consumer harm would have been greatly reduced had the Merchant displayed the pricing information clearly, proximately, and prominently.
36. The Merchant submitted that they did take sufficient steps to ensure that the requirements of the Code were met, especially in response to the concerns raised by the PSA’s compliance team. Specifically, with regards to the ensuring the prominence of the pricing information, which was improved during the course of the relevant period.
37. The other requirements of Rule 2.2.7 relate to legibility and visibility. The Merchant pointed out that only proximity had been raised by asking whether the price should have been above or below the call-to-action button. However, strictly speaking, either position is equally proximate, as proximity has to do with the distance between the call to action and the price.
38. The Merchant accepted that the PSA had concerns about the prominence of the pricing information, but stated that they engaged extensively with the PSA to address those concerns. The Merchant argued that the dramatic fall in complaints in May 2021 coincided with the improvements made to the landing page and suggested that if the pricing was not sufficiently prominent in the beginning, the efforts in mid-2021 bore fruit, as the pricing had been sufficiently prominent since then.

39. The Merchant submitted that they specifically and voluntarily suspended the promotion of the Service from May 2021 in order to seek advice and consider its implementation. And did so again from 15 August 2022, to provide the PSA with the opportunity to articulate their concerns.
40. As to the period from May to August 2021, the Merchant stated that they approached this part of the process with transparency and good faith, with the intention of ensuring that any legitimate concerns raised by the PSA on behalf of consumers were dealt with.
41. The Merchant emphasised that consumers interacting with the Service were immediately told the price via an audio price warning at the start of the call. This, taken together with the evolution of the promotion of the Service, demonstrated that they took proportionate steps to ensure consumers interacting with the service were fully aware of the costs involved as per the outcome which Rule 2.2.7 of Code 14/requirement 3.2.1 of Code 15 sought to achieve.
42. During the hearing, the Tribunal questioned the PSA regarding the scientific background behind the VAS report and how it mirrored the requirements of the Code. The PSA explained that the VAS report was not enhancing the requirements of the Code, it merely demonstrated what consumers were seeing when looking at the promotional material.
43. The Tribunal decided to place little evidential weight to the VAS report but found the screenshots of the promotional material compelling. They found that the pricing was not proximate, clear or visible. The pricing information was much smaller when compared to the call-to-action buttons.
44. The Tribunal recognised that some changes had been made to the Service, but found that the changes made were inadequate, and that they didn't go far enough. The Tribunal determined that the changes made didn't achieve compliance. The changes made did not result in the information being clear enough so that consumers had all the necessary information to make an informed decision about the Service.
45. The Tribunal in noting that the Merchant admitted the breach in part, upheld the breach on the balance of probabilities.

Decision: UPHELD

Alleged breach 2

Code 14 - Rule 2.3.2

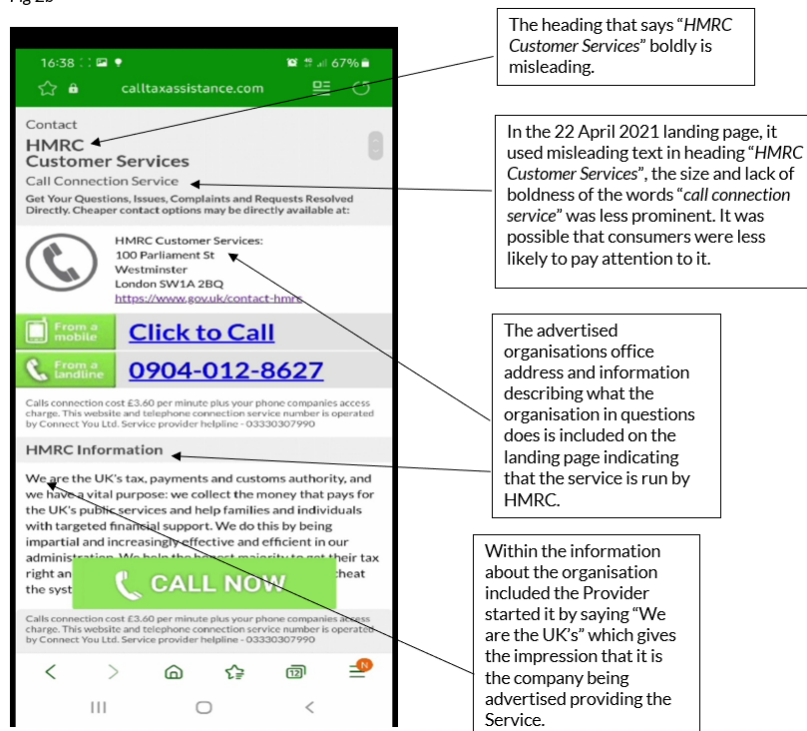
"PRS must not mislead or be likely to mislead in any way."

Code 15 - Rule 3.3.2

“PRS Merchants and their services must not mislead or be likely to mislead consumers in any way”.

