

Statement of Facts and Evidence pertaining to the investigation into Telecom2 Limited

Introduction

1. This statement sets out the facts and evidence relating to the Phone-paid Services Authority's ('PSA') investigation into Telecom2 Limited ('Telecom2') in August 2021. This statement also sets out the breaches and sanctions agreed by the parties and has been produced and published in accordance with paragraph 5.5.2 of the PSA Code of Practice (15th Edition) ("Code 15"), together with the formal agreement made by the parties to settle the matter.
2. The investigation into Telecom2 concerned the adequacy of its due diligence, risk assessment and control ("DDRAC") measures over a 7-year period. The period commenced when the 14th Edition of the Code of practice ("Code 14") was in force and continued for some time after Code 15 came into force. During the investigation a second breach was raised due to Telecom2's failure to fully respond to a direction from the PSA.

The investigation

3. Telecom2 is a UK based Network operator who have been operating for 15 years. Telecom2 provides a telecommunication connectivity platform service to (and contracts directly with) merchants operating premium rate services (PRS),
4. The PSA became aware of potential DDRAC issues following high levels of complaints received in relation to its merchant providers. During the investigation the PSA relied on evidence from consumer complaints and service monitoring. It also relied on information supplied by Telecom2, including detailed information relating to five of its merchants, its DDRAC process, procedural documentation and supplementary documentation. The PSA also considered eighteen underlying investigations that had reached a regulatory outcome between March 2018 and the date the Enforcement Notice was issued (January 24), as well as data gathered through a thematic review it conducted in relation to information, connection and signposting ("ICSS") services (July 2021 – June 2022).
5. Following initial directions and requests for information by the PSA to Telecom2 regarding a number of its clients, the PSA considered that Telecom2 had conducted satisfactory due diligence and that there was insufficient evidence to suggest a breach of this under either Code 14 or Code 15. The case subsequently put forward by the PSA was therefore focused on risk assessment and risk control ("RAC") requirements of the Code.
6. Having considered the available evidence the PSA concluded that Telecom2 failed to conduct adequate RAC through failing to properly identify risks, set proportionate levels of risk, conduct in-life assessment or put appropriate measures in place to mitigate risk and that these amounted to a breach of the Code. In addition, it failed to adequately respond to issues of non-compliance and incidents.

7. During the investigation into Telecom2, the PSA also conducted an investigation into one of its merchants, Connect You Limited (Connect You) and subsequently became aware that Telecom2 had failed to provide certain information regarding Connect You when requested under a direction. The PSA considered that this also amounted to a breach of the Code and added it to the investigation.

Breaches of the Code

8. The parties have agreed that the following breaches have occurred and should accordingly be upheld:

Breach 1 – failure to comply with paragraph 3.1.3 of Code 14 and paragraph 3.9.2 of Code 15

9. Paragraph 3.1.3 (a) and (b) of Code 14 requires that:

all network operators assess the potential risk posed by any party with which they contract in respect of, the provision of PRS and the promotion, marketing and content of PRS which they provide or facilitate and take and maintain reasonable continuing steps to control those risks.

10. Paragraph 3.9.2 of Code 15 requires that:

Network operators must continually assess the potential risks posed by any person with whom they contract in respect of the provision, content, promotion and marketing of PRS and must take and maintain effective and ongoing steps to control and mitigate any risks identified.

11. The parties have agreed that a breach of paragraph 3.1.3 of Code 14 and 3.9.2 of Code 15 has occurred because of Telecom2's failure to;
 - conduct adequate RAC; and
 - respond adequately to incidents.

Reason 1 – Telecom2's failure to conduct adequate RAC

12. Telecom2 cooperated fully throughout the investigation, providing its RAC policies and procedures, including any updates to these documents as well as information relating to how these were applied to a selection of its merchant clients. Following review of the evidence provided to the PSA, it identified deficiencies in Telecom2's RAC processes, which hindered its ability to effectively evaluate potential risks posed by merchants and their services. Consequently, this impacted the efficacy of the control measures implemented by Telecom2.

