

## Tribunal meeting number 303

Case reference: 196267  
Merchant provider: GMTech Media OU  
Type of service: Horoscope/Astrology Service  
Network operator: TalkTalk Ltd (PRNs) and Dynamic Mobile Billing Ltd (PSMS)  
Intermediary: Square1 Communications Limited

This case was brought against GMTech Media OU (“the Merchant”) under Paragraph 5.4 of the 15<sup>th</sup> Edition of the Code of Practice (“Code 15”).

### Background and investigation

1. This case concerns the Astroway (3+3) horoscope/astrology service provided by the Merchant (“the Service”).
2. The Merchant is registered in Estonia and provided the Astroway (3+3) horoscope/astrology service to UK consumers using 090 premium rate numbers (PRN) (Number range 09023128000-99 and 09023128500-99, and premium SMS (PSMS) 85202. The Intermediary was Square1 Communications Limited, and the Network Operators were TalkTalk Ltd (Premium rate numbers) and Dynamic Mobile Billing Ltd (Premium SMS).
3. The horoscope/astrology service was advertised as a personalised horoscope service, asking users a list of personal questions including their date of birth, and then asking them to call an 09 premium rate number to hear their personalised horoscope. The Service was promoted via different marketing and social media platforms including Google ads, Facebook, Instagram and TikTok. The Service started operating under the Merchant on 29 April 2022. Prior to this date, the Service was provided by a company registered in Estonia which, although part of the same umbrella group, is a separate legal entity to the Merchant and fell outside the scope of the PSA’s investigation.
4. The investigation relates to the period between 29 April 2022 (when the Service commenced under the Merchant) until 10 November 2023 when the Service was disconnected by the Intermediary Square1 Communications.

### Previous relevant cases

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

## Alleged breaches of the Code

6. The PSA sent an enforcement notice to the Merchant on 3 September 2024, in which the following breaches of Code 15 were raised:
  - Code 15 - 3.2.1 – Transparency and pricing
  - Code 15 - 3.3.1 - Fairness
  - Code 15 - 3.3.2 – Misleading
  - Code 15 - 3.8.1 – Registration.

## Preliminary issues

7. The Tribunal was satisfied that service of the Enforcement Notice had been complied with. In particular, the Tribunal noted that emails with the Enforcement Notice and annexes had been downloaded by the Merchant, but the Merchant had chosen not to respond to the Enforcement Notice.
8. The Tribunal also noted that delivery of hard copies by UPS service was not successful, but the last registered address had been used. Overall, the Tribunal was satisfied that the enforcement notice had been served on the Merchant and that the Merchant had been notified of the Tribunal hearing. The Tribunal was satisfied that, in all the circumstances, it was fair to proceed with the hearing.

## Submissions and conclusions

9. The PSA submissions were that the Merchant had committed four breaches of Code 15. The PSA presented evidence to the Tribunal to substantiate each of the alleged breaches.

### Alleged breach 1

Code 15 - Paragraph 3.2.1 Transparency and pricing

*“During any written, spoken or other form of promotion of a PRS, the cost of the service must be provided before any purchase is made. The cost of the PRS must be prominent, clear, legible, visible and proximate to the phone number, shortcode, button or other means by which a charge may be triggered.”*

10. The PSA asserted that the Merchant had breached Paragraph 3.2.1 of Code 15 between 29 April 2022 and 10 November 2023 as it failed to display the price in a prominent manner.
11. Paragraph 3.2.1 of the Code provides that the cost of the service must be provided before any purchase is made and must be prominent, clear, legible, visible and

proximate to the means by which a charge may be triggered.

12. The PSA referred the Tribunal to the Code 15 Guidance note - Transparency Standard it has issued setting out what it expects providers to do to ensure they meet the requirements of Code 15 in respect of pricing. This sets out that:

*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.*

*Pricing information needs to be put where consumers will easily see it. It is likely to be judged as prominent if the information is clearly visible when a consumer makes their purchase and triggers the payment. Both the font size and use of colour are important to establishing pricing prominence.*

*The prominence of pricing information needs to be considered in comparison to the prominence of the call to action. The appearance and prominence of the call to action should not decrease the prominence of, or detract from, the pricing information.*

*Proximate can be defined as being next to, or very near, the means of consumer access to a service. The most common example of pricing information being proximate is when it is provided immediately before or above the call to action.*

*The PSA recommends displaying the price directly above the means of access to the service. For both web and mobile web, if ordering a service entails activating a button function), the labelling of the button should make the obligation to pay absolutely clear, for instance by using phrases such as "pay now" or "buy now". The wording on the button should be easily legible. A failure to label the button in this way may result in the provider not complying with the law (Regulation 14 (4) of the Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013. Note that consumers are not bound by orders for services which do not comply with this legal requirement and may be entitled to a full refund.*