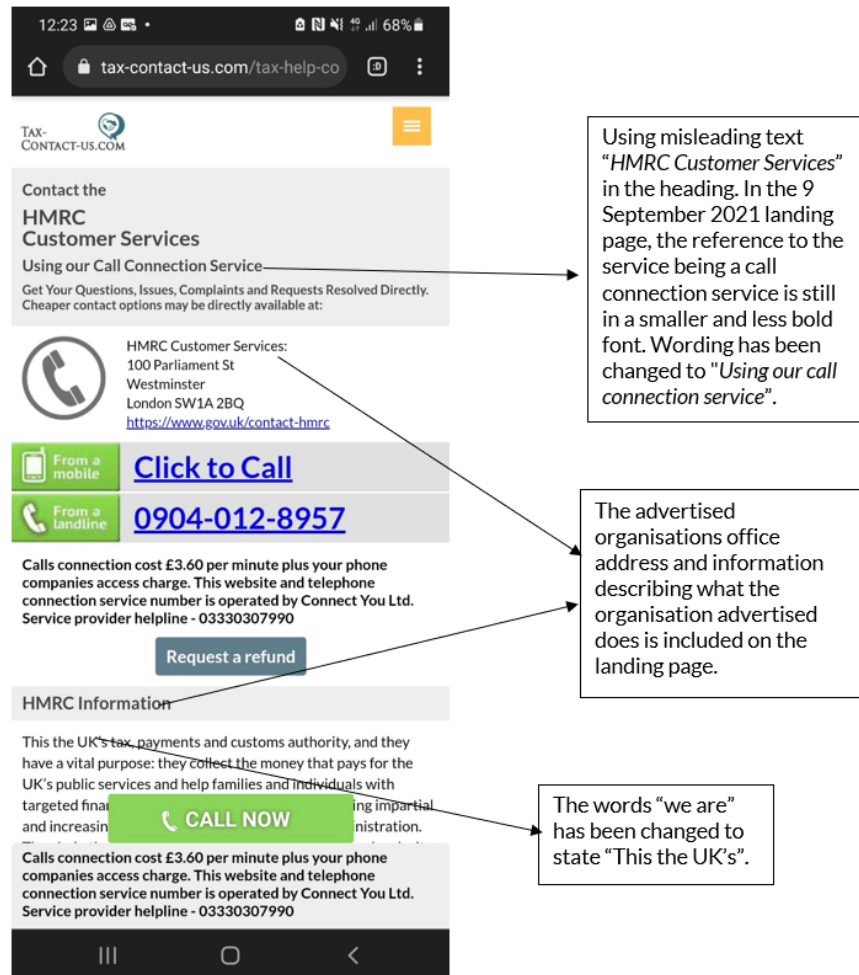
46. The PSA asserted that the Merchant misled consumers into thinking that, upon viewing the promotional material, they were contacting the sought after organisations. This was achieved through the description of the Service and the failure to display key information.
47. The PSA relied upon the monitoring evidence gathered in October 2020 and on 22 April 2021 capturing the Service’s landing page, both showed that the Merchant placed the word “Contact” followed by the organisation, for example “HMRC”, and the words “Customer Service” at the very top of the landing page. In this section the words “HMRC” and “Customer Service” have been made bold and are in a larger font size. Whereas the words “call connection service” have been displayed in a fainter font two sizes smaller than the text above.

Fig 2b



48. The PSA asserted that inclusion of the office address of the organisation being advertised, in this case HMRC, in addition to the information describing details of what the organisation does, beginning with the words “We are,” gives the impression that this Service is provided by the sought after organisation.
49. The PSA stated that the promotional material obtained on 9 September 2021 has the information displayed in the same way, but the reference to a call connection service has changed to read “Using our call connection service”. The font size is still smaller and

fainter compared with the information above it. The inclusion of the word “our” further misled consumers to believe that the Service was being supplied by the sought after organisation. The Merchant continued to display “Contact the HMRC customer services” as the heading for the landing page.



50. While the Merchant made some amendments to the promotional material, such as replacing the words “We are” with the words “The UK’s”, the PSA asserted that consumers were still being misled into believing that the it was the sought after organisation providing this Service, as opposed to the Merchant, especially with the continued use of the office address of the organisation and use of the words such as “our” within the promotional material.

51. On 17 September 2021, the Merchant was advised by the PSA that the inclusion of the organisations address did not serve a purpose and had the potential to distract consumers from key information, therefore decreasing the prominence of that key information. From the monitoring captured on 29 November 2021, the Merchant heeded the PSAs advice and removed the address of the organisation from the landing.

However, information describing what the organisation does remained on the page from November 2021 until 5 April 2022.

52. The PSA relied upon the complaints regarding the Service. 408 complaints were received by the PSA regarding the Service and one of the features of those complaints was that consumers believed that they were contacting the sought after organisation.