Issue 1 - Inadequate risk identification process

13. Telecom2 and its process documents confirmed it conducted a risk assessment (RA) by completing a 'Client Risk and Evaluation Worksheet' ("Worksheet").

14. The PSA considered that having regard to both Code 14 and Code 15 DDRAC guidance, the Worksheet failed to assess the type of service that was being delivered, how it was promoted, how long the merchant had operated PRS and whether the merchant and/or service type had a breach history. As such the Worksheet was inadequate for the purposes of a thorough assessment of the risks associated with Telecom2's merchants and their services.
15. The PSA emphasised that full assessments are crucial for a robust and comprehensive RA. However, Telecom2's existing process hampered the ability to effectively evaluate potential risks posed by its merchants and their services. The PSA noted that when risks were not properly identified, the consequences were that Telecom2 were unable to take adequate preventative measures to control them, which likely resulted in consumer harm and/or breaches of the Code.

Issue 2 - Inadequate Risk Score/Rating Process

16. The PSA assessed Telecom2's Worksheets and noted that they incorporated a scoring system and the overall risk score calculated as a percentage. This stipulated that if the percentage fell below 50% it would be passed to a Director/CFO for review. However, the scoring appeared to influence the decision to onboard a merchant rather than contributing to a risk rating (i.e. for an already onboarded merchant). This was corroborated by the fact that the Worksheets were completed prior to the signing of contracts for the merchants and demonstrated by documentation provided by Telecom2.
17. The PSA considered that the Worksheets mainly served as a due diligence (DD) assessment given that the majority of questions on the Worksheet were geared towards obtaining DD information.
18. The PSA noted its guidance which was clear that RA is continuous and must be conducted throughout the lifetime of the contract and as the experience with the merchant develops, in order to thoroughly understand the risks posed by clients and their services. This crucial step in the DDRAC process was absent from the Telecom2's procedure.
19. Under a direction issued by the PSA Telecom2 was asked to explain its policy regarding RA and to include the basis on which it categorised a risk and what steps it took as a result of that. However, Telecom2 only detailed onboarding processes and failed to demonstrate that it had distinct practices in place to assess and address varying levels of risk.
20. Throughout the investigation Telecom2 stated that all new clients were treated as high risk. However, no evidence was provided by Telecom2 to indicate how this was carried out in practice.
21. Consequently, the PSA formed the view that Telecom2 did not adequately assess risk or put in place proportionate control measures in response to the level of risk identified by their own processes.

Issue 3 – Inadequate in-life risk assessments

22. From the PSA's DDRAC guidance it was clear that RA was an ongoing process which should be conducted periodically throughout the lifespan of any contractual relationship. The frequency of these assessments should be determined by a process/action plan based on the risk score assigned to the merchant and its service(s). It was also expected that assessments were reconsidered in light of any new information or where incidents had occurred as indicated in the PSA's guidance.
23. The PSA issued a direction Telecom2 to provide evidence of any additional risk assessments it carried out on its clients. In response Telecom2 provided a list of the checks it makes and stated that it was standard practice to review clients on an annual basis and to reassess any risks found ahead of the annual check.
24. However, the PSA found that all but two of the checks in Telecom2's list related to DD information and simply reflected the requirement under Annex 2 of Code 15 to collect such information annually. Telecom2 provided screen captures of google calendars showing that they had scheduled annual reviews but did not provide evidence or an audit trail /compliance file of post onboarding RAs conducted on the merchants.
25. The failure to evidence any RA conducted post the onboarding stage demonstrated a failure of Telecom 2 to conduct RA on an ongoing basis. This was heightened by Telecom2's failure to adequately carry on RA (as opposed to DD) at the point the client was onboarded. Therefore, any initial failings were not addressed by RA at any point during the lifetime of the contractual agreements with its clients.
26. The PSA also considered whether Telecom2 was prompted to reassess risks following investigations into its clients. The PSA highlighted four of Telecom2's merchants' services which had all been allocated to an investigation. The PSA had notified Telecom2 of the opened investigations into their clients upon allocating them to the enforcement team. However, Telecom2 did not provide any evidence to suggest that this activity prompted it to carry out further RA (or an investigation) or to enhance its control measures.
27. Given Telecom2 failed to conduct ongoing RAC on its merchants and their services, it had negligently allowed its merchants to operate services without thoroughly assessing the risks and setting appropriate control measures.