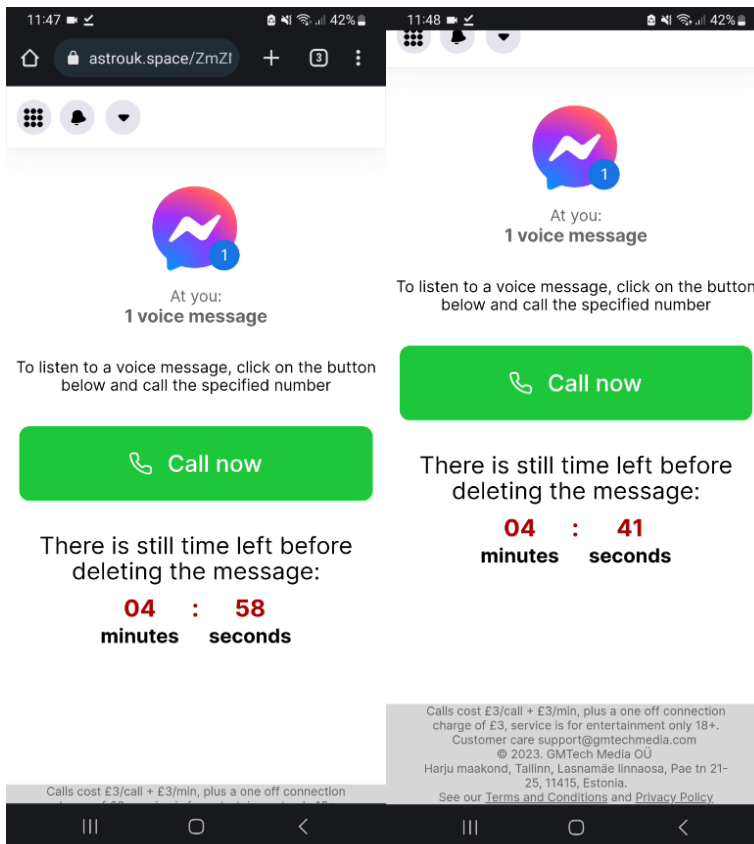
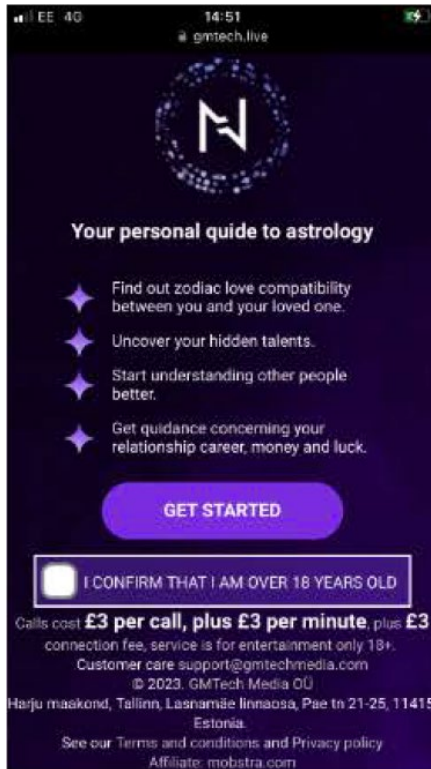
*Pricing information should be:*

- *standalone rather than hidden within terms and conditions or a bulk of text*
- *above the fold on a web-based promotion, in other words consumers should not have to scroll down a page to see it.*

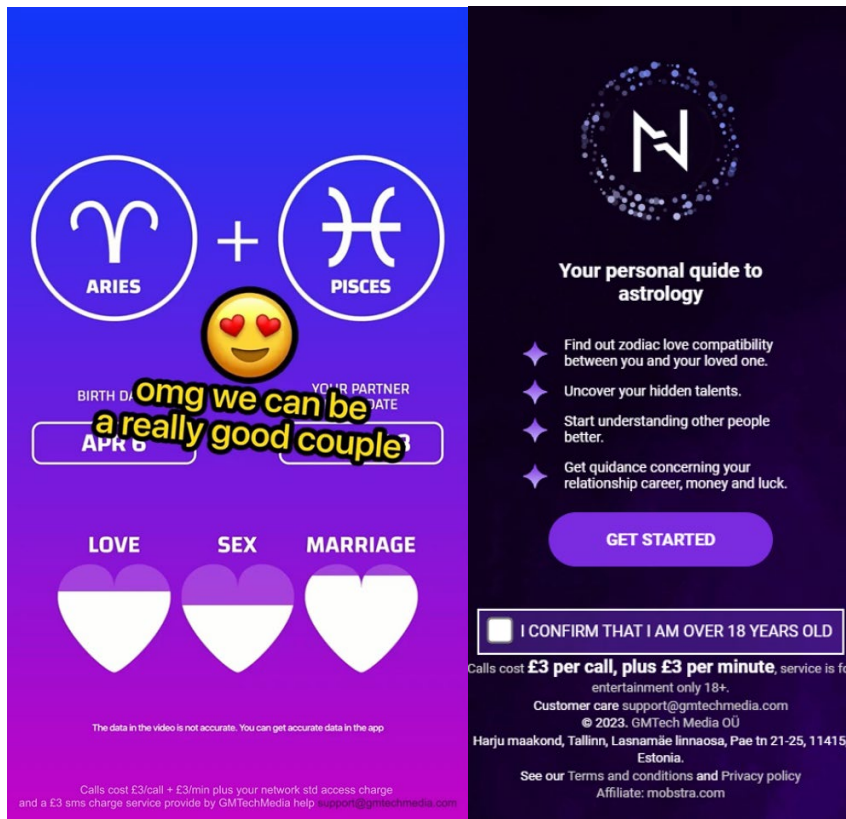
13. The PSA provided the Tribunal with details of monitoring evidence it had gathered, explaining that when it had viewed the Facebook promotional material for the Service, the PSA found that pricing information was significantly less prominent than the 'Call now' button, which detracted from the pricing information provided on the page, and was more prominent. The 'Call now' button had white text, in a large font, on a green background. In order to view the pricing information in full, consumers would have to scroll to the bottom of the page, on a mobile handset. The font used was significantly less prominent, in much smaller grey font on a grey background. The PSA asserted that