53. A sample of the complaints are detailed below:

"Hi I found the number on the internet. It was misleading and presented itself as the HMRC contact number. I used this number twice unaware of the charges which have now totalled to £74.90."

"I searched online for the telephone number for the insurance company AXA, under the impression that this was the direct telephone number to this company, and no point was I under the understanding that this call would cost over £70!!! Otherwise I wouldn't of used this contact number"

"I was looking online to get in touch with HMRC and the number above was the only one which appeared every time I looked. I clicked on the number to contact HMRC but I was not aware of the nature of the charge at the time. Half of the phone call I was on hold until I got get through with the operators. I feel this isn't fair as this was misleading to me as a customer. Going online to find HMRC contact was tricky but the number appeared like it was my only option at the time as I needed to desperately get hold of HMRC."

"hello.

I needed to call HMRC to discuss an urgent reporting issue.

I Googled 'Call HMRC' and pressed a link to a site which appeared to be HMRC, as it had as its headline 'Contact HMRC Customer Services' followed by a link to call the number. The phone line itself also gave the impression of being HMRC. It stated that it would charge £3.60 for the 'connection' but I presumed that was because HMRC was under specific pressure/workload at this time. I was prepared to pay the fee to be connected, on the presumption that it was an HMRC line. I also presumed that I would ONLY be charged for the duration of the call once it had been connected, not that the charges would be made against the waiting time PRIOR to being connected.

However, despite waiting for 5 mins twice on separate occasions, I was never connected. And now I understand that it was not in fact an HMRC line.

I would like to be refunded but I can't find the number of the relevant company.

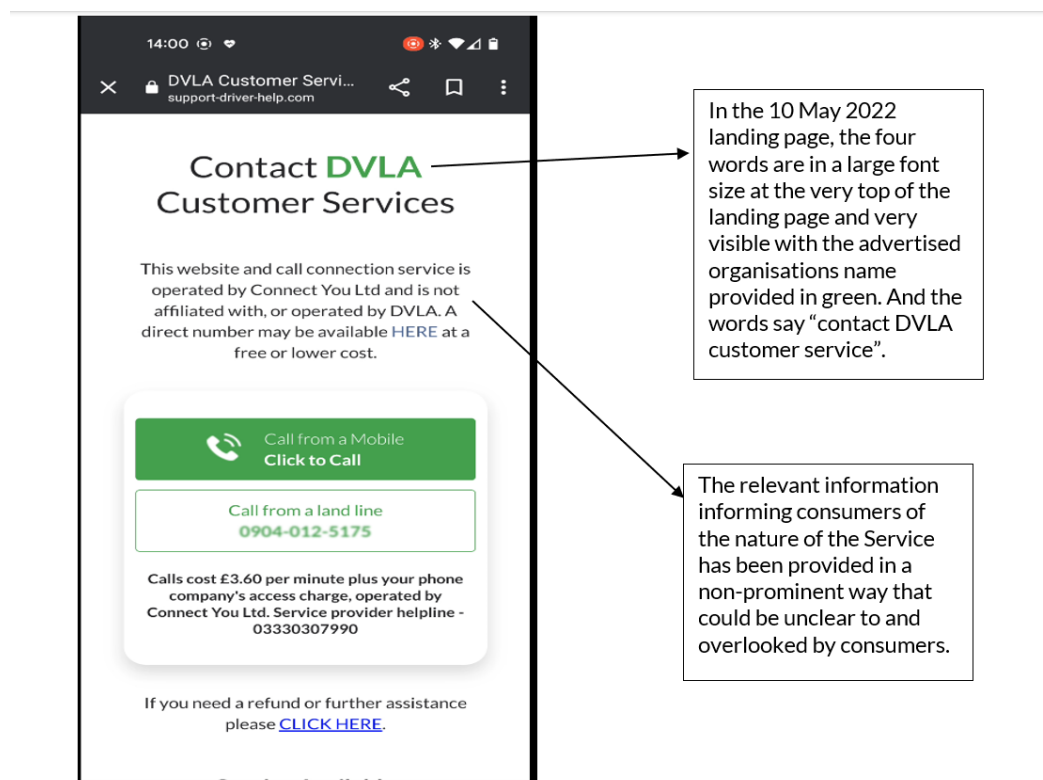
I also strongly believe that the company running this line should fined; and that the number itself should be prohibited, given that it is very misleading"

"I was completely unaware when I made this call of the charges in fact I was under the impression I was calling Ryanair direct."

54. The PSA used VAS to identify where a consumer's attention would be drawn to on the promotional material for the Service and it demonstrated that the consumer's

attention was likely to drawn to the middle of the pages, were the call-to-action button was located.

55. The PSA asserted that the breach continued after 5 April 2022 and amounted to a breach of Code 15. The monitoring that was captured after this date indicated that consumers were still being misled by the promotional material.



56. Furthermore, the PSA continued to receive consumer complaints after 5 April 2022 regarding the fact they thought they were calling the sought after organisation.