Issue 4 – failure to adequately control risks

28. The PSA noted that, Telecom2's failure to adequately assess risks put them in a position where they are unable to set adequate control measures; as RA was not properly carried out, the risks were not being identified and therefore, Telecom2 did not know what control measures were necessary to address the risks.
29. During its investigation the PSA identified a number of RC concerns in respect of the lack of evidence of an action plan or sufficient monitoring, testing and assessment as to whether and what (further) control measures were necessary.

Action plan/compliance files

30. The PSA Directed Telecom2 to provide evidence of RC for its clients, including “*the controls and actions plans put into place to monitor the risks identified in relation to each client.*” In response, Telecom2 did not provide an action plan. Instead, it provided information about the RA Worksheet and the DD it completes for each client. It explained that for two of the four clients in the merchant sample provided to the PSA, it created an excel information sheet to track the set-up of the PRS from number allocation to live promotion and that this helped them to monitor for any changes made to the service. For one client it admitted to conducting less RC but that it maintained a good level of due diligence during the onboarding process, and for another client no RC was conducted given that the service stopped shortly after it started.
31. Telecom 2 failed to provide any evidence of an action plan or compliance file for any of the four sample merchants, nor any documents setting out the risks it had identified and a plan for how to control them. As such Telecom2 could not demonstrate that there was an action plan in place nor that it was followed.

Monitoring for promotions

32. In response to a PSA direction Telecom2 provided four screenshots of monitoring it had conducted using Google Search, where the services were being promoted. The monitoring was conducted a few days prior to the deadline response and Telecom2 confirmed it was conducted late at night and on a Saturday when ICSS promotions are low. It also stated that:
- “If a pattern of successful testing and unvarying test results happen month on month, there is no real reason as to why Telecom2 would conduct an intensive testing in a continuous manner. A periodical approach is taken.”*
33. Although it provided evidence of some limited monitoring this was not considered to be adequate to meet its obligations. Telecom2 did not provide any evidence of its monitoring strategy, nor did it provide evidence to demonstrate the frequency of monitoring or the steps it takes when it finds any issues.

Online complaints monitoring

34. In response to a PSA direction Telecom2 explained that it monitors online complaints “*to observe if any complaints have been recorded against the specified service. This includes searches of online forums*”. To demonstrate this Telecom2 provided a screenshot of a comment it placed on an online complaint forum ‘who-calls.me.uk’. There were no consumer complaints on the forum but the comment it placed detailed all relevant information about the service (i.e. what the service was, the cost, how to complain, etc).
35. Later in the investigation, Telecom2 provided further evidence of adding comments to another website, who-called.co.uk, being a well-known website for individuals to check and/or report numbers. The evidence it provided covered a wide range of merchants and their services.

36. While the PSA considered this to be a proactive and informative RC measure, it considered that Telecom2 needed to conduct ongoing monitoring in order to understand if any online complaints were being made about the service and take appropriate measures should this be the case.