this resulted in an increased chance of consumers not seeing the pricing at all. This is because of the significantly smaller text, the lack of prominent contrast between the pricing text and the background, and the fact that the consumer had to scroll down to see the full pricing.

14. The PSA also provided details of when it had viewed the Facebook and TikTok promotional material for the Service, explaining that it had found the call cost information below the call to action, and it was not stand alone but within a block of text containing other information about the Service. This is contrary to what is set out within the PSA Transparency Standard Guidance. Additionally, on the Facebook promotion the call-to-action button was labelled as 'Call now' and on the TikTok promotions the call-to-action button was labelled as 'Get Started'. The PSA asserted that the labels used did not make the obligation to pay clear, as set out in the Transparency Standard.
15. The PSA further asserted that the overall labelling, placing, and font/contrast design of the pricing information, compared to the call-to-action button, across all promotions for the Service, had the effect of reducing its prominence and making it less likely to be seen by consumers. This meant that consumers meaning-were more likely to may be completely unaware of the full costs of using the Service.
16. The PSA also pointed out that Pricing concerns had previously been raised during the operation of the Service by the Mobile Network Operators and, Intermediary but these concerns did not appear to have been addressed.
17. The PSA provided examples of screenshots from its monitoring for the Tribunal to consider:



The PSA also provided examples of promotional material provided by the Merchant in relation to a TikTok promotion and promotional landing page:



Calls cost £3/call + £3/min plus your network std access charge and a £3 sms charge service provide by GMTechMedia help support@gmtechmedia.com

18. The Tribunal considered the evidence provided by the PSA, including screenshots, itemised bills, and consumer complaints about billing which had been provided by the PSA in evidence.
19. The Tribunal was satisfied, on the balance of probabilities, that the Merchant had breached the requirements set out in paragraph 3.2.1 of Code 15, in particular that:
  - pricing information was not prominent – it was below the call-to-action button and not stand alone, meaning separate from the terms and other details
  - the Facebook promotion required users to scroll down to see the pricing information at the bottom of the page
  - the call-to-action buttons were labelled “Call now” and “Get started” not making the obligation to pay clear.
20. All of this meant that it was likely that consumers were not aware of the pricing information before making the decision to use the Service. The Tribunal commented that this was one of the worst examples it had seen of a breach of this nature. The breach was found to have been conclusively proven.

Decision: UPHELD

## Alleged breach 2

Code 15 - Paragraph 3.3.1 Fairness

*“PRS providers must treat all consumers of PRS fairly and equitably”.*

21. The PSA asserted that the Merchant had breached Paragraph 3.3.1 of Code 15 between 29 April 2022 (when the Service commenced under the Merchant) and 10 November 2023 as it had failed to treat consumers fairly and equitably for two reasons:

- the promotion failed to inform consumers of the £40 maximum call charge; and
- PSA monitoring showed the call cut off before the Service was fully delivered on three out of four monitoring calls.

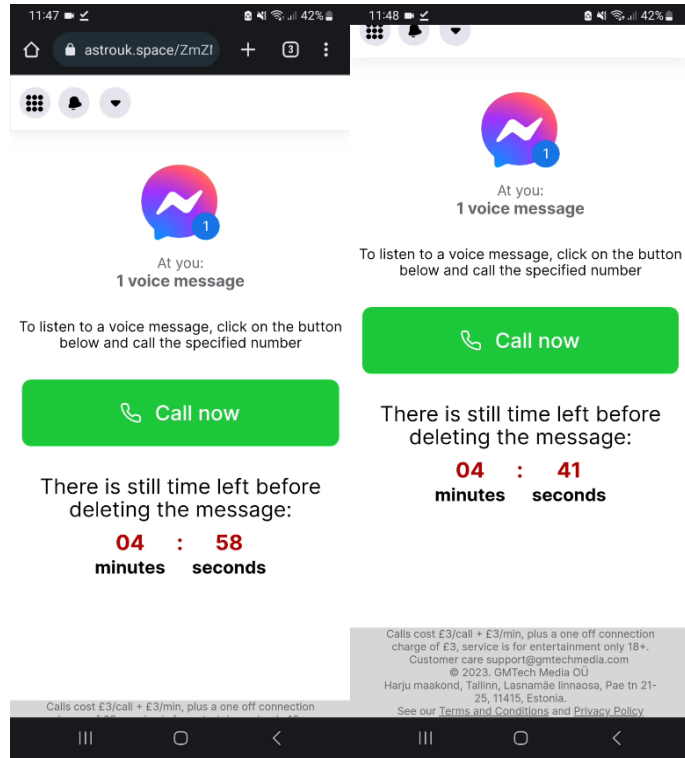
22. The PSA referred the Tribunal to the Code 15 Guidance note - Fairness Standard. This Guidance sets out what the PSA expects providers to do to ensure they meet the requirements of Code 15 in respect of treating customers fairly. This sets out:

- the importance of ensuring that consumers are treated fairly and equitably throughout their experience of phone-paid services; and
- the importance of ensuring that promotions do not omit, or make insufficiently clear or prominent, information that is likely to affect a consumer’s decision to purchase a service.