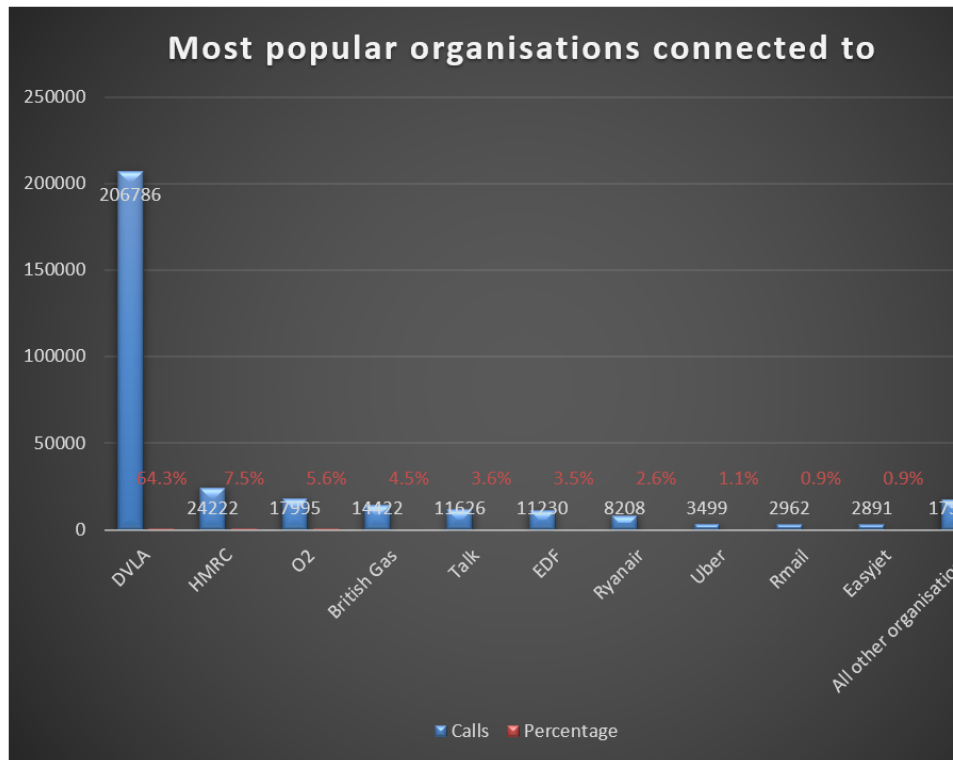
57. A sample of the complaints are detailed below:

"I called this number as i thought it was for British Gas and i was trying to sort out my bill. I was left on hold and was waiting 1 hr 30 minutes with the advisor. I now have a bill of 322 pounds i cannot afford to pay. I am needing advice plesse eith gratitude"

"I tried to phone the DVLA, after a search on the internet. I did not realize the number was a false number and was piggybacked onto the real DVLA number. I was charged £154.68 for 35 mins and 40 seconds. EE seem to have credited me with £88.40 but i was still left with a bill for £75.03."

58. The PSA again relied upon the data obtained as part of the thematic review as it demonstrated that that the vast majority of calls to the Service were to organisations such as DVLA (64.3%), HMRC (7.5%), O2 (5.6%) British Gas (4.5%), TalkTalk (3.6%), EDF (3.5%) and Ryanair (2.6%). All other organisations represented 1% or less of total calls.

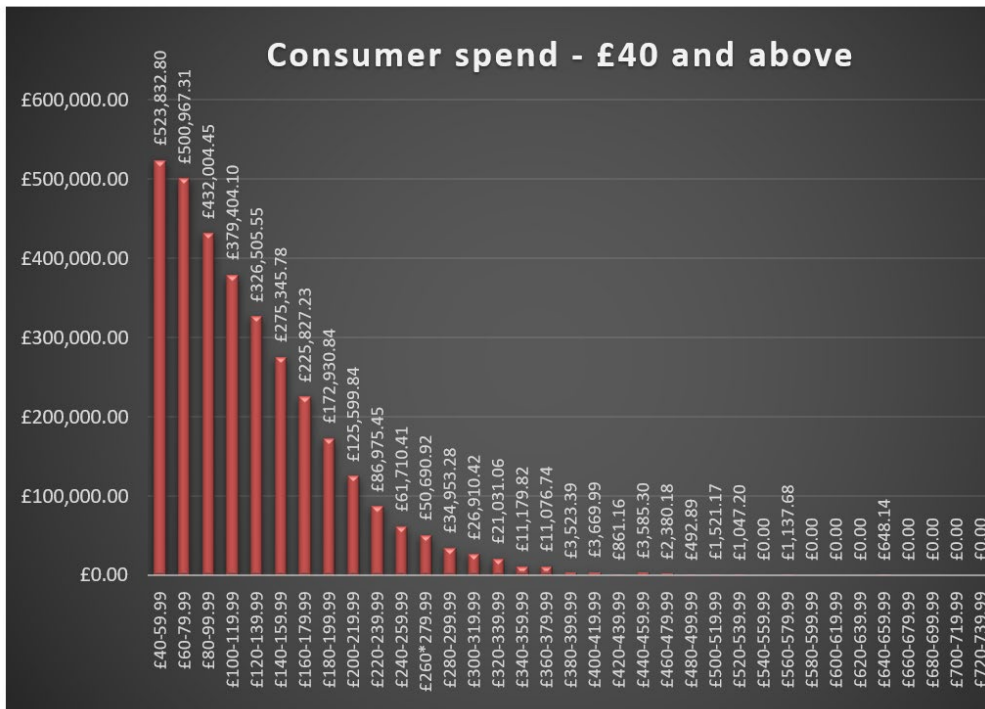
Number of calls per destination company (top ten organisations)