Call testing

37. During the investigation Telecom2 supplied partial logs detailing test call information for the selection of merchants. The PSA noted that the result was 'OK - NO FURTHER ACTION' for every test call it made. Looking specifically at the logs for the merchant, Connect You, the PSA considered that the frequency of the testing was inadequate given that at the time it was a relatively new client operating a high-risk service and therefore Telecom2 should have considered it high risk from the outset. The evidence suggested that Telecom2's testing was sporadic and not proportionate to the risk rating for, and number of premium rate numbers being operated by, Connect You.
38. The PSA directed Telecom2 to provide copies of call recordings/transcripts. In response Telecom2 said *"Calls are made from office landlines and mobile. Our APEX system is not able to store calls from any mobile initiated testing; only those that are made from our office landline number. Unable to record test mobile results in an audio format. PRN's and URLs are also tested by mobile phone to test access and if there are any differences. I therefore cannot supply 15 transcripts for each client due to a mix of landline and mobile testing..."* The PSA did not dispute that some test calls were made as evidenced by Telecom's records. However, the PSA considered that Telecom2 had failed to adequately record call testing and there was no verifiable evidence to ensure that adequate checks were being carried out.
39. The PSA highlighted an example which related to an underlying adjudication into Telecom2's client Embill Limited (Embill) whereby there was evidence to show that Telecom2 had not been monitoring the Service frequently enough nor had it been adequately checking the content of the IVR.
40. Telecom2 also supplied the PSA with an email sent to another merchant client confirming that the PRN's it operated had been suspended. In that case Telecom2 had received a complaint from a mobile network operator's fraud department which caused it to investigate the merchant's service, including making test calls.
41. Originally, the service had been set up and approved to run as a technical support service. However, when testing Telecom2 learned that it was operating a loan advice service on the premium rate numbers and Telecom2 also experienced undue delay on the service.
42. Although Telecom2 did take adequate steps once the issue had been highlighted to them by the mobile network operator it had failed to conduct ongoing monitoring on the service during the 9 months of its operation. The PSA considered that if this had been done then Telecom2 would have identified (and been able to resolve) the issue earlier.
43. The PSA considered that overall, the failure to identify risks properly and have an action plan in place to control those risks impacted Telecom2's ability to conduct robust RC. From the evidence provided Telecom2 had conducted some monitoring and testing however, it was sporadic, poorly recorded and the actions it did take did not go far

enough in controlling the risk presented by the merchants and/or the services they provided. Telecom2 did not set adequate control measures and consistently apply them to its merchants in line with the level of risk they posed.

Reason 2 – Failure to adequately respond to incidents

44. The PSA considered that Telecom2 was in breach of paragraph 3.9.2 of Code 15 and paragraph 3.1.3 of Code 14 as it failed to adequately identify and respond to incidents as part of its RC which also had an impact on RA.
45. Having regard to published guidance the PSA considered that when a network operator becomes aware of any incidents that may affect the compliant operation of services provided by its clients or could cause consumer harm, it should consider the incident in question and take an appropriate response that is in line with their risk assessment and control obligations.
46. In its enforcement notice the PSA highlighted four areas which demonstrated that Telecom2 failed to adequately identify and respond to incidents, which were previous investigations and adjudications, artificial inflation of traffic, consumer complaints and high call charges.
47. Overall, the PSA asserted that there were many incidents (and red flags) that caused consumer harm which should have prompted Telecom2 to conduct proper investigations and put control measures and action plans in place to rectify/mitigate concerns, but it continually failed to do so.
48. The PSA stated that the failures identified in Telecom 2's RAC processes and procedures were not limited to individual merchants as they were procedural in nature and therefore systemic across Telecom 2's RAC activity relating to merchants operating on its platform. Having regard to the two reasons identified and all relevant factors, including the length and the widespread nature of the breach, the PSA considered the severity of the breach to be very serious.

The Parties' agreement on the breach

49. Telecom2 acknowledged and accepted responsibility for the breach realising that its overall risk assessment and control was inadequate and not fit for purpose.
50. The parties therefore agreed that the breach had occurred under paragraph 3.1.3 (a) and (b) of Code 14 and Paragraph 3.9.2 of Code 15.

Breach 2 – Failure to provide information

Paragraph 4.2.2 of Code 14 requires that:

a party must not knowingly or recklessly conceal or falsify information or provide false or misleading information to the PSA (either by inclusion or omission)

51. The PSA asserted that a breach had occurred because Telecom2 failed to provide full information in response to a Direction from the PSA in relation to an underlying

investigation into its client, Connect You. In May 2021, the PSA sent its first Direction for information to Telecom 2. Question 8 of that Direction stated *“Please provide a full list of the numbers within the 0904012-number range or any other number range utilised by this Service”*. However, Telecom2 in their reply only included information relating to the already identified number range (0904012).