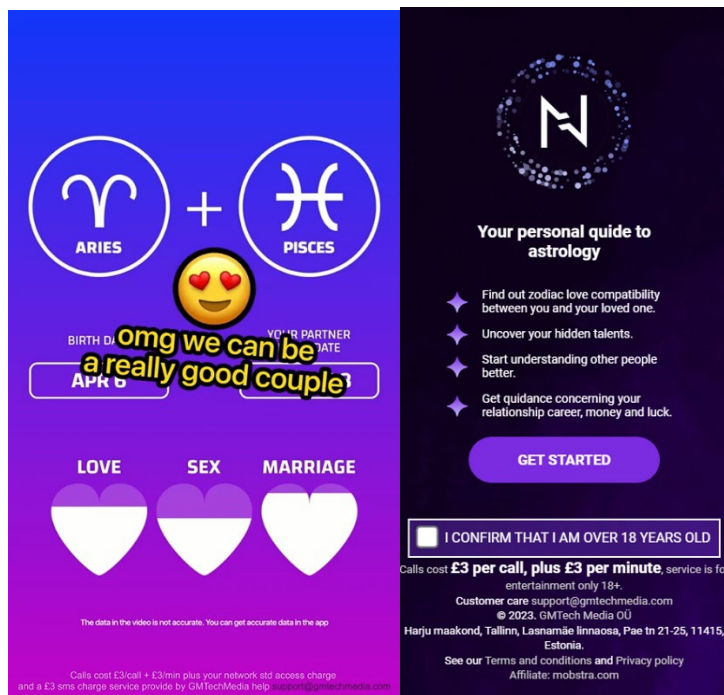
### **Reason 1 – Failure to inform consumers of £40 maximum call charge**

23. The PSA asserted that the Merchant had failed to meet the requirements set out in paragraph 3.3.1 of the Code as the promotion did not inform consumers that the call would cut-off when the cost of the call reached £40. This key information was not stated in the promotional material or on the PRN call. The PSA submitted that this information was reasonably likely to influence whether a consumer decided to use the Service.

24. The PSA provided screenshots from a Facebook promotion from its monitoring for the Tribunal to consider:



The PSA also gave examples of promotional material provided by the Merchant for its TikTok promotion:



Calls cost £3/call + £3/min plus your network std access charge and a £3 sms charge service provide by GMTechMedia help support@gmtechmedia.com



25. The PSA's submissions were that the promotion should have been clear that the cost was £3 per call plus £3 per minute up to a maximum of £40, at which point the call would be ended. The PSA asserted that it was the Merchant's responsibility to inform the consumer that the duration of the call was limited by the £40 spend cap irrespective of whether the consumer had finished using the Service. This information was not included in the promotional material. The PSA explained that the £40 maximum price cap derives from the Payment Services Regulations 2017.
26. The PSA acknowledged that the cut off mechanism was not within the Merchant's control, but the PSA was of the view that the Merchant was able to include information within the promotional material, explaining that the call would be cut off once the maximum service charge for the call was reached. The Merchant was aware that consumers' calls would be terminated once the cost of the call reached £40 as the £40 maximum charge limit prevented the cost of the call exceeding this amount. The PSA asserted that this was key information that the Merchant should have provided within the promotional material as it had an impact on whether consumers received the full service or not.
27. Although the Merchant had indicated that it had prepared zodiac recordings that would end prior to the disconnection of the call (i.e. before the £40 maximum was reached), the PSA's monitoring evidence demonstrated that calls were cut off mid-sentence on recordings once the £40 maximum charge limit had been reached. The recordings were therefore not designed to end prior to the disconnection brought about by the spending cap.
28. The PSA asserted that by failing to provide any information to consumers regarding the £40 spending cap, the Merchant was not allowing consumers to make a fully informed decision on whether to purchase the Service, which they were paying a premium rate for. This was likely to influence a consumer's decision whether or not to use the Service and was a failure to treat the consumer fairly.

## **Reason 2 – Call cut off before Service was fully delivered**

29. When the PSA carried out monitoring of the Service by calling the PRNs, it identified that the Service would cut off once the cost of the call reached £40. The PSA had monitored four different PRNs which were shown on the promotional material – 09023128531, 09023128037, 09023128038 and 09023128039. All PRNs had the same audio recording transcript, however on three of the four PRNs, the audio recording was cut off before the last full sentence was spoken due to the £40 maximum call charge.
30. The Merchant had advised the PSA that it prepared "*recordings per zodiac sign, of such length that the call ends before the forced disconnection and the subscriber can listen to the content to the end.*" However, PSA's monitoring evidence demonstrated three of the four monitoring calls cut off at the £40 maximum call charge before the full last sentence was read out. This meant that callers to the numbers did not receive the

entire content to the end. Consumers would have been unaware that the call would cut off prior to them receiving the full horoscope based on the way that the Service was promoted.