59. The waiting times for a consumer’s query to be resolved for organisations such as DVLA and HMRC are likely to involve long call durations. At the price point of £3.60 per minute a consumer would incur a charge of £40, 11 minutes into their call. Considering the average wait time for HMRC, for example, consumers are unlikely to have their query resolved within 11 minutes and would incur call charges over £40.

60. The graph below shows the call charges incurred by consumers that exceeded £40 and reveals that a significant number of consumers incurred high call charges which caused significant consumer harm. This further indicates that consumers were misled into believing that they were calling the desired organisation directly, rather than using a call connection service, which resulted in the inflated charges they incurred. Had consumers known that they were not calling the organisations directly, it is highly unlikely that they would have used the Service at all.

Consumer spend for calls costing £40 or more:



Top 10 call charges

Organisation connected to	Date of call	Total call cost
DVLA	16/12/2021	£762.07
DVLA	16/12/2021	£648.14
DVLA	18/02/2022	£573.47
ON THE BEACH	27/06/2022	£564.21
BRITISH GAS	06/05/2022	£526.93
DVLA	13/01/2022	£520.27
PASSPORT	22/06/2022	£513.73
BRITISH GAS	23/05/2022	£504.80
TALK	03/01/2022	£502.64
O2	16/06/2022	£492.89

61. The graphs above shows that consumers queries took some time to resolve which resulted in significant charges when using this Service:
- 10,637 calls cost between £40-£59 per call
 - 7,216 calls cost £60-£79 per call
 - the highest call charge was £762
 - there were 34,602 calls charged at £40 or more per call, with a total revenue of £3,288,853 earned by the Merchant. This represents over 65% of the total revenue earned by the Merchant between 1 July 2021 and 30 June 2021.

62. As set out above, the PSA asserted that the way in which the Merchant promoted its Service was misleading, resulting in a number of consumers believing that they were contacting the relevant organisation directly. This, combined with the insufficient prominence of pricing information and the nature of the organisations contacted, led to consumers facing long call durations, with very high call charges.
63. For consumers unaware of the real cost of the Service (for the reasons set out in breach 1) and that were misled into using the Service this would have resulted in bill shock, financial detriment and distress as reflected in the complaint evidence above.
64. The breach was not admitted by the Merchant, who in response stated that they disagreed that consumers were misled into thinking they were contacting the sought after organisation. The Merchant asserted that they made it clear to consumers that they were using a call connection service. The Merchant also pointed out that consumers' first interaction with the service was through online (Google led) advertising, which made it very clear that they were offering a call connection service to third-party companies.
65. The Merchant asserted that the information relating to the organisation to whom consumers would be connected, was not (as claimed) an attempt to present the service as the equivalent of that organisation's own call service. Nor did this have the effect of making people believe that they were directly connecting to the destination organisation. Rather, such information was part of the overall branding of the Merchant's service, viewed in conjunction with the specific wording, provided that this was "Connect You Call Connection Service".
66. The Tribunal found that the promotional material was misleading in the way the information was presented, coupled with the language used and overall tone. It appeared that it not only misled consumers, but that it was actually designed in that way, with the intention to mislead consumers. This finding is supported by the consumers' complaints who clearly felt that they had been misled. The information contained within the promotional material gave the overall impression that it was that of the sought after organisation and it not only misled consumers, but it also caused confusion when they received their bills as they clearly believed that at the time of making the call they were contacting the sought after organisation.
67. The Tribunal was satisfied for the reasons set out above that the breach, as alleged by the PSA, had occurred. Accordingly, the Tribunal upheld the breach.

Decision: UPHELD

Alleged breach 3

Code 14 - Paragraph 3.11.1:

"Where the PSA is satisfied there is or is likely to be a risk of:

- a) a significant level of consumer harm; or
- b) unreasonable offence to the general public, arising from a particular category of Premium rate service (“a high-risk service”),

it may impose conditions (“special conditions”) for the purpose of ensuring compliance with the Code’s outcomes. The conditions which may be imposed are the conditions set out in Annex Two and any related conditions which are necessary for the proper functioning of those conditions.”

The Special condition ICSS 3 states that:

ICSS 3

All Promotional material must clearly and prominently state (where it is factually the case) that the information (including the contact number) advice, or assistance provided by the PRS is available directly from the relevant public or commercial organisation at no or a lower cost.

This statement should:

- (i) be set out above the premium rate number and, or clickable call button.*
- (ii) include a link to the homepage of the official website of the organisation that contains the contact number the consumer is looking for where such a website exists.*

Code 15 - Requirement 3.2.2 (g):

Before making their purchase or incurring any charges, consumers must be fully and clearly informed of all information that would reasonably be likely to influence their decision to purchase, including:

- (g) any other key information including a full and clear description of any prizes or awards (where relevant).*

68. The PSA asserted that the monitoring evidence captured between October 2020 and September 2021 demonstrated that the Merchant did not clearly or prominently inform consumers, when it was factually the case, that the information they sought, was available for free or at a lower cost elsewhere.

69. The PSA’s monitoring evidence captured in October 2020 shows that:

- the information informing the consumer that the Service they seek is available at lower or no cost elsewhere, was in a significantly smaller size font compared to the other information in the same area at the top of the page,
- the information did not include the link to the advertised organisations website directly after the statement, but was included after the organisations address,
- the statement read “*may be directly available*” rather than “*is directly available*” (because this was factually the case).



On the monitoring captured in October 2020, the font is smaller and less prominent. The link to the cheaper contact number is far from the relevant statement and after the address of the advertised organisation.

70. The PSA obtained monitoring evidence on 22 April 2021 and 9 September 2021 which evidenced that the Merchant continued to display the relevant information in the way described above. The PSA obtained screen captures of the Service on 29 November 2021 and on 11 February 2022, which indicated that the Merchant had made some changes to the landing page of its Service. However, on the screenshots captured on 29 November 2021 and 11 February 2022, the required information was still in a smaller size font compared to the name of the organisation and Service function information. But the statement read “can be contacted directly” and the link to the organisation has been placed directly after the relevant statement.

71. On the monitoring evidence captured 10 May 2022, the required information had increased in size, however, was not as prominent as the heading or the multiple call-to-action buttons on the page. It was placed amongst unrelated information and reads “may be available.” But the link has remained next to the relevant information. The monitoring shows that:

- the required information reads “may be available” rather than “is available” where this was factually the case, and
- the required information is not prominent because it has been provided with other information.

72. The monitoring captured on 12 August 2022 had similar issues, in that the language remained the same.

73. The Merchant stated that they dealt with all of the PSA’s concerns during the course of its investigation. Firstly, information stating that “cheaper contact options may be directly available at” rather than “is available” were resolved in November 2021. Secondly the link to the cheaper contact option not being supplied directly after the statement made reference to was resolved in November 2021. Lastly, the required information being significantly less prominent than surrounding information in the same section on the landing page – this information and its prominence was updated in November 2021 and May 2022.
74. The Merchant also took issue with the PSA’s focus on the use of the phrase “may be available”. The Merchant stated the use of the word “may” does not, in the circumstances of this case, render any less importance to the warning given to consumers as to the alternate availability of another call connection option (that of going direct through the organisation). The Merchant noted that the word “may” is commonly used in mandatory warning language in many different contexts without it being seen as any less forceful or prominent. Indeed, some of the language recommended/mandated by the PSA across its guidance equally relies on the use of “may”.
75. The Merchant therefore disagreed that the breach had occurred.
76. The Tribunal considered the use of the word “may” was misleading. The wording used within the promotional material was important in order to provide consumers with clarity and the use of the word “may” did not provide that.
77. The Tribunal therefore found the breach to be proven.

Decision: UPHELD

Sanctions

Representations on sanctions made by the PSA

Assessment of breach severity

78. The Tribunal’s initial assessment of the breaches of Code 14 and Code 15 was that they were, overall, **very serious**. In making this assessment, the Tribunal found the following:

Rule 2.2.7 and Paragraph 3.2.1

79. This breach was **very serious**.
80. The Tribunal considered that the breach has severely damaged consumer confidence in premium rate services.

81. The Tribunal also noted that consumers had incurred very high costs for a service that provided little or no value.
82. The Tribunal also considered that the breach was committed intentionally, particularly after compliance advice was provided to the Merchant and that it was committed over a significant period of time.

Rule 2.3.2 and Paragraph 3.3.2

83. This breach was **very serious**.
84. The Tribunal considered that the breach was committed intentionally and that the Service was designed with the specific purpose of generating higher revenues through deliberately misleading consumers.
85. The Tribunal found that the breach had severely damaged consumer confidence in premium rates services and that the breach was of a lengthy duration.
86. The Tribunal noted the actions of the Merchant in making some changes to the promotional material, but found that there was a fundamental disregard for the Code and the effect of the breach was widespread.

Paragraph 3.11.3 (Special Condition ICSS 3) and Paragraph 3.2.2

87. This breach was **very serious**.
88. The Tribunal found that this breach was committed intentionally and repeated.
89. The Tribunal noted the actions of the Merchant in making some changes to the promotional material but found that there was a fundamental disregard for the Code.

Initial overall assessment

90. 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 formal reprimand
 - a requirement that the Merchant seeks compliance advice from the PSA and implements it to the satisfaction of the PSA in relation to the operation and promotion of this Service and any future Services, for a period of five years and six months from the publication date

- the prohibition of the Merchant from any involvement in any PRS or promotion of PRS for a period of five years
 - a requirement that the Merchant 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 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 - £250,000
 - Breach 2 - £250,000
 - Breach 3 - £250,000.
91. The Merchant had made a partial admission to breach 1 and as a result the Merchant was content for a formal reprimand to be imposed and the requirement to seek compliance advice. The Merchant did not agree that a prohibition was warranted in this case as the breaches were not committed deliberately, recklessly or through negligence.
92. The Merchant also asked the Tribunal to note that the Service had ceased operation since August 2022 and will not recommence until the required changes had been implemented. The Merchant argued that this negated any suggestion of ongoing consumer harm and the cooperation shown invalidated the need for a deterrent effect through the imposition of a prohibition.
93. The Merchant accepted that refunds should be issued to consumers who so requested, but disagreed with the recommended fine in that the breaches were incorrectly categorised as very serious.
94. The Tribunal, while noting the submissions of the Merchant, agreed with the PSA's initial assessment.

Proportionality assessment

Assessment of mitigating and aggravating factors

Aggravation

95. The PSA submitted that the Merchant was given compliance advice in relation to the landing page of its Service and was advised of specific things that it should do in order to make its promotion more compliant. After receiving this guidance, the Merchant made some efforts to implement the advice, but the subsequent monitoring evidence obtained by the PSA demonstrated that the Merchant intentionally chose to only action some of the advice and later reverted to pre-advice promotion layouts.

96. The PSA asserted that the Merchant's failure to implement the compliance advice in full amounts to an aggravating factor as the Merchant failed to take on board guidance which could have minimised or prevented consumer harm. The fact that the advice relayed related to all areas of non-compliance, which the Merchant failed to action, directly caused the continuation of the breaches and makes the non-compliance that followed more serious.
97. Additionally, the PSA asserted that the Merchant had misled them when they stated they would be testing live traffic in September 2021 as the wording used did not suggest that the Service would be live. When the PSA began receiving complaints the Merchant indicated that the Services were not live. It was only after the PSA sought further clarification that the Merchant confirmed that the Services were actually live. The PSA regarded this as an aggravating feature as the Merchant had misled the Regulator.
98. The Merchant disagreed that they had failed to implement the compliance advice as they made some improvements to the Service after voluntarily suspending it. The Merchant also stated the suggestion that they misled the PSA as to whether the Service was live in September 2021 amounts to a gross misrepresentation of the situation. The response given to the PSA was not intended to suggest that the Service was not operational. The Merchant also pointed out the PSA never had objections regarding the Service itself. All the concerns raised related solely to the promotional material.
99. During the hearing, the Merchant stated that they never misled the PSA during throughout their extremely lengthy (three year) investigation. On the contrary, they have always maintained close communications with and responded promptly and honestly to every single request put to them by the PSA. The Merchant asserted that their aim was, and always has been to co-operate and look for solutions.
100. The Tribunal was of the view, after considering the submission of both parties, that the Merchant had misled the PSA and failed to implement the compliance advice in full. Both of these factors amounted to aggravating features.

Mitigation

101. The PSA acknowledged that the Merchant voluntarily suspended the Service from June 2021 until September 2021. During this period, the PSA saw a considerable drop in the number of complaints received regarding the Service. The complaints that were received related to charges incurred prior to 8 May 2021.

102. The PSA also stated that they regarded the two incidents where the Merchant issued refunds was to be regarded as mitigation, along with the implementation of some of the compliance advice given.
103. The Merchant stated that the suspension of the Service is something they have repeated in August 2021 in order to react accordingly to the PSA's concerns regarding the Service. The Merchant also stated that they offered consumers a "no quibble" refund irrespective of the veracity of their complaint. During the hearing, the Merchant stated consumers never had issues in contacting their customer service team which was always available and quick to respond.
104. Furthermore, the Merchant stated that their proactive engagement with the PSA and their compliance with providing information when requested should also be regarded as a mitigating factor.
105. The Tribunal agreed that the voluntary suspension of the Service amounted to mitigation. However, the Tribunal concluded that the other factors raised were not. In particular the Tribunal recognised the changes made to the Service but concluded that the changes did not go far enough, as demonstrated by the continued non-compliance. The Tribunal also determined that the Merchant had a duty to engage and cooperate with the PSA as they operated within the PRS and the PSA acted as the Regulator. The Merchant did nothing in this case that was over and above what was expected of them.
106. The Tribunal questioned the Merchant during the hearing regarding the refund process and it transpired that the initial refund provided to consumers was limited to the service revenue received from the call to the Merchant. This resulted in the additional charges that the consumer had incurred not being refunded. The Merchant stated that if the consumer continued to express dissatisfaction, they may have then received a full refund, in some circumstances. The Tribunal therefore regarded this process of providing consumers with partial refunds as limited mitigation.

Financial benefit/Need for deterrence

107. The PSA stated that the total revenue generated from the Service was £10,156,866.73 which was the entire revenue received during the offending period from number ranges 0904012, 0904111, 0900828 and 0901172. However, the PSA accepted that they had promotional material for the 0904012 number range and therefore the breaches were based on the evidence pertaining to this number range alone.
108. The PSA argued that the non-compliance was systemic in nature and therefore indicative as to the way the Service across the other number ranges operated. The

PSA asserted that the revenue from all the number ranges should therefore be taken as relevant in this case.

109. The Tribunal was not persuaded by this argument as there was no evidence advanced to support the position that the breaches were systemic across all the number ranges. The Tribunal therefore had regard to the total revenue generated from the 090412 number range which provided a total Service revenue of £9,864,134.76. The Merchant's gross revenue was therefore found to be £7,124,810.43.

110. The PSA submitted that the breaches relate directly to the promotional material that was used by the Merchant to entice consumers to use the Service. However, the promotional material failed to clearly and accurately provide consumers with key information that was relevant to their decision to use the Service. The promotional material caused consumers to be misled and the decision to use the Service, and incur the charges, was not an informed decision on the part of the consumers as key information was not provided clearly.

111. The PSA believes that there is a need to remove the financial benefit made through the breaches committed and to deter the Merchant and the wider industry from further behaviour of this nature. This is particularly important given the Merchant's disregard for Code requirements, evidenced through the Merchant's refusal to implement all the compliance advice it was provided.

112. It is also important to note that a thematic review of the ICCS market demonstrated that the Merchant has a significant share of the consumer spend within this sector. It is therefore important that a deterrent message is made, taking into consideration the very serious nature of the breaches and the link between the revenue and non-compliance.

113. The PSA is of the view that the recommended sanctions are justified when balanced with the need to achieve an effective regulatory outcome and to remove the financial benefit the Merchant obtained from the misconduct.

114. The Merchant stated that they did not consider that the £7,124,810.43 was the correct starting point for the Tribunal's assessment of this case. The Merchant provided their latest audited accounts (year ended 2021) and asked the Tribunal to note their net assets of just £7,000. The Merchant stated that this was reflective of the fact that they had to spend very significant sums on advertising and running costs in connection with the ICSS and that the net revenue position is that only a small proportion of the gross revenue is left after such costs have been taken into the equation.

115. The Merchant asserted that there was no intent in the non-compliant activity and no evidence had been submitted of a wider problem for the Merchant or repetition of the non-compliance. They stated that the breaches were short lived

and did not involve vulnerable consumers. They also believed that they should be given credit for the voluntary suspension of all promotions from May through to September 2021, and from August 2022 to date.

116. The Tribunal agreed that the revenue from the Service flowed directly from the breaches and that there was a need to remove as much as the financial benefit as possible taking into account the conduct of the Merchant, the overall severity being found to be very serious, and the deterrent effect. The Tribunal was particularly concerned regarding the misleading elements of the non-compliance and the consumer harm that resulted, which included very high call charges.

Sanctions adjustment

117. The PSA recommended that a sanction adjustment should not be made regarding this case, when balancing the seriousness of the breaches, aggravating, and mitigating factors, and the proportionality assessment set out above. The PSA was of the view that the Merchant's conduct in relation to the breaches was intentional and has negatively impacted the perception of premium rate services for consumers. The Merchant has also accumulated a substantial revenue as a result of the alleged breaches, and it is the PSA's view that the sanctions without any adjustment achieve the sanction's objective, serving as a deterrent for the Merchant and the wider market. This is of particular importance taking into consideration the Merchant's position within this sector of the PRS market. The Merchant stated that they did not intend to recommence promotion of the Service and felt that that adjustment was adequate in the circumstances.

118. The Tribunal recognised that some changes had been made to the Service and during the hearing the Merchant expressed some remorse. The Tribunal therefore decreased the length of the prohibition requirement to obtain compliance advice in recognition of the limited mitigation.

Final overall assessment

119. 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 Merchant seeks compliance advice from the PSA and implements it to the satisfaction of the PSA in relation to the operation and promotion of this Service and any future Services, for a period of five years from the publication date
- the prohibition of the Merchant from any involvement in any PRS or promotion of PRS for a period of three years starting from the date of publication

- a requirement that the Merchant 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 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 - £250,000
 - Breach 2 - £250,000
 - Breach 3 - £250,000.

Administrative charge recommendation: 100%