52. However, in January 2022 Telecom2 indicated in an e-mail response that there were further number ranges but did not provide the requested information. On October 2022 the PSA received (as part of Telecom2’s response to the PSA’s ICSS thematic review) detailed information regarding all the number ranges operated by its client.
53. The PSA therefore considered that Telecom2 breached paragraph 4.2.2 of Code 14 as it failed to provide pertinent information when it was requested at the start of the investigation into Connect you. The direction for information was issued in May 2021 and was not fully responded to. The PSA considered the breach ended when Telecom2 provided the information in full in October 2022.
54. The PSA asserted that Telecom2’s failure to reveal the full scope of numbers was reckless and demonstrated a fundamental disregard of the Code which ultimately delayed the regulatory process in relation to the underlying Connect You case and contributed to consumer harm.
55. Having taken account of relevant factors, including the fact that the PSA treats all failures to comply with a direction seriously, it considered the breach severity to be very serious.

The Parties’ agreement on the breach

56. Telecom2 acknowledged and accepted responsibility for the failure but argued that it was not deliberate, providing a detailed statement explaining that it was due to an oversight.
57. The parties agreed that the breach had occurred as Telecom2 had not fully complied with the direction issued under paragraph 4.2.2 of Code 14.

Breach severity

58. The PSA had originally classified each of the breaches as **very serious** and the overall breach severity as **very serious**.
59. In relation to breach 1, the parties agreed that the seriousness should remain as very serious.
60. In relation to breach 2, the parties agreed to lower the breach severity taking into account all relevant factors, and in particular:
 - Telecom2’s submission that the failure to provide the full information was a genuine oversight rather than a fundamental disregard for the Code, with focus being placed on the 0904012 number range stated by PSA in the direction rather than the *“or any other number range utilised by this service”*.

- The fact that Telecom2 had previously notified PSA that they had other number ranges (which demonstrated that they had not attempted to conceal the existence of such other number ranges).
 - PSA's acceptance that the breach did not demonstrate a "*fundamental disregard for the Code*" as it had asserted in its Enforcement Notice to Telecom2.
61. The parties agreed that while the breach was reckless the degree of recklessness fell within the "serious" breach rating descriptor set out in the Procedures rather than "very serious".
62. The parties agreed that it was appropriate to downgrade breach 2 to serious.
63. The parties agreed that the overall breach severity should remain as **very serious**.

Final agreed sanctions

64. The parties agreed that as the case severity overall is **very serious** the following sanctions should be imposed:
- formal reprimand
 - a total fine of £255,000 comprised of the following amounts for each breach:
 - Breach 1 (Risk assessment and Control pursuant to paragraph 3.1.3 (a) and (b) of Code 14 and paragraph 3.9.2 of Code 15) £180,000.
 - Breach 2 (failing to provide information pursuant to 4.2.2. of Code 14) £75,000.
 - a compliance audit to be carried out by a third party approved by the PSA and to a standard prescribed by the PSA, the costs of such audit to be paid by the Relevant Party. The audit must be completed and the recommendations implemented within 12 months. Telecom2 agrees not to resume its ICSS services until completion of the audit.
 - Telecom2 to pay the final administration fee £13,977.50 in full.
65. In agreeing the level of the fine at £255,000 the following factors were considered:
- the downgrading of breach 2 from "very serious" to "serious"
 - application of a 20% early settlement discount as set out in the Procedures
 - Telecom2's overall cooperation throughout the lifetime of the case
 - the admissions made by Telecom2 and the remorse it has shown
 - the progress Telecom2 had made in improving its DDRAC policies and practices
 - the fact that Telecom2 had suspended all of its ICSS merchants and confirmed that it would not be onboarding any ICSS clients for the foreseeable future

- Telecom2's agreement that a compliance audit would be carried out and completed prior to the resumption of Telecom2's ICSS services.

66. In accordance with paragraph 5.5.2 of Code 15, the breaches and sanctions agreed between the PSA and Telecom2 are binding and have the same effect as though they had been upheld and imposed by a PSA Tribunal.