31. The PSA asserted it was the Merchant's responsibility to inform consumers of the maximum call charge of £40 and to ensure that consumers received the full service as described in the promotions, i.e. that is, to ensure that the horoscope reading was provided within the maximum call duration.

32. The Tribunal considered the evidence together with comments from consumers complaining on Facebook pages about charges. The Tribunal was satisfied, on the balance of probabilities, that the Merchant had breached the requirements set out in paragraph 3.3.1 of Code 15, in particular that:

- it had failed to inform consumers of the £40 maximum call charge; and
- calls cut off before the Service had been fully delivered.

33. The Tribunal was satisfied, on the balance of probabilities, that the Merchant had breached paragraph 3.3.1 of Code 15 as it had failed to treat customers fairly and equitably.

Decision: UPHELD

### **Alleged breach 3**

Code 15 - Paragraph 3.3.2 – Misleading

*"PRS providers and their services must not mislead or be likely to mislead consumers in any way."*

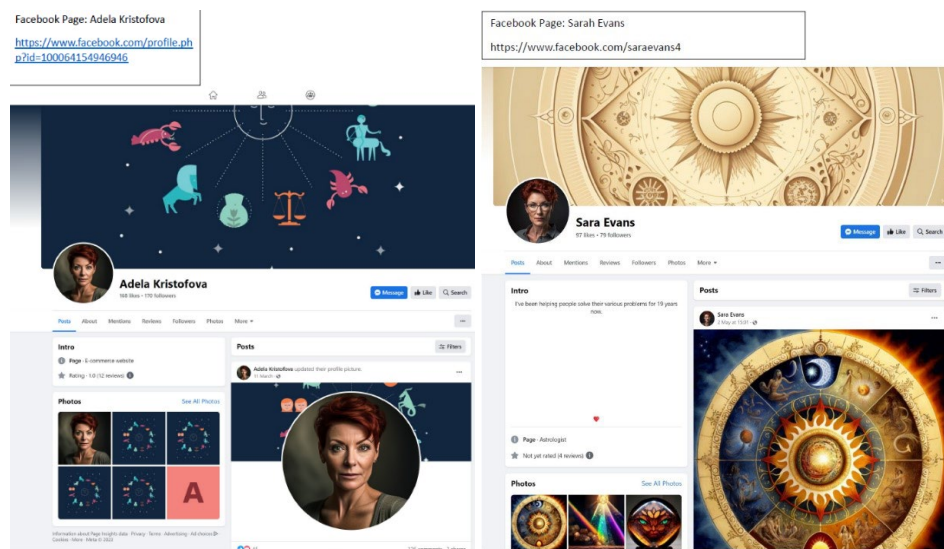
34. The PSA asserted that the Merchant had breached Paragraph 3.3.2 of Code 15 between 29 April 2022 and 10 November 2023 for three reasons:

- the Facebook promotion was designed to appear such that consumers would think they were interacting with a real person under Facebook profile names such as "Sara Evans" and "Adele Kristofova", when this is not the case. Consumers were interacting with a chatbot.
- the Service purported to offer personalised individual readings ("*A personal voice audio message has been prepared for you*"), but PSA monitoring evidenced that the same recorded transcript was being used irrespective of which 09 PRNs consumers called, moreover, the readings were and not personal to individual consumers
- the promotional material created a false sense of urgency to call the service.

## Reason 1 – Facebook promotions gave a false impression consumers were interacting with real person, not a chatbot

35. The PSA asserted that the Facebook promotions gave the false impression that consumers were interacting with real people, rather than chatbots used by the Merchant to interact with consumers. Different Facebook profiles were used to interact with consumers, including the profiles of “Sara Evans” and “Adele Kristofova” which suggested these were real people who consumers were interacting with.

*The PSA provided examples of Facebook profiles used by the Merchant:*



36. The Merchant told the PSA that several Facebook profiles were used to segment the target audience (by gender, age and other characteristics). This allowed for the sending of more targeted advertising messages. During this advertising campaign, the Merchant stated that it had at least ten such Facebook pages but after receiving information about the negative response of subscribers to this type of interaction, all pages were deleted.

37. Information provided by the Merchant stated that after users joined the Facebook group, they texted in the chat first to activate an automatic script - this was done by users having to click on a “Get started” button which gave no indication that by clicking ‘Get started’ the user would be entering a promotion for a premium rate service. The information also showed that within the Facebook Help Centre on “*How chats within business Pages work*” it stated “*Pages may use automated chats, live agents, or both for their business chats*”. The PSA asserted that this information was not prominent on the promotion, it needed to be found by manually clicking on the Facebook Help Centre which only stated “*Pages may use automated chats*” rather than positively affirming that they do use chatbots. The PSA found no evidence of live agents being used as suggested. The PSA monitoring journey did not join via the Facebook group method of promotion but by clicking on a banner ad promotion in Facebook and being taken

directly to the Facebook messenger chat service. During the monitoring journey the PSA documented evidence of the Facebook promotion for “Sara Evans” and Facebook messages sent by “Sara Evans”.

38. The PSA asserted that as consumers would be interacting with a chatbot, the message received was misleading stating: *“I am a professional astrologer, consultant, teacher of classical astrology. I’ve been helping people solve their various problems for 19 years now.”* The PSA considered that this gave the misleading impression that consumers were interacting with a real person. The PSA provided evidence of consumer comments posted on the Facebook profiles showing that consumers believed they were engaging with a real person:

*“She will not leave me alone...She’s doing my head in...”*

*“Have asked numerous times to desist from sending me fake messages trying to cause people to be fearful. No notice taken by Sara.”*

39. The PSA also provided evidence of other consumer comments posted on the Facebook profiles noting that they appeared to be interacting with a computer - making others aware it was not a real person - in response to comments raised by other individuals believing they were interacting with a real person. Although some consumers realised that they were interacting with a computer, the PSA asserted that the text used, the information included in the promotion, and the Facebook profiles, resulted in some consumers believing they were interacting with an actual person rather than a chatbot. It was the PSA’s submission that it should not be necessary for consumers to engage with other Facebook users to be warned they were not communicating with a real person as the promotion had led them to believe.
40. The PSA further asserted that use of Facebook profiles to promote the Service, the content of the automated messages, in conjunction with the claim that this was a personalised reading misled consumers into thinking they were receiving a personalised service from a real person.
41. The PSA noted that the promotion indicated that the Service was said to be for entertainment only, in some of the ~~above~~ Facebook and TikTok promotional material. However, the text was not clear and prominent enough, and that, combined with the overall impression that a real operator provided a personalised psychic reading, compounded the overall misleading nature of the promotion. The PSA asserted that the inclusion of information that the Service was for entertainment only, did not mitigate against the breach.

## **Reason 2 – The Service purported to offer personalised individual readings when this was not the case**

42. The PSA asserted that the Facebook promotion led consumers to believe there was a personal and individual reading for them if they called the PRN, not a generic message

or a general recording for their Zodiac star sign. During its monitoring of the Service, the PSA was sent multiple messages from the Service via Facebook messenger – encouraging the end user to call the PRN. The service prompted users to answer a series of questions including their date of birth before stating “*Excuse me. It takes some time to prepare your personal forecast. As soon as it is ready, I will write to you*” and then “*A personal voice audio message has been prepared for you*”. When the PSA called the PRNs, the same recorded message was found on each one.

43. The Merchant told the PSA that it typically prepared 12 recordings for the 12 Zodiac star signs, but the PSA noted that the promotion claimed to offer a “*personal voice audio*” and a “*personal forecast*”. The Merchant also told the PSA that the reason for this was because it was in the process of developing an IVR content tree and it understood that “*...such a single recording on several premium rate numbers can mislead users*”. The PSA asserted that the Service was misleading as it did not offer a personalised individual reading as claimed in the promotion. At most it offered a generic audio recording for the 12 Zodiac star signs.

44. The PSA provided evidence of four identical transcripts of audio recordings of the recorded message on four different PRNs. The PSA’s monitoring showed that the first part of the call recording (from 2 minutes 14 seconds to 5 minutes 27 seconds of the audio recordings) asked a series of Yes or No questions and even though the PSA did not respond to the Yes or No questions, the call recording continued on regardless. The Yes or No questions appeared to further give the impression of a personalised individual reading when this is not the case as confirmed by the Merchant.

45. The PSA also provided evidence of the Facebook promotion making claims of a personal individual reading stating:

*“It takes some time to prepare your personal forecast”*

*“Everything is ready John, a personal voice audio message has been prepared for you”*

*“You need to call and listen to a personal message...”*

*“It is important to listen to the individual forecast to the end”.*

46. The PSA provided further evidence showing the consumer journey on the Merchant’s landing page, which asked multiple personal questions and stated at the end “*Congratulations! You can listen to your personalized horoscope right now!*”. The PSA asserted that this gave the misleading impression that a personalised reading would be provided by calling the premium rate number, not a generic horoscope reading for one of the 12 Zodiac star signs.

47. The PSA asserted that the promotional material for the Service was misleading in claiming to offer a personalised service when in fact it resulted in one of 12 pre-recorded horoscope readings which could not be said to be personalised for each individual. As consumers were paying a premium rate for this Service, the PSA asserted that they should have been made aware of the true nature of the Service rather than led to believe that the Service was personalised specifically for them - particularly as it

offered no more value than a generic horoscope reading that could be found for free on an internet search without having to invest time or money, or answer a series of questions. In promoting the Service as offering a personalised individual reading by a real person and advising that the call was urgent, the PSA asserted that this would have misled consumers into calling the premium rate number without the purported value of a personal individual reading being received from a real person/astrologer. Rather, an automated generic horoscope reading was given which they could have obtained elsewhere for free.

### **Reason 3- The promotion created a false sense of urgency**

48. The PSA asserted that the language used in the Merchant's Facebook promotion for the Service gave the impression that the consumer urgently needed to call the Service, for example, to prevent harm occurring to either themselves, or others, such as their family. The impression given by the Service was misleading, causing consumers to call the Service through use of a false sense of urgency. The PSA provided evidence that the Service sent multiple messages via Facebook Messenger, as demonstrated by the PSA's monitoring and consumer complaints.

49. The PSA's Code 15 - Guidance Note – Fairness Standard sets out what the PSA expects providers to do to ensure they meet the requirements of Code 15. The guidance states that:

*“Promotional material should always accurately describe and represent the service on offer. Only factual statements should be made about services. It is also important that promotions do not omit, or make insufficiently clear or prominent, information that is likely to affect a consumer's decision to purchase a service. For example:*

- *a false sense of urgency should not be created, for example through use of countdown clocks...*

*...Examples of misleading statements might include:*

- *“hurry time is running out!! 30 seconds left”.*

50. The PSA provided monitoring evidence showing the Facebook promotion created a false sense of urgency to call the PRN. Examples included:

*“You may lose someone who is so dear to you!”*

*“Your plans for the future may collapse”*

*“Hurry up you don't have much time!”*

*“Click the button below before your happiness slips away! Hurry up.”*

*“Please take care of your fate. You need to call and listen to a personal message while you still have time and the message is still available!”*

*Your happiness is slipping out of your hands! And you need to try to stop it immediately”*

*“Maybe one of your colleagues or acquaintances will try to harm you”.*

51. The PSA also provided evidence of consumer comments on Facebook profiles for the Service complaining about, the false sense of urgency, and pressurising consumers to call the service:

*"Trying to use scare tactics..."*

*"...fake messages trying to cause people to be fearful..."*

*"...she said someone wants to harm me and it's a man..."*

*I've just had a message saying if I don't get InTouch someone close to me is going to die. That is a threat just because I didn't call her."(sic)*

*"...Somebody wants to harm my family. It's scare tactics..."*

*"She says horrible things to try and threaten you into calling..."*

*"...she's sent me about 4 or 5 messages saying that is something that is bad going to happen..."*

52. The PSA also provided evidence of online complaints about the sense of urgency created to encourage consumers to call the Service. In the PSA's submission, the method used of sending persistent and false messages to consumers to encourage them to call the premium rate number had the potential to instil a real sense of fear within consumers. This could lead to distress, especially amongst vulnerable consumers. It was unnecessary and misleading, especially since when the consumer did call to receive their reading, it was a pre-recorded generic horoscope reading and not a personalised one. Therefore, the messages encouraging consumers to call to receive important information, or to prevent something untoward occurring to them or their families, was neither truthful nor, were they for entertainment purposes. It was the PSA's contention that this was likely to lead to consumer harm and mistrust of premium rate phone services.

53. The Tribunal acknowledged the serious nature of the messages, and the method used of sending false, misleading, and persistent messages to consumers to encourage them to call a premium rate number. The Tribunal noted the potential for the messages to instil a genuine sense of fear in consumers, leading to distress, especially for vulnerable consumers. The Tribunal considered the messages to be egregious, noting that they were sent to many people, including vulnerable consumers with serious concerns in their lives or going through a low point.

54. The Tribunal was satisfied, on the balance of probabilities, that the Merchant had breached the requirements set out in paragraph 3.3.2 of Code 15.

Decision: UPHELD

#### **Alleged breach 4**

Code 15 – Paragraph 3.8.1 – Registration

*"Before a PRS is made accessible to consumers, all network operators, intermediary*

*providers and merchant providers in the relevant PRS value chain must register with the PSA, subject only to paragraph 3.8.9 below.”*

55. The PSA asserted that the Service was made accessible to consumers on 29 April 2022, but registration did not take place until 11 May 2022 and that as a result, the Merchant failed to meet the requirement set out in paragraph 3.8.1 of Code 15.
56. The Merchant admitted that the Service had been accessible to consumers prior to registration with the PSA. The Merchant explained that the Service had started under its sister company but was moved to the Merchant.
57. The PSA’s submission was that the Merchant had breached the requirements set out in paragraph 3.8.1 of the Code in the period 29 April 2022 to 11 May 2022. This had the potential effect of preventing consumers checking the authenticity of the contact details within the promotions, being unable to verify the correct company on the PSA website and obtaining the contact details to enable them to seek redress and/or raise any concerns they may have had during this period. It would potentially prevent consumers from receiving timely customer care and resolution to any enquiries and complaints and registering a complaint with the PSA. It would also cause delay to the PSA pursuing its regulatory duties until it identified the correct legal entity providing the Service.
58. The Tribunal was satisfied, on the balance of probabilities, that the Merchant had breached the requirements set out in paragraph 3.8.1 of Code 15.

Decision: UPHELD



## Sanctions

### Representations on sanctions made by the Executive

59. The Tribunal's initial assessment of the breaches of Code 15 was that they were, overall, very serious. In making this assessment, the Tribunal found the following:

#### Paragraph 3.2.1 - Transparency and pricing.

60. This breach was **very serious**. The Tribunal considered that the breach was likely to have affected a high number of consumers. The Tribunal also noted that breach was likely to have generated higher revenues, as a result of the breaches. The Tribunal noted that breach was committed intentionally or recklessly. The Tribunal considered that breach was of a very lengthy duration and occurred throughout the entire period of operation.

#### Paragraph 3.3.1 - Fairness

61. This breach was **very serious**. The Tribunal considered that the breach was committed intentionally or recklessly and demonstrates a fundamental disregard for the requirements of the Code. The Tribunal noted that the breach was of a very lengthy duration and occurred throughout the entire period of operation.

#### Paragraph 3.3.2 - Misleading

62. This breach was **very serious**. The Tribunal found that the effect of the breach was widespread and/or affected all users of the Service. The Tribunal considered that the breach is likely to have generated higher revenues for the Merchant. The Tribunal found that the Service was incapable of providing the purported or any value to consumers. The Tribunal also considered that the breach was committed intentionally or recklessly and/or demonstrated a fundamental disregard for the requirements of the Code. The Tribunal noted that the breach was of a very lengthy duration and occurred throughout the entire period of operation. The Tribunal considered that the Service had caused distress and/or had taken advantage of consumers who were in a position of vulnerability.

#### Paragraph 3.8.1 - Registration

63. This breach was **significant**. The Tribunal considered the breach was committed ~~was~~ negligently - although the Merchant did register with the PSA, this was after making the Service available to consumers.

## Initial overall assessment

64. 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, three of which were considered as very serious, and one as significant:

- a formal reprimand
- 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 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 £800,000 broken down as follows:

Breach 1 - £250,000

Breach 2 - £250,000

Breach 3 - £250,000

Breach 4 - £50,000

65. The Tribunal agreed with the PSA's initial assessment.

## Proportionality assessment

### Assessment of aggravating and mitigating factors - the whole investigation

66. As regards aggravating and mitigating factors in respect of the whole investigation, the PSA did not consider there to be any aggravating factors.

67. The PSA considered it to be a mitigating factor that the Merchant had been co-operative during the PSA's investigation. The Tribunal agreed with the PSA's assessment.

### Aggravating and mitigating factors relating to individual breaches

68. The PSA did however consider there to be the following aggravating factors in relation to the specific breaches:

- Paragraph 3.2.1 – Transparency and pricing – The PSA noted that pricing concerns had previously been raised by the Mobile Network Operators and the Intermediary during the operation of the Service but these concerns had not been addressed by the Merchant.

- Paragraph 3.3.2 – Misleading – The PSA asserted that the false sense of urgency created by the Service was likely to induce an unreasonable sense of fear, anxiety, distress or offence in consumers as demonstrated by consumer comments.
69. The Tribunal agreed with the PSA’s view and was particularly concerned about the impact on vulnerable consumers. The Tribunal found the Service to be a bogus product, with misleading promotions, giving rise to the possibility of real harm.
70. The PSA did not consider there to be any mitigating factors relating to the individual breaches. The Tribunal agreed, noting that Breach 4 (Registration) was more of a technical breach and not on the same level of egregiousness as the other breaches.

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

71. The PSA stated that the revenue retained by the Merchant in relation to the Service was £483,125.23. The PSA asserted that there was a need to remove the financial benefit gained during the period of non-compliance to deter the Merchant from future non-compliance. Additionally, this would send a deterrent message to others operating within the industry. The Tribunal was persuaded that this was appropriate in this case.

### **Sanctions adjustment**

72. 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. The Tribunal was of the view that the Merchant’s conduct in relation to the breaches 1, 2 and 3 was intentional or reckless and had negatively impacted on consumers and in particular, vulnerable consumers.
73. The Tribunal considered that it was that was appropriate and proportionate to impose sanctions to:
- serve as an indication of wrongdoing that warrants immediate and effective action
  - to protect consumers and build consumer confidence in the premium rate services market
  - to ensure as far as is possible that the breaches of the Code will not be repeated by the Merchant party in breach, or others in the industry
  - to ensure as far as possible that the party in breach does not benefit from that non-compliant conduct
  - to restore consumers to the position they would have been in, had the breaches not occurred.
74. The Tribunal noted that the Merchant’s revenue was £483,125.23, gained during the period of the alleged breaches. The Tribunal was of the view that the sanctions should remove all the revenue generated from the Service as this would serve as a deterrent and ensure that the Merchant does not benefit from the non-compliant conduct

identified.

75. The Tribunal also considered that it would be appropriate and proportionate for the fine to be higher than revenue gained but the Tribunal considered the fines recommended by the PSA to be too high as it considered breaches 1, 2 and 3 to be inter-linked. The Tribunal therefore considered a fine of £200,000 per breach (rather than £250,000 per breach) for breaches 1, 2 and 3 was appropriate and proportionate. The Tribunal stressed that this reduction for proportionality should not detract from what it considered to be a very serious scam, which added no value to anyone but had the potential for serious consumer detriment- particularly in relation to vulnerable consumers.

76. The rest of the sanctions were left unchanged.

### **Final overall assessment**

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

### **Sanctions imposed**

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

- a formal reprimand
- the prohibition of the Merchant from any involvement in any PRS or promotion of PRS for a period of five years from the date of publication
- a requirement that the Merchant 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 £650,000 broken down as follows:

Breach 1 - £200,000

Breach 2 - £200,000

Breach 3 - £200,000

Breach 4 - £50,000

Administrative charge recommendation: 100%