

Tribunal meeting number 204

Case reference: 116798

Level 2 provider: DK Call Limited (UK)

Type of service: Information, Connection and Signposting Service (ICSS)

Level 1 provider: N/A

Network operator: TelecomIQ Limited

This case was brought against the Level 2 provider under Paragraph 4.5 of the Code of Practice

Background

The case concerned an Information, Connection and Signposting Service (ICSS) service operating under the brand name “Record the Call” on the number range 0984653XXXX (“the Service”).

The Level 2 provider for the Service was DK Call Limited (the “**Level 2 provider**”). The Network Operator for the Service was TelecomIQ Ltd (the “**Network**”).

The Service

The Service was stated to be a “Call Connection” service that connected consumers to a variety of commercial and public organisations at a charge of £3.60 per minute. In addition, the service offered the consumer an option of downloading a recording of their phonecall. The Level 2 provider stated that the Service commenced operation on 14 September 2016.

On 10th November 2016 the Level 2 provider supplied the below summary of the consumer journey and provided promotional material:

“Consumer searches online for keywords relating to the company they wish to contact. Upon searching they are presented with our link that describes our call recording service. Here is an example of our link that clearly describes that we offer a phone recording service:

[HMRC Contact Number - Record Your Call - recordthecall.net](https://recordthecall.net)
recordthecall.net/call-hmrc

Call the HMRC helpline to speak to HMRC and income tax and record your call

Consumers that are interested in our service click on the link where they are presented with our recording numbers clearly displaying the call costs:

HMRC:**Address:**

HM Revenue and Customs
BX9 1AS
United Kingdom

HMRC Opening Times**Monday - Friday**

8am to 8pm

Saturday

8am to 4pm

Sunday

Closed

Call HMRC On

0984 653 2410

Call recordings cost £3.60 per minute plus your networks access charge

Department	Contact Number
HMRC General Enquiries	0984 653 2410
Self Assessment	0984 653 2411
Tax Credits	0984 653 2412
Income Tax	0984 653 2413
National Insurance	0984 653 2414
Tax For Employers	0984 653 2415
VAT	0984 653 2416

Call recordings cost £3.60 per minute plus your networks access charge

HMRC (Her Majesty's Revenue & Customs) oversees many government functions, including taxation, National Insurance, various financial benefits, and more. In the area of taxes, UK residents can contact HMRC in order to ask questions about individual income tax, self-assessment for the self-employed, business taxes, and more. In the area of credits and benefits, HMRC support can provide information with regards to tax credits such as Child Tax credit, Working Tax credit, and more. HMRC offers information on the Gov.uk website, but does offer one-on-one support for all who need it. To speak with an agent, simply call the HMRC contact number.



Record The Call is a phone recording call connection service that allows you to record your phone call and is in no way connected to or affiliated with HMRC. Calls cost £3.60 per minute plus your networks access charge. To retrieve your call recording, simply scroll down to the bottom of the page and fill in the form. Once we receive your request, we will email you a WAV recording link by email. Call recordings are only stored on our servers for 24 hours, for future usage please download your recording to your local computer.

It was the Executive's understanding that a significant number of complainants would have accessed the Service promotions via their mobile handset. The Executive therefore monitored the Service on both desktop and mobile devices.

The Executive noted that the monitoring did not correspond with the Service promotional material supplied by the Level 2 provider. Although the promotional material supplied by the Level 2 provider showed pricing information at the top the landing page (directly beneath the main premium rate number), this was not present in the monitoring conducted by the Executive.

The Executive's view was that this was particularly significant for mobile users, as the monitoring indicated that mobile users would have been required to scroll down the page to view all key Service information, including pricing information.

Screenshots of the initial landing pages taken from monitoring conducted by the Executive is below:

Desktop Device:

A screenshot of a Google search for "hmrc contact number". The search results are displayed on a desktop browser. The first result, "HMRC Contact Number - Record Your Call - recordthecall.net", is circled in red. Below it are other results for "HM Revenue Contact number - Direct Dial Telephone Number" and "Call for Tax Help with HMRC - Telephone advice for UK Tax". A map of the United Kingdom is shown below the text results, with a red pin marking London. The browser's address bar shows the search URL.

A screenshot of the RecordTheCall website. The page features a navigation bar with "REQUEST CALL RECORDING", "RECORD CALL", and "CONTACT US". The main content area includes contact information for HMRC, a table of contact numbers for various departments, and a section about call recording costs. A photo of a smiling woman wearing a headset is also present.

HMRC:
Address:
HM Revenue and Customs
BX9 1AS
United Kingdom

HMRC Opening Times
Monday - Friday
8am to 6pm
Saturday
8am to 4pm
Sunday
Closed

Call HMRC On
0984 653 2410

Department	Contact Number
HMRC General Enquiries	0984 653 2410
Self Assessment	0984 653 2411
Tax Credits	0984 653 2412
Income Tax	0984 653 2413
National Insurance	0984 653 2414
Tax For Employers	0984 653 2415
VAT	0984 653 2416

Call recordings cost £3.60 per minute plus your networks access charge

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HMRC: *Call recordings cost £3.60 per minute plus your networks access charge*

Address:
HM Revenue and Customs
BX9 1AS
United Kingdom

HMRC Opening Times
Monday - Friday
8am to 8pm
Saturday
8am to 4pm
Sunday
Closed

HMRC (Her Majesty's Revenue & Customs) oversees many government functions, including taxation, National Insurance, various financial benefits, and more. In the area of taxes, UK residents can contact HMRC in order to ask questions about individual income tax, self-assessment for the self-employed, business taxes, and more. In the area of credits and benefits, HMRC support can provide information with regards to tax credits such as Child Tax credit, Working Tax credit, and more. HMRC offers information on the Gov.uk website, but does offer one-on-one support for all who need it. To speak with an agent, simply call the HMRC contact number.

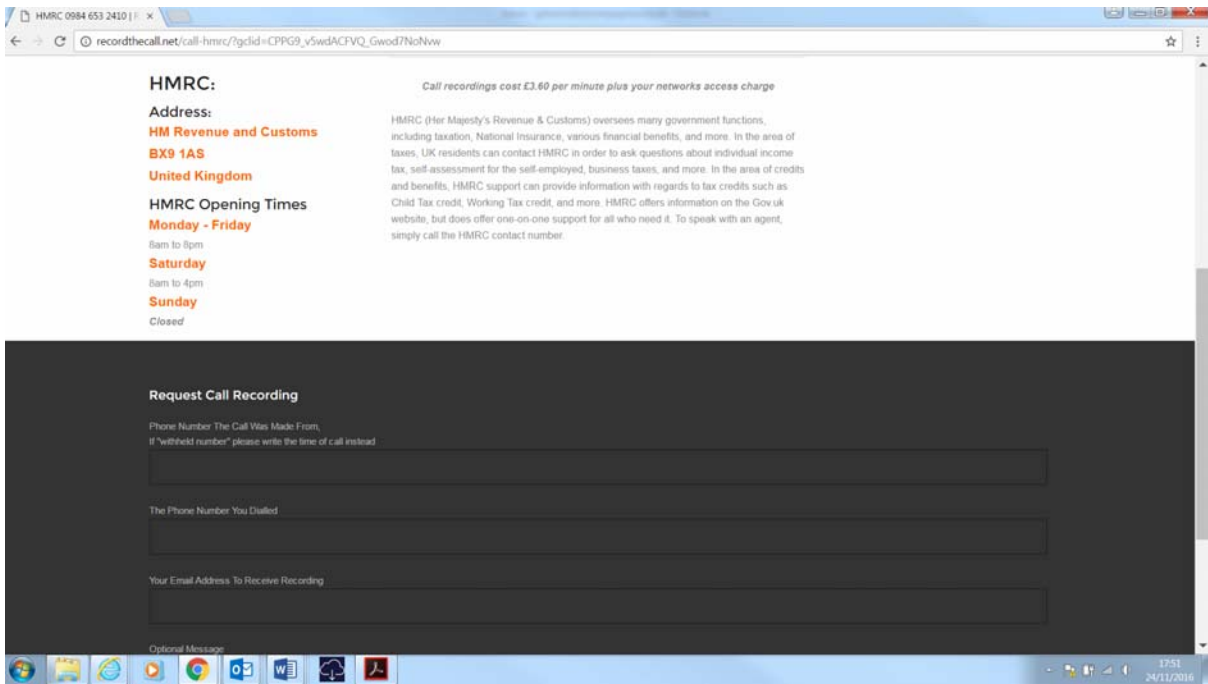
Request Call Recording

Phone Number The Call Was Made From, if "withheld number" please write the time of call instead

The Phone Number You Dialed

Your Email Address To Receive Recording

Optional Message



HMRC:

Address:

Request Call Recording

Phone Number The Call Was Made From, if "withheld number" please write the time of call instead

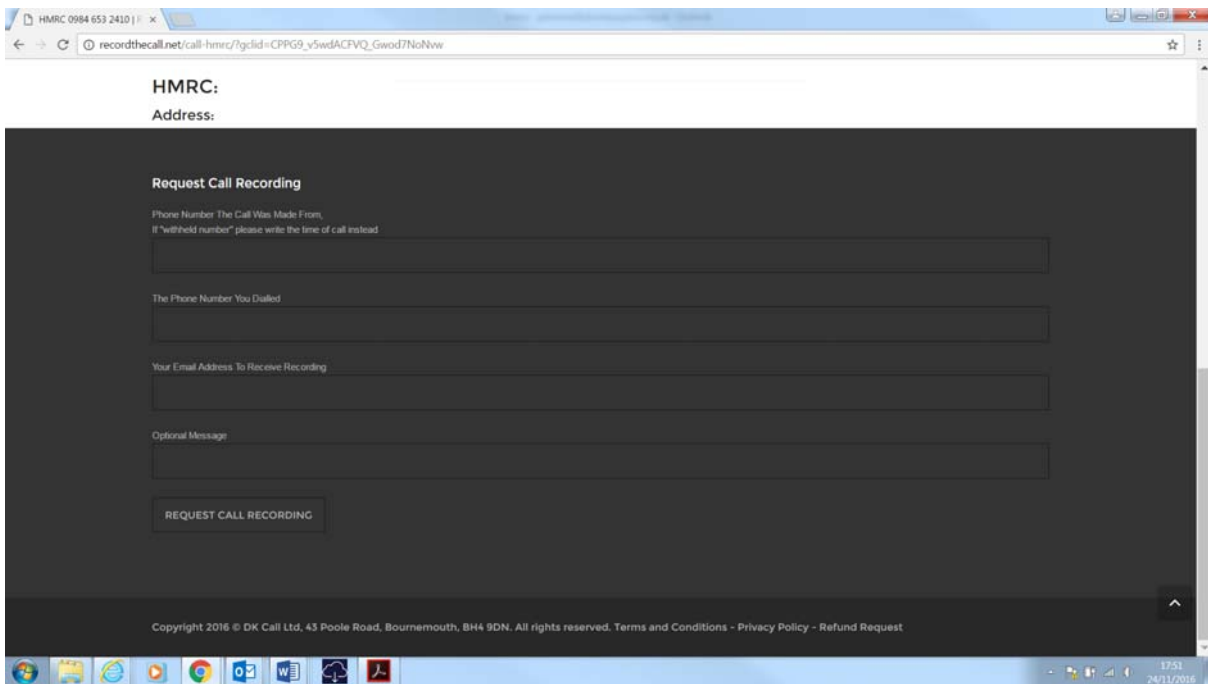
The Phone Number You Dialed

Your Email Address To Receive Recording

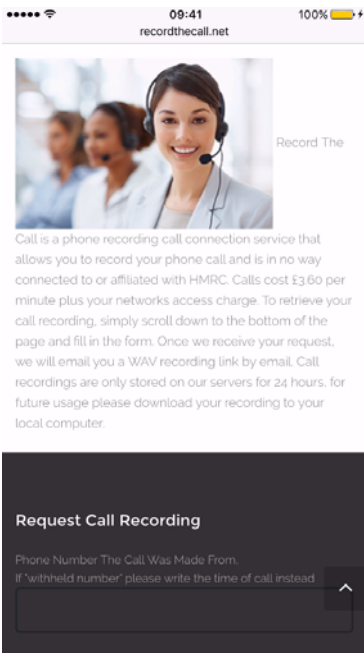
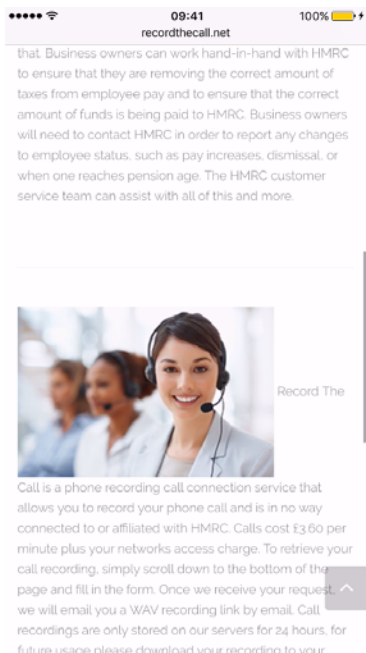
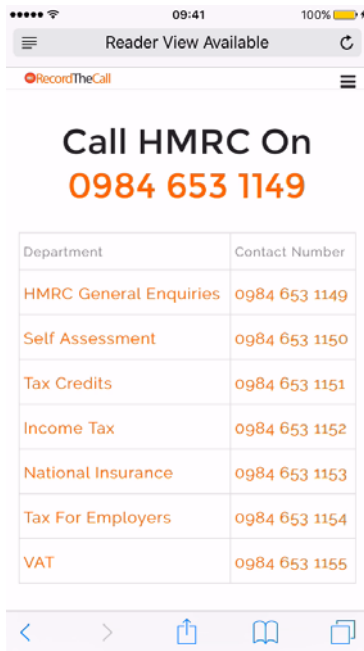
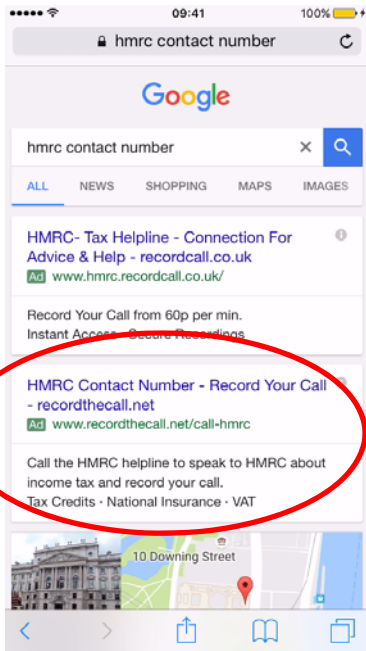
Optional Message

REQUEST CALL RECORDING

Copyright 2016 © DK Call Ltd, 43 Poole Road, Bournemouth, BH4 9DN. All rights reserved. Terms and Conditions - Privacy Policy - Refund Request



Mobile Device:



Summary of complaints

The Executive received 69 complaints concerning the Service between 24 September 2016 and 30th November 2016.

A sample of complainant accounts is provided below:

"I am very very upset. After googling call HRMC revenue i clicked the first link i saw. I called this number and now i am being charger 60 pound for a 10 minute conversation!!!! I FEEL very very upset by this as this website is one of the first to come up! there should be something done to stop this immediately for people who cannot afford this. This is not on!!! There should be more done to protect people from this and i will not be paying this!!! I am not able to afford this bill on top of my current bill, please can you help me!" [sic]

"I was trying to get trough Sky costumer and apparently I used some premium number that I wasn't informed of the charge. I find this number on sky website and I thought its free costumer service number. So the answer machine put me on hold for 25 minutes then in the end I give up waiting and hang up the phone. I think it's absolutely unfair that I was charged £94.97 for 25min being in the queue." [sic]

"I Googled Sky contact number and was given 09846532400, thinking it was a genuine normal charge number for Sky. I have been charged approximately £128.00 for a 30 minute call.... I have written a detailed letter to Sky saying I am going to cancel my direct debit to them and not pay any 'non genuine money' I may owe them or this scamming company, my bill is due on 6/9/2016, I would appreciate a resolution before this date so I don't have to do this."

The investigation

In accordance with the transitional arrangements set out at paragraph 1.8 of the PSA Code of Practice (14th Edition), the Executive conducted this matter as a Track 2 procedure in accordance with paragraph 4.5 of the Code of Practice (14th Edition).

Interim measures

On 1 December 2016 the Code Adjudication Panel ("CAP") considered an application by the Executive for the imposition of interim measures. Accordingly, in respect of the Service, it was decided to impose a Withhold on the Service revenue.

The Executive sent a Warning Notice to the Level 2 provider on 15 February 2017 with a deadline for response of 1 March 2017. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the "**Code**");

- Rule 2.2.1 – Transparency and pricing
- Rule 2.2.7 – Pricing information
- Rule 2.3.2 – Misleading
- Rule 3.4.14a – Number registration

- Paragraph 3.11.3 – Special conditions ICSS 1
- Paragraph 3.11.3 – Special conditions ICSS 3
- Paragraph 4.2.2 – Provision of false information to the PSA

On 23 March 2017, the Tribunal reached a decision on the breaches raised by the Executive. The Tribunal considered the following evidence in full:

- The complainants’ accounts;
- Correspondence between the Executive and the Level 2 provider (including directions for information);
- Correspondence between the Executive and the Network Operator;
- PSA Special Conditions in respect of ICSS;
- Revenue and call volume information for the Service;
- Monitoring video supplied by the Executive;
- The Warning Notice dated 15 February 2017, including attachments; and
- The response to the Warning Notice dated 1 March 2017 and attachments.

Submissions and Conclusions

Alleged breach 1

Rule 2.2.1 – “Consumers of PRS must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

1. The Executive asserted that the Level 2 provider had breached rule 2.2.1 of the Code as consumers were not given all of the necessary information in order to make an informed decision to use the Service. The Executive asserted that the key Service information was not clear and prominent on the website landing page for mobile device users.

The Executive relied upon the PSA’s “Guidance on Promoting premium rate services” which states at paragraph 2.3:

“...the following information is considered key to a consumer’s decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

Cost

Brand information

Product or service information

How it is delivered or used

How it is paid for – one off payment, recurring charges, etc.

How to get help where necessary”

Paragraph 6.2 states:

“Once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see section 2 of this Guidance).”

The Executive also relied upon complainant accounts which variously alleged that consumers did not understand the true nature of the service and, in particular, they did not appreciate they were not telephoning the organisation concerned directly.

In addition, the Executive relied upon its monitoring of the Service on both desktop and mobile devices. The Executive noted that the key Service information was not immediately visible on the website landing page for mobile devices and that if a consumer wished to view the key Service information they had to scroll down the page.

The Executive noted that the key service information included a summary of the Service on offer, how the Service operated and the costs of using the Service. The Executive submitted that, if a consumer did not view this key service information, it was unlikely that they could make an informed decision to use the Service. In addition, monitoring conducted by the Executive indicated that on 21 September 2016 no recorded message containing key service information was played at the outset of the call to the Service.

The Executive stated that the Level 2 provider had confirmed that 83.88% of its traffic was generated by mobile devices and that, due to the need for a consumer using a mobile device to scroll down to view the key Service information, it was likely that those consumers were not aware of all information necessary, prior to making a decision to purchase. The Executive asserted that, due to the high percentage of users accessing the service via a mobile device, the majority of users of the service may not have been aware of the key information prior to using the Service.

In response to questioning by the Tribunal, the Executive confirmed that the key service information missing from the pre-recorded message on 21 September 2016 was information making it clear to the consumer the nature of the service and that they were not calling the end-organisation in question, together with the name of the end-organisation consumers would be connected to. The Executive stated that this information is essentially the same as items (ii) and (iii) from Special Condition ICSS 11.

The Executive submitted that, in light of all of the above, the key Service information was not sufficiently prominent to allow consumers to make an informed decision prior to purchase, and that a breach of Rule 2.2.1 had occurred.

2. The Level 2 provider admitted the breach in part and submitted written representations in respect of the breach. It stated that brand and service information were provided on

its website and, whilst it acknowledged that consumers using a mobile device would have had to scroll in order to view certain information, it was entirely unreasonable to assume that all the information could have been provided in one screen shot. It stated that, should an attempt have been made to provide brand information, customer service information and full service information on the initial launch page, the text would have been so small that consumers may have misunderstood or simply skipped the information, subsequently leading to misunderstanding of the service it provided. The Level 2 provider stated that it ensured that consumers would be able to access this information by simply scrolling. Whilst it had been made aware that its website suffered a design flaw in relation to pricing information for mobile users, the pricing information was still provided in a recorded message played at the onset of every call made through the Service, therefore making pricing information readily available.

In addition, the Level 2 provider indicated that, although on the initial loading of the site the pricing information was not displayed, the information was contained directly under the table of contact numbers. The Level 2 provider stated that the reasonable man would in this instance move the page over slightly, and the pricing information at this point would have been available to the consumer, with only a very slight movement of the finger.

The Level 2 provider stated that, upon becoming aware of the design, the website was amended in order to make it fully compliant with the Code, this amendment having been made on 9th November 2016, meaning that consumers were able to access all the information on a mobile device from this date onwards. In light of this, the Level 2 provider stated that it was not inclined to agree with the Executive's argument that consumers were not provided with the relevant information to make an informed decision, in particular with regard to those consumers who had used the Service after 9 November 2016.

The Level 2 provider accepted that on the 21 September, the recorded message with pricing information was not played at the outset of a call. Its own investigations had drawn a blank on this and, due to the subsequent changes in the recordings and to the Service, it unfortunately could not put this down to any other reason than an error in its system. It fully admitted that this was not being compliant with the Code and understood that it was not acceptable that it was unable to provide a reason for this. It stated that, had it been made aware of this on 21 September 2016, when the Executive became aware of it, then it would have been able to provide an explanation as to why the recorded message was not played.

The Level 2 provider stated that it is not a requirement to have key information available at every point throughout the consumer journey, and therefore the fact that customers had access to key information on the website would indicate that it was not in breach of 2.2.1. It also noted that the Executive had stated that the key service information was not available upon connecting to the service. However, in order to ensure that it was providing an optimum service for its customers, the Level 2 provider did not provide any information other than pricing at this point. It was of the belief that, should it have provided a message outlining all the key information (which was

displayed on the website) prior to the connection, customers would have become frustrated and consequently used one of its competitors. Given the information was provided on its website, it did not see the need for duplication, but once it was made aware that it was actually in consumer's best interests to have the message contain more information, it ensured that the message was changed to reflect this. It had not originally provided all the relevant key information at this point in order to avoid the risk of its consumers experiencing undue delay.

The Level 2 provider also indicated that only a total of 1.15 percent of its consumers felt the need to make a complaint about the service, and this had been accelerated by the fact that Sky and HMRC were directing consumers who wished to complain directly to the PSA. The amount of complaints to the PSA totalled 0.3 percent of Service users.

The Level 2 provider stated that it had accepted this breach in part as, due to the reasons outlined above, a pre-recorded message was not played on the 21 September 2016, and in this instance it acknowledged that its consumers may not have been able to make an informed decision to use the Service. For this reason, it had a no quibble refund policy in place to ensure that all consumers who were charged were genuine consumers who wished to use the Service.

3. The Tribunal considered the Code and all the evidence before it.

The Tribunal was satisfied, on the balance of probabilities, that consumers of the Service had not been fully and clearly informed of all information likely to influence the decision to purchase before any purchase was made.

The Tribunal noted that the necessity for consumers using a mobile device to scroll either down or up to view the key service information could result in consumers not being clearly informed of the important information that might influence their decision to use the Service. The Tribunal concluded that a consequence of this was that consumers were likely to be unaware that they were not calling the organisation concerned directly.

The Tribunal considered the Level 2 provider's explanation that it was not possible to include the key service information in such a "small space" to be inadequate. The Tribunal noted that it was a Service provider's responsibility to operate a compliant service and that, if this was not possible, the Service should not operate. Furthermore, the Tribunal considered the Level 2 provider's response to the allegation to amount to a full admission of the breach.

Accordingly, the Tribunal upheld a breach of rule 2.2.1 of the Code.

Decision: UPHELD

Alleged breach 2

Paragraph 2.2.7. - "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.”

1. The Executive asserted that the Level 2 Provider had breached rule 2.2.7 because pricing on the promotional website was not prominent or proximate to the premium rate number on the website.

The Executive relied upon the PSA Guidance on Promoting premium rate services which states:

Paragraph 3.2

“As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code, number or call to action for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged...”

Paragraph 3.7

“Pricing information needs to be put where consumers will easily see it, not where it is hard to find. This is because the price ought to be part of what attracts consumers into making a purchase. The rules in our Code are there because consumers want this information so they can choose what they buy and how much they pay for 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.”

The Executive also relied upon the complainants’ accounts which variously alleged that consumers were unaware of the price for using the service, a sample of complaints is below:

“I was trying to contact sky tv I found this number on the Internet and called it unaware it was going to cost me £75...”

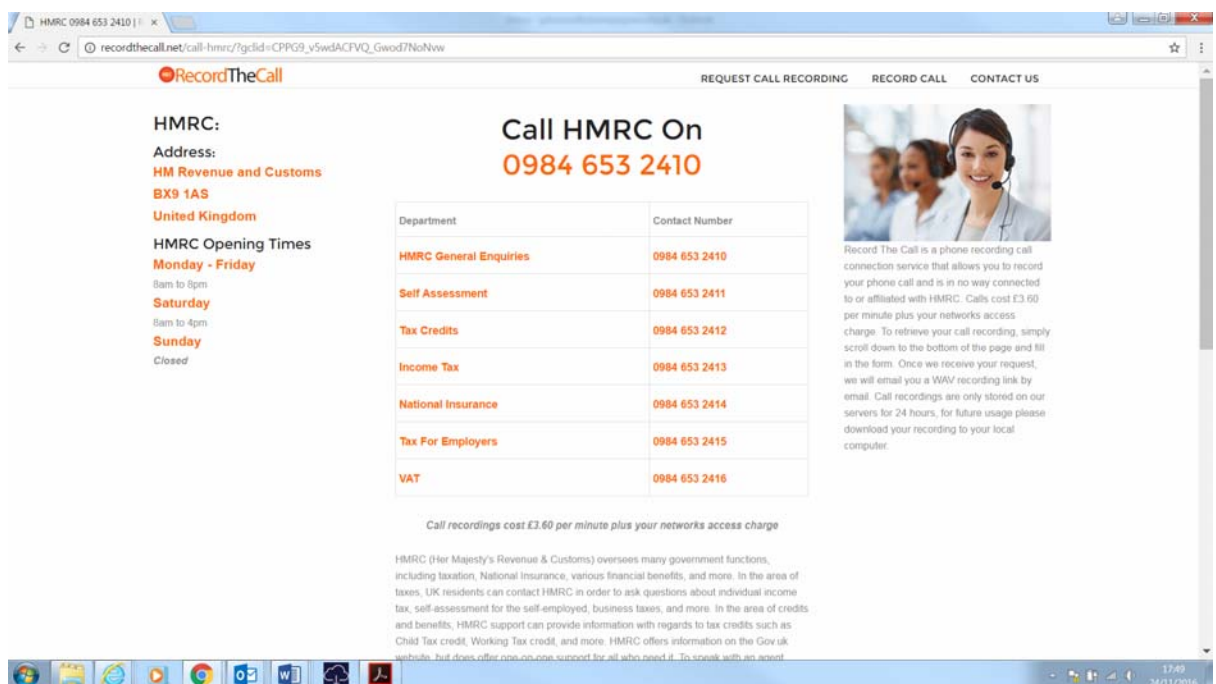
“Consumer googled sky to get a contact number this number came up first 09846532230 consumer didn't see or hear any pricing.”

“Consumer called this number 09846531118 to call sky however no one mentioned to her that it was going to cost £3.60 per minute...”

The Executive submitted that the monitoring it had conducted of the Service did not correspond with the promotional material supplied by the Level 2 provider. Whilst the Level 2 provider had submitted promotional material which included pricing information at the top the landing page (directly beneath the main premium rate number), the Executive’s regular Service monitoring showed that the pricing information was not displayed directly beneath the premium rate number. The Executive’s monitoring had been conducted using both desktop computers and mobile

devices.

When accessed and monitored from a desktop computer, the Service's landing page displayed the premium rate number prominently under the name of the relevant public or commercial organisation at the top of the page. Beneath the premium rate number was a table containing additional premium rate numbers for each separate department of the public or commercial organization. Pricing information was provided underneath this table containing additional premium in an extensive paragraph of information and also on the right hand side of the webpage. A screenshot from the Executive's desktop monitoring is below:



The pricing information positioned below the table read: "Call recordings cost £3.60 per minute plus your networks access charge" The pricing information within the paragraph of information on the right hand side of the website read: "Calls cost £3.60 per minute plus your networks access charge".

The Executive submitted that, although pricing information was stated on the website landing page, the fact that it was displayed either towards the bottom of the page or contained in a paragraph of information on the right hand side of the page, meant that consumers might not be drawn to the pricing information. In addition, the fact that the first premium rate number was highlighted in a large orange font meant that the number itself was more prominent than the subsequent pricing information.

When accessed and monitored from a mobile device, the Service's landing page displayed the premium rate number prominently under the name of the relevant public or commercial organisation at the top of the landing page. Beneath the premium rate number was a table containing additional premium rate numbers for each separate department of the public or commercial organisation.

However, the Executive noted that the pricing information was only visible when a user scrolled down the page. The pricing information read: “Call recordings cost £3.60 per minute plus your networks access charge”

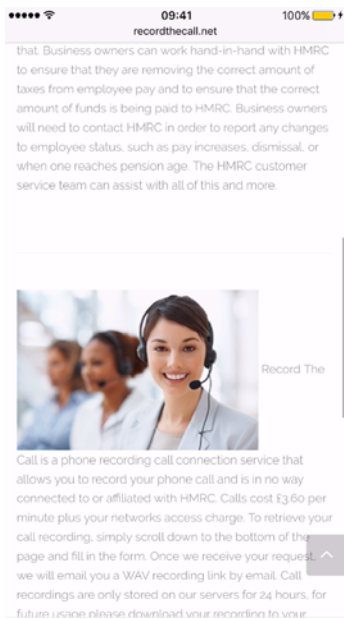
Screenshots from the Executive’s mobile device monitoring are below:



screenshot 1



screenshot 2



screenshot 3

The Executive submitted that the Level 2 provider had confirmed that 83.88% of its traffic was generated by mobile devices and that, due to the need for a consumer using a mobile device to scroll down to view the pricing information, it was likely that those consumers were not aware of the pricing information before using the service. The Executive therefore asserted that, due to the high percentage of users accessing the service via a mobile device, the majority of users of the Service may not have been aware of the pricing information prior to using the Service.

In light of the above, the Executive submitted that the pricing information was not sufficiently prominent and that consumers may not have been aware of the Service pricing before using the Service. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of rule 2.2.7 of the Code.

2. The Level 2 provider denied the breach. In its written representations to the Tribunal the Level 2 provider stated that it strongly disagreed with the Executive's comments in relation to the pricing information contained on the desktop website. It stated that the pricing information was deliberately placed in a bold font in a short sentence away from all other text, in order to draw consumers' attention to it. It stated that, had the pricing information been placed in a paragraph with other text it feared that this would not have been clear, nor sufficient to give the consumer the information they needed to make an informed decision. Additionally, the "extensive" text that the Executive referred to directly next to the pricing information contained all the relevant business information and pricing information that the consumer would need, should they wish. This text was intentionally placed alongside the pricing information so that it could be easily located by the customer. Similarly, the block paragraph sitting alone would have attracted the attention of the consumer. It submitted that its layout made the pricing information clear and also very accessible to the consumer. For these reasons, it

strongly rejected the Executive's comments.

The Level 2 provider also stated that the pricing information in relation to mobile devices had already been covered in the breach of rule 2.2.1, and therefore it did not believe the repeating of the breach was necessary under the breach of rule 2.2.7. The Level 2 provider submitted that, should the Executive wish to pursue this breach, it would request that the Executive agree and accept that no breach occurred under rule 2.2.1.

In respect of the Executive's comments that the "vast majority" of consumers would not have been aware of the pricing information, the Level 2 provider assumed that this gross over exaggeration was an effort by the Executive to make the service it provided appear as a scam. The Level 2 provider reiterated that it acknowledged that the recorded message at the commencement of the call failed to play on 21 September 2016, and reiterated that it openly accepted that, on this particular day, its consumers may not have been provided with the relevant pricing information. However, the Level 2 provider asserted that this would not have affected the "vast majority" of our consumers but, in reality, only a small minority.

The Level 2 provider stated that, in order to ensure that the affected customers were properly and fairly treated, it adopted a no quibble refund policy, therefore ensuring that any customers who did not make an informed decision to use the service were properly refunded. It pointed out that its submission that its customers were given a full overview of the Service and the appropriate information in relation to pricing was reflected in the number of complaints it had received. Only 1.15% of Service users had made a complaint, of which the vast majority had been refunded, the only reason that all consumers had not yet been refunded (69 remaining) was due to its funds currently being withheld. It did not have the cash flow, but all customers had been contacted and had been provided with an update advising that, upon release of the funds, they would be appropriately refunded.

The Level 2 provider relied upon the wording in Paragraph 2.15 of the "PSA Guidance on promoting premium rate services" to argue that it had not committed the alleged breach, which states; "*As long as the consumer is clearly informed of the price prior to purchase, then there is no need to inform the consumer in each individual part of a cumulative promotional process*". The Level 2 provider submitted that at any given point throughout the operation of the Service, accurate pricing information in relation to the Service had been fully available to the consumer. Therefore, in light of the wording of Paragraph 2.15, it failed to see how a breach had occurred, given that consumers were clearly informed of the pricing prior to making the purchase.

In response to questioning by the Tribunal, the Level 2 provider stated that it did not know how much working capital it had at the time the Executive's application for a withhold of Service revenue was granted. It stated that it was in a position where the Executive's enforcement action could close the business completely, therefore it did not want to refund clients if it did not know what was going to happen to the business

in the future. The Level 2 provider stated that it did not know how much cash was in the bank at the time it stopped making refunds to consumers. It stated that, previously, the business would have made a profit but that it also had high expenses. It estimated that the company profit margin was around 8 – 10 percent. It confirmed that it had voluntarily suspended the service and that a full pricing review was underway.

3. The Tribunal considered the Code and all the evidence before it.

The Tribunal considered that the need for a consumer using a mobile device to scroll either down or up to view the pricing meant that the pricing information was not sufficiently prominent or proximate to the premium rate number. The Tribunal noted that a consequence of this was that a consumer was unlikely to be aware of the cost of the Service before using the Service and that, furthermore, this was borne out by the consumer complaints received by the Executive.

The Tribunal did not accept the Level 2 provider’s submissions that the pricing was sufficiently prominent and proximate to the premium rate number. The Tribunal concluded from the evidence before it that the pricing was obscure and difficult for a consumer to access by virtue of the fact that the consumer had to scroll up or down to read it. The Tribunal was therefore satisfied that the pricing information in respect of the service was not sufficiently prominent and proximate to the premium rate number.

The Tribunal noted that it was a requirement of the Code that the pricing was sufficiently prominent and proximate, whether contained in the body of text or otherwise.

The Tribunal considered the Level 2 provider’s submission that the breach had already been covered in the allegation of breach of rule 2.2.7 of the Code. The Tribunal did not accept that this was the case as the breaches covered distinct aspects of the evidence, the breach of rule 2.2.1 being concerned with the prominence and proximity of the pricing information itself. In any event, the Tribunal concluded that, where there was an overlap in the harm occasioned by the breaches, the proper approach was to consider whether this should affect the sanctions ultimately imposed, rather than not uphold a breach which was made out on the evidence.

Accordingly, for the above reasons, the Tribunal upheld a breach of rule 2.2.1 of the Code.

Decision: UPHELD

Alleged breach 3

Rule 3.2.3 – “PRS must not mislead or be likely to mislead in any way”

1. The Executive asserted that the Level 2 provider had acted in breach of rule 2.3.2 of the Code as consumers were misled into using the Service and had thereby incurred

premium rate charges.

The Executive relied upon the PSA Guidance on ‘Promoting premium rate services’ which states at Paragraph 7.1:

“If consumers are to have trust and confidence in using PRS, it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, a key term or condition likely to affect a consumer’s decision to use the service.”

The Executive asserted that monitoring it had conducted showed that, for desktop devices, pricing information was displayed towards the bottom of the page and also within an extensive paragraph of information on the right hand side of the website. The pricing information at the bottom of the page read:

“Call recordings cost £3.60 per minute plus your networks access charge”

The Executive submitted that the wording of the pricing information, and in particular the reference to “call recordings,” was likely to mislead consumers into believing that they would only be charged at £3.60 per minute for “call recordings”, rather than for calls made to the Service. Accordingly, the Executive asserted that a breach of rule 2.3.2 of the Code had occurred.

2. The Level 2 provider denied the breach. It stated that it advised customers that call recordings cost £3.60 per minute, and whilst it understood that this might not be as clear as its current pricing information, which stated that “calls costs £3.60 per minute”. It did not consider that the Executive had taken into account the following considerations:

- that customers were advised that they had 24 hours to request their call recordings, and that this alone would indicate to them that the call they were making was being recorded;
- that at no point were consumers given the option to start recording their call; and that to the reasonable man, this would indicate that the call was being automatically recorded, and this was further highlighted by the website name which was clearly displayed as “Recordthecall.net”.

The Level 2 provider indicated that, upon receiving a request for further information from the Executive, it had quickly changed the wording on the website to reflect that the calls cost £3.60 per minute, in order to satisfy the Executive. Furthermore, upon changing the wording, the Level 2 provider stated that it did not see an impact in call volumes which highlighted that, prior to the change in wording, customers were not being misled; had they been, then a drop in the call volumes would have reflected this.

The Level 2 provider also referred to a previous PSA Tribunal ruling, whereby a Level 2 provider (Waqar Ashraf), was fined for being in breach of rule 2.2.3 of the Code; noting that the Executive had relied upon this ruling by way of precedent at the Interim Measures application. The Level 2 provider submitted that this case differed from that case in that: Mr Ashraf was found in breach on the basis that he had used the words “official” and “Govuk” in his URLs, that Mr Ashraf had also undoubtedly inferred that calls would cost a one off fee of £31 and implied an affiliation with the cost of a driving theory test, when the reality was that the cost of the call was £1.53 per minute in addition to the £31 booking fee. The Level 2 provider stated that this was undoubtedly deliberately misleading. However, the Level 2 provider failed to see how the Executive could rely upon this ruling in relation to the current alleged breach as at no point had it ever inferred that it was associated with the companies whose numbers it provided and it had in fact expressly stated on its website (as documented by the Executive) that it was in no way affiliated with the HMRC. The Level 2 provider submitted that the URL used to gain access to the Service made no reference to “gov.uk” nor to the word “official”, but simply stated “Recordthecall” and “HMRC”. Furthermore, the ruling of the Tribunal in the Waqar Ashraf case made no express reference to the provider’s failure to mention that the call would cost £1.53 per minute, and the Tribunal in that case was notably more concerned with the misleading use of the words “official”, “gov/uk” and the deliberate indication that the call would only cost £31.

The Level 2 provider further stated that Mr Ashraf had found to be in breach of this rule to the same level of severity that it had allegedly been found at and from examining the facts, it found this wholly disproportionate and completely unjustified. It stressed that it had never intended to mislead its consumers, nor did it feel it had done so. The Level 2 provider reiterated that the changes it had made in order to be more compliant would have had a gross impact on its data had its consumers been seriously misled prior to these changes, but this was evidently not the case. In light of all of the above, the Level 2 provider disputed that any breach has occurred.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal decided that the wording “call recordings cost £3.60 per minute” was ambiguous and was likely to mislead consumers who read it into believing that they would only be charged for call recordings rather than for calls to the Service itself.

The Tribunal considered the Level 2 provider’s submissions, including that it had made changes to the wording of the pricing information and that this had not impacted on the Service user data. The Tribunal did not consider that there was sufficient evidence before them to demonstrate that this was the case, noting that changes to the wording had been made only shortly before the Level 2 provider had voluntarily suspended the service.

In light of the Tribunal’s conclusion that the use of the phrase “call recordings cost £3.60 per minute” was unclear and ambiguous, the Tribunal was satisfied that consumers were likely to have been misled by the wording of the pricing information.

Accordingly, the Tribunal upheld a breach of Rule 2.3.2 of the Code.

Decision: UPHELD

Alleged breach 4

Paragraph 3.4.14(a)– “Level 2 providers must, within two working days of the service becoming accessible to consumers, provide to the PSA relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service.”

1. The Executive asserted that the Level 2 provider had breached paragraph 3.4.14(a) of the Code as it failed to provide the Phone-paid Services Authority with relevant details to identify the Service operating on the premium rate number 09846532400 to consumers for a period of time when the Service was operational.

The Code requires that Level 2 providers supply relevant details to identify services to consumers. The PSA Registration Scheme is in place to facilitate providers to supply relevant details to identify their services to consumers. Once a provider has supplied details of its services, including which premium rate numbers it operates on, the details then appear on the ‘Number Checker’ section of the PSA website, www.psauthority.org.uk. The Number Checker allows consumers to enter a phone number they may not recognise on their phone bill, and find out information regarding that number.

The Executive noted from the information supplied by the Level 2 provider that the Service commenced operation on 14 September 2016. However, the Executive noted that although the Level 2 provider had registered the Service with PSA on 13 September 2016, the premium rate number range 09846532370 to 09846532501 was not registered with the PSA until 9 November 2016. Furthermore, the Service had generated two complaints on the number 09846532400 prior to 9 November 2016, which demonstrated that the Service was operating on a number that at the time was not registered with the PSA.

The Executive submitted that the information on the PSA Number Checker indicated that the PRN 09846532400 was not registered with the PSA for almost two months.

The Executive asserted that where services are not registered, consumers do not have the ability to access information relating to the Service, which impairs the PSA’s regulatory function. The Executive submitted that the failure to provide the requisite information to the PSA by registering the Service number was a breach of paragraph 3.4.14(a) of the Code.

In response to questioning from the Tribunal, the Executive clarified that the evidence supplied by the Level 2 provider in the written response to the allegation related to different numbers to those which were the subject of the breach allegation.

2. The Level 2 provider denied the breach. It stated that it had previously discussed this issue with the Executive, and had provided evidence which supported that the numbers

were fully registered with the PSA, but did not receive a response. It had assumed that the Executive had accepted its argument that there had been a system error on the Executive's side. It stated that this was not the first piece of evidence that the Executive had chosen to ignore, which had made it feel that it was not being taken seriously and that the Executive's repeated decision to ignore its justifications had left it in a grossly disadvantaged position. It was therefore again submitting as part of its written representations, the evidence that it had first submitted in early November 2016 following the receipt of correspondence from the Executive accusing it of not registering its numbers. It had double checked following the Executive's correspondence and all the numbers were registered accordingly under its account. When the Level 2 provider ran a "Number Checker" search on a few of the numbers, the results came back and said the PSA had no record of it. At this point, it had advised the PSA it was unsure if its concerns were due to a bug in the PSA's new system. The following evidence was provided in relation to this:

Premium Rate Number or First Number in PRN Range	Last Number in PRN Range	Short code	Keyword	Payfort ID	Service Name	Status	
09846533500 	09846533548				Record The Call	Complete	View/Edit /Delete
09846531002	09846531501				Record The Call	Complete	View/Edit /Delete
09846532002	09846532369				Record The Call	Complete	View/Edit /Delete
09846530210	09846530219				Record The Call	Complete	View/Edit /Delete
09846532370	09846532501				Record The Call	Complete	View/Edit /Delete
09846536252	09846536501				Record The Call	Complete	View/Edit /Delete

If you want to check another number, please [click here](#).

Unfortunately we don't have any information about the number **09846533500**.

You should contact your phone network and ask them for details about this number and service. Ask for the phone number of the company operating the service (service provider) and contact them directly.

If you cannot contact the service provider, then please get it touch with us [here](#).

The Level 2 provider gave the following accompanying explanation of the steps it had undertaken:

"Used number ending with 33500 as an example and searched for it through <http://psauthority.org.uk/about-us/number-checker> The Result came back saying "Unfortunately we don't have any information about the number" when we looked at the numbers that were registered with the PSA, the number was clearly registered. For the avoidance of doubt, we double checked all the numbers that had been registered and went as far as checking registered numbers that we do not use, but the result came back stating "Unfortunately we don't have any information about the number". If you look at the numbers that were registered with yourselves, the number was clearly

registered.”

The Level 2 provider stated that it had also advised the Executive at this point that its concerns could have been in relation to defamation it had suffered as a result of Sky's Customer Service department. It stated that Sky began advising customers to redirect their claims to the Level 2 provider as the service provider, when in fact the service provider was not the Level 2 provider, but another company operating under a similar name: “RecordCall.co.uk”. Consequently, the Level 2 provider believed that the Executive's concerns may be due to this confusion.

The Level 2 provider submitted that all the numbers it used in relation to the Service were compliantly registered with the PSA, and therefore it believed that it was highly inappropriate for the Executive to allege that a breach had occurred in circumstances where the teething problems of a new system resulting from the change from “PhonePay Plus” to the PSA was likely to be the explanation why no information in relation to its numbers was being shown.

In response to questioning by the Tribunal, the Level 2 provider stated that in respect of some of the complaints to the PSA (which it listed), it had been unable to find a record of the call on its systems. In addition, one of the complaints to the PSA related to a date before the Service was in operation. In light of this, Level 2 provider therefore believed that not all of the complaints related to the Service.

The Level 2 provider also stated that it had been made aware that Sky Customer Services representatives had been directing some consumers to different departments within Sky, via the Service. The Level 2 provider stated that it had spoken to a lady from Sky Customer Services on the telephone. It confirmed that no note had been taken of her name and no recording of this call was available. It stated that the lady had provided it with a telephone number, but this was not a direct dial number. Its understanding was that the Customer Services representatives at Sky had been “googling” its number and passing it on to consumers. It had taken this up with Sky, as a significant number of complaints related to Sky.

When asked by the Tribunal to clarify whether consumers had been re-directed internally within Sky via the Service, or whether consumers had been simply provided with the telephone number of the Service, the Level 2 provider stated that it presumed consumers had been provided with the number of the Service, although it was not certain as to how Sky's systems worked. Due to these issues, together with the fact that call durations to Sky were generally longer, the Level 2 provider had taken the step of dropping Sky as a service.

3. The Tribunal considered the Code and all the evidence before it.

The Tribunal considered the Level 2 provider's representation that it had in fact registered the number range in question, but that the PSA registration system had not properly recorded the registration. The Tribunal carefully considered the screenshots of the registration database provided by the Level 2 provider. The Tribunal noted that the screenshots did not contain dates or times for the entries, and that the entries did

not relate to the number range which was the subject of the breach allegation. However, the Tribunal acknowledged that the Level 2 provider had supplied the screenshots in order to show more generally that the PSA registration database was not operating correctly at all relevant times and that there was a general technical problem with the registration system.

The Tribunal noted the Level 2 provider's submissions that a number of the PSA complainants may not have used the Service. The Tribunal accepted that one of the complaints, which pre-dated the commencement of the Service, was unlikely to relate to the Service. However, the Tribunal considered that the Level 2 provider's submission that a minority of the PSA complaints may not have related to the Service, did not affect the nature and content of the remaining complaints and therefore did not influence the Tribunal's decision making with regard to this breach (or any of the other alleged breaches).

Notwithstanding this, in light of the fact that the Executive had not produced evidence in rebuttal in order to establish that the PSA registration database had indeed been operating correctly at all times throughout the relevant period, and noting that the burden of proving the breach rested with the Executive, the Tribunal was not satisfied that the breach had been made out on the balance of probabilities.

Accordingly, the Tribunal did not uphold a breach of Paragraph 3.4.14(a) of the Code.

Decision: NOT UPHELD

Alleged breach 5

Paragraph 3.11.3 – “Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the Special conditions. A breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code.”

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special condition applicable to Information, Connection and/or Signposting Services (ICSS) had not been adhered to.

The Executive relied upon the evidence from monitoring conducted by the Executive, complainant accounts and the content of the Notice of Special Conditions for Information, Connection and/or Signposting Services (“ICSS Special Conditions”).

Paragraph 3.11.1 of the Code states:

“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 Notice of Special Conditions for Information, Connection and/or Signposting Services published in accordance with paragraph 3.11.4 of the Code defines Information, Connection and/or Signposting Services (ICSS) as follows:

“Premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services.”

The definition creates two distinct categories of ICSS; services that provide connection to organisations sought by consumers and those that provide information, advice and assistance on organisations. The two categories are defined as follows:

“Type 1 – ‘Call connection’ services. Type 1 services offer connection to a small number of organisations, rather than the full range that a national Directory Enquiry (DQ) service provides. In some cases Type 1 services may, in addition to connection, offer the number the consumer is seeking.

Type 2 – ‘Signposting’ and ‘Helpline’ or advice or assistance services (which may or may not include the consumer providing account details relating to an unrelated online account they hold, so that the ICSS provider can interact with the account on their behalf). Type 2 services usually offer consumers the number of one or a small number of organisations (but not onward connection to that number), operator-led assistance, or provide generic, pre-recorded advice via an Interactive Voice Response (IVR) system.”

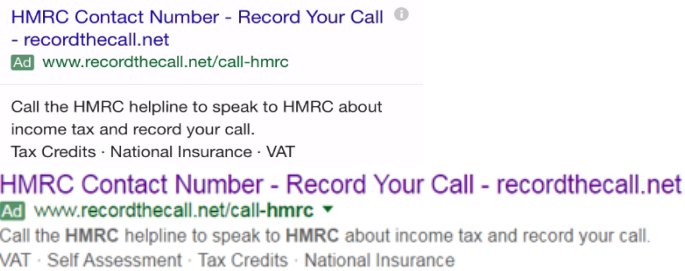
The Executive asserted that the Service fell within the Type 1 category for ICSS as it provided call connection to public or commercial organisations.

The Executive further asserted that Special Condition ICSS 1 had been breached by the Level 2 provider. Special Condition ICSS 1 states:

“Web-based promotions should not use internet marketing or optimisation techniques (such as metadescriptions or metatags) which mislead a consumer into believing (a) that their service is the actual service the consumer is seeking; or (b) that they are providing advice or information that is not already available from a public or commercial organisation (unless they genuinely are providing advice or information that is not available in this way). In addition, web-based promotions should contain metadescriptions which make the nature of the service clear and do not mislead the consumer into believing that they are the helpline or information the consumer is seeking. The Search Engine Marketing (SEM) should therefore clearly display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as “Premium rate connection service” or “Call connection service” within the result displayed for a Type 1 ICSS; and for

example “Premium rate assistance service” or “Information assistance service” for a Type 2 ICSS. Such a phrase must be positioned to ensure it is clearly on-screen when the consumer views the search engine results. For the avoidance of doubt alternative phrases may be used where they meet the above SEM description requirement.”

The Executive had monitored the Service and had discovered the below sponsored advertising on Google:



HMRC Contact Number - Record Your Call ⓘ
- recordthecall.net
Ad www.recordthecall.net/call-hmrc

Call the HMRC helpline to speak to HMRC about income tax and record your call.
Tax Credits · National Insurance · VAT

HMRC Contact Number - Record Your Call - recordthecall.net
Ad www.recordthecall.net/call-hmrc ▼
Call the HMRC helpline to speak to HMRC about income tax and record your call.
VAT · Self Assessment · Tax Credits · National Insurance

The Executive submitted that the use of language in the sponsored advertising such as “HMRC Contact Number” and “Call the HMRC helpline.” could mislead consumers into believing that the Service was linked to the actual public organisation.

In addition, the Executive asserted that the sponsored advertising for the Service did not provide an accurate description of the Service on offer.

In light of the above, the Executive submitted that internet marketing in respect of the service was misleading and did not make the nature of the service clear.

Accordingly, the Executive asserted that the Level 2 provider had not complied with Special Condition ICSS 1 and had consequently acted in breach of Paragraph 3.11.3 of the Code.

2. The Level 2 provider denied the breach. It stated that it was genuinely surprised that the Executive was alleging the breach and that it had gone through the Executive’s arguments on numerous occasions and still could not find justification for the alleged breach, for the following reasons: Special Condition ICSS 1 stated that “*The Search Engine Marketing (SEM) should therefore clearly display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as “Premium rate connection service” or “Call connection service” within the result displayed for a Type 1 ICSS*”. The Level 2 provider referred to the evidence submitted by the Executive and stated that, within this evidence, it was clear that the type of service had in fact been clearly displayed three times: in the website URL itself “Recordthecall.net”, within the link to the website “Speak to the HMRC – Record Your Call” and in the description of the Service “Contact the HMRC and Record your call”. In light of the fact that the Service provided was a call recording service, it failed to see how this was not an accurate reflection of the true nature of the Service.

The Level 2 provider submitted that Special Condition ICSS1 specifically states that the wording “call connection service” would be enough to accurately describe the service on offer, and that this inferred that there was no requirement to use the words “premium rate service” within the link. The Level 2 provider stated that it believed the Executive has misunderstood this rule, as the wording the Executive had used when describing the breach indicated that had it only used the term “call-connection service” then there would not have been a breach. The Level 2 provider asserted that the words it had used were a more accurate reflection of the service on offer, and therefore it did not see the logic or the reasoning as to how this could be interpreted as a breach in circumstances where the consumer was given a more accurate description of the service than the examples provided for in Special condition ICSS 1.

The Level 2 provider further stated that it did not agree with the Executive’s submission that the use of language in the sponsored advertising such as “HMRC Contact Number” and “Call the HMRC helpline..” could mislead consumers into believing that the Service was linked to the actual public organisation. The Level 2 provider wished to point out that it did not use the HMRC logo, nor did it use the words “gov.uk”, both of which would have inferred an affiliation with the HMRC (in line with previous Tribunal rulings). The Level 2 provider had deliberately sought not to mislead consumers by only using the phrases “contact number” and “call the helpline”, as it believed that any other wording would not have accurately advertised the Service. The Level 2 provider therefore submitted that the Executive would have found fault whatever words it had used.

In light of all of the above, the Level 2 provider firmly rejected the alleged breach.

3. The Tribunal considered the Code and the evidence before it. The Tribunal noted that a Notice of Special conditions in respect of ICSS Services had been issued by the Executive in light of evidence that ICSS were high risk services. The Tribunal also noted that the Special conditions in respect of ICSS provided very clear guidance to providers and laid out a series of prescriptive steps in order to assist providers in operating a compliant service.

The Tribunal considered the representations made by the Level 2 provider. Whilst the Tribunal accepted that the “Call Recording” element of the Service was clear from the metadescriptions and sponsored advertising, it was not made clear that the Service was also a “Call Connection” Service. The Tribunal noted that Special condition ICSS 1 stated that Search Engine Marketing should “*clearly display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as “Premium rate connection service” or “Call connection service” within the result displayed for a Type 1 ICSS*”

The Tribunal considered that the metadescriptions and words used in the sponsored advertising such as “HMRC Contact Number” and “Record your Call” were misleading to consumers in the absence of word making it clear that the Service was a “Call Connection Service” and that, consequently, the consumer would not be directly calling the organisation in question.

The Tribunal was therefore satisfied, on the balance of probabilities, that the Google adverts and metadescription in respect of the Service did not comply with Special Condition ICSS 1.

Accordingly, the Tribunal was satisfied that the Level 2 provider had acted in breach of Paragraph 3.11.3 of the Code.

Decision: UPHELD

Alleged breach 6

Paragraph 3.11.3 – “Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the special conditions. A breach of any special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code”.

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special condition applicable to Information, Connection and/or Signposting Services (ICSS), namely Special Condition ICSS 3 had not been adhered to.

The Executive relied upon monitoring it had conducted, consumer complaints and the Notice of Special conditions for Information, Connection and/or Signposting Services.

Special condition ICSS 3 states:

“Promotional material must clearly and prominently state (where this is factually the case) that the information (including the number), advice or assistance provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists.”

The Executive had monitored the Service and discovered the below website landing page:

The screenshot shows a web browser window displaying the 'Record The Call' service page for HMRC. The page features a navigation bar with 'REQUEST CALL RECORDING', 'RECORD CALL', and 'CONTACT US'. On the left, there is a sidebar with HMRC contact information: 'Address: HM Revenue and Customs, BX9 1AS, United Kingdom', 'HMRC Opening Times: Monday - Friday 9am to 5pm, Saturday 9am to 4pm, Sunday Closed'. The main content area is titled 'Call HMRC On 0984 653 2410' and contains a table of services and their contact numbers:

Department	Contact Number
HMRC General Enquiries	0984 653 2410
Self Assessment	0984 653 2411
Tax Credits	0984 653 2412
Income Tax	0984 653 2413
National Insurance	0984 653 2414
Tax For Employers	0984 653 2415
VAT	0984 653 2416

Below the table, it states 'Call recordings cost £3.60 per minute plus your network access charge'. There is also a small image of a woman wearing a headset and a text box explaining the service: 'Record The Call is a phone recording call connection service that allows you to record your phone call and is in no way connected to or affiliated with HMRC. Calls cost £3.60 per minute plus your network access charge. To witness your call recording, simply scroll down to the bottom of the page and fill in the form. Once we receive your request, we will email you a MP3 recording file by email. Call recordings are only stored on our servers for 24 hours, for future usage please download your recording to your local computer.'

The Executive submitted that the Level 2 provider had not adhered to the Special

condition ICSS 3. Special condition ICSS 3 states that promotions “*must clearly and prominently state (where this is factually the case) that the information (including the number), advice or assistance provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost.*” The Executive noted that the website landing page did not state that the information (including the number), advice or assistance provided by the Service was available direct from the relevant organisation.

In addition, the Executive noted that a link to the homepage of the website containing the actual number the consumer was looking for was not been included on the Service promotions.

In light of the above, the Executive asserted that the Level 2 provider had acted in breach of Special condition ICSS 3. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of Paragraph 3.11.3 of the Code.

2. The Level 2 provider admitted the breach. It acknowledged that it was not initially fully compliant with Special condition ICSS 3, but stated that upon becoming aware of the Special Condition it had amended the website straight away in order to be fully compliant. The Level 2 provider stated that it could not deny that this was due to an error on its part. It was not aware that it had been flagged as a high risk service at the point at which it commenced the operation of the Service, and therefore it did not fully understand the rules under Special Condition ICSS 3. It stated that, had it been made aware of this sooner, the changes to the website would have been made at that point. It stated that the changes it had made were made entirely voluntarily and also rapidly to show full compliance.

The Level 2 provider stated that it believed the severity of the breach had been wrongly classified by the Executive as very serious and, whilst it admitted that it was not compliant, it did not believe this seriousness rating was a fair reflection of the mistake, particularly bearing in mind some of the Executive’s comments overlapped with the comments in respect of the alleged breach of rule 2.2.1.

The Level 2 provider referred to the “Descriptors” in the Supporting Procedures in relation to the severity scale and submitted that the Service did not satisfy the descriptors in relation to “very serious” breaches for the following reasons: the Service did not provide any harmful content, it was clear about the nature of the Service and what it provided, any consumers who were misled would have received a refund in line with its refund policy and therefore it could not be said to be seeking revenue through non-compliance.

In addition, the Level 2 provider submitted that it did not accept that its error would have had a highly detrimental impact on its consumers, although it did accept that it may damage consumer confidence in premium rate services. In this respect, it had taken steps to remedy this by making the relevant amendments to the website and also refunding all consumers who requested a refund.

The Level 2 provider also referred to the list of examples accompanying the “very serious” descriptors and indicated that these were either not applicable or did not fit

the facts of the case for the following reasons: its consumers were able to exit the Service by terminating the call, pricing information and relevant promotional material had been provided, and all amendments to the Service had been made voluntarily by the Level 2 provider in order to comply with the Special conditions

The Level 2 provider submitted that, whilst it accepted the breach, it believed that in light of the customer refunds issued and changes voluntarily made to the Service, it would be more realistic to class this as a moderate breach in terms of severity.

3. The Tribunal carefully considered the Code and the evidence before it. The Tribunal noted that, in addition to offering a call connection service, the Service also gave consumers 'assistance' by offering the option of obtaining a recording of their call. The Tribunal therefore concluded that the Service was a call connection service plus a recording service. The Tribunal were not satisfied that this assistance was available at no or lower cost elsewhere.

In addition, the Tribunal concluded that the wording of Special Condition ICSS 3 as drafted did not specifically include a requirement for a provider to make clear that a "call connection" to the relevant organisation was available for free or at lower cost elsewhere. The Tribunal noted that ICSS 3 referred only to "*information (including the number), advice or assistance*".

The Tribunal noted the Level 2 provider's admission that it had not provided a link to the website where the number could be obtained, but had now provided this information. The Tribunal indicated that the apparent intention of ICSS 3 was to make the provision of this information a requirement where it related solely to a "call connection", but this was inconsistent with the actual wording of ICSS 3 itself. In light of the above, and notwithstanding the Level 2 provider's admission of the breach, the Tribunal was not satisfied that the Level 2 provider had breached Special Condition ICSS 3.

Accordingly, the Tribunal did not uphold a breach of Paragraph 3.11.3 of the Code.

Decision: NOT UPHELD

Alleged breach 7

Paragraph 4.2.2 - "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)."

1. The Executive asserted that the Level 2 provider had breached paragraph 4.2.2 of the Code because the promotional material supplied by the Level 2 provider was misleading.

The Executive relied upon the correspondence exchanged with the Level 2 provider and the monitoring evidence obtained by the Executive.

Promotional material supplied by the Level 2 provider in response to the Executive's requests for information (RFIs) showed pricing information at the top the landing page

(directly beneath the main premium rate number). The Executive noted that this same promotional material had also been supplied by the Level 2 provider on 10 November 2016 in response to an informal enquiry made by the Complaints Assessment Team.

The Executive submitted that the monitoring it had conducted of the Service on 21 September 2016, 6 October 2016 and 8, 11, 17 and 24 November 2016 did not correspond with the Service promotional material supplied by the Level 2 provider. When monitored by the Executive, the Service website landing page did not include the first mention of pricing information at the top of the page.

The Executive therefore asserted that the promotional material provided by the Level 2 provider was not what would have appeared to consumers accessing the service and in light of this, the promotional information supplied by the Level 2 provider to the Executive was false and misleading.

In addition, the Executive noted that the Level 2 provider had only provided the Service promotional material as it would have appeared to a consumer accessing the Service from a desktop device. This was despite the Level 2 provider having confirmed that 83.88% of its traffic was generated by mobile devices. This was significant as consumers accessing the Service from a mobile device would have had to scroll down to the page to view all key Service information including pricing information. The Executive asserted that the information supplied by the Level 2 provider, namely the promotional information in respect of desktop users only, was incomplete and therefore misleading by omission.

The Executive asserted that the Level 2 provider had supplied false, incomplete and misleading information in an attempt to convince the Executive that the complainants' accounts were without basis and that pricing information was clearly and prominently stated on promotions, in order to persuade the Executive that an investigation was not warranted.

For the reasons set out above, the Executive asserted that the Level 2 provider had acted in breach of paragraph 4.2.2 of the Code.

2. The Level 2 provider admitted the breach in part. It stated that it had been fully co-operative and provided all information the Executive had requested throughout the investigation. It accepted that, due to it misinterpreting this particular request, it only provided the customer journey for a desktop user. However, it stated that had the initial request for information been more specific it would have happily provided the information.

The Level 2 provider further stated that it had only been given a very short time frame of three days to respond to the notice requesting the information and as it did not want to miss the deadline, it did not waste time in providing information in respect of the Service that was no longer in place, nor information that the Executive had not requested. The Level 2 provider also stated that the time frame within which to respond was over a weekend, but it co-operated fully without complaint, even though the standard practice is to not include non-business days in a response time.

The Level 2 provider did not agree with the Executive's assertion it was deliberately trying to mislead the Executive in order to appear compliant. It stated that this was statement was unfair and not an accurate reflection of how it had cooperatively corresponded with the Executive throughout the process.

The Level 2 provider stated that it was prepared to admit the breach in part, because it had misinterpreted the request for further information dated 10 November 2016, and therefore, omitted to provide the customer journey in relation to mobile users. However, the Level 2 provider stated that it did not agree with any other statements made by the Executive.

The Level 2 provider submitted that the Executive had essentially repeated its arguments in relation to the alleged breaches of rules 2.2.1 and 2.2.7 in respect of this breach.

3. The Tribunal considered the Code and the evidence before it. The Tribunal were satisfied that the information requested by the Executive clearly related to all promotional material in respect of the Service. The Tribunal noted that the Level 2 provider had chosen to supply promotional material relating to desktop users, which was of relevance to only approximately 15 percent of the Service users.

The Level 2 provider appeared to be suggesting that it either misunderstood the request or that it had insufficient time to provide the information requested. The Tribunal did not accept the Level 2 provider's submission that it had not supplied all of the promotional material due, in part, to the short timeframe for providing the information. The Tribunal noted that there had been no request for further time to supply the material but in any event, the promotional material for both desktop users and mobile users of the Service should have been readily available to the Level 2 provider.

The Tribunal noted that the promotional material discovered by the Executive in respect of mobile users demonstrated significant issues with the service, including pricing which was not sufficiently prominent or proximate. The Tribunal was satisfied that, in supplying only some of the promotional material to the Executive, the Level 2 provider had, by omission, provided misleading information to the Executive. Indeed, the Level 2 provider had made an admission in this regard.

Consequently, the Tribunal was satisfied that the Executive had demonstrated on the balance of probabilities that the Level 2 provider had deliberately provided misleading information.

Accordingly the Tribunal upheld a breach of paragraph 4.2.2 of the Code

Decision: UPHELD

SANCTIONS

Representations on sanctions made by the Executive

The Executive submitted that the following sanctions were appropriate:

- a formal reprimand;
- a fine of £750,000;
- a requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority before charging any new consumers; and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made.

based on a preliminary assessment of breaches 1, 2 and 3 as “serious” and breach 4 as “significant” and breaches 5,6 and 7 as “very serious”.

The Level 2 provider indicated that it agreed with the imposition of a formal reprimand and agreed in part with a requirement to obtain compliance advice, stating that it would be receptive to receiving advice from the PSA in order to prevent any future mistakes regarding compliance. It did not agree that a requirement to refund consumers was necessary as it had already refunded consumers in line with its “no quibbles” refund policy. The Level 2 provider indicated that its present cash flow situation prevented it from issuing refunds at the current time as it was prevented from accessing withheld funds. However, individual responses had been provided to each complainant.

The Level 2 provider did not accept the proposed fine amount, pointing out that in the comparable case of “Waqar Ashraf” a fine of just £85,000 had been imposed, which would mean that it was incredibly unjust for the Tribunal to recommend a fine of £750,000 in this case. The Level 2 provider stated that the Executive had recommended the top tier of sanctions for all breaches and that this did not reflect the fact that it had taken all possible steps to remedy the breaches, even where it did not accept that a breach had occurred. It had also provided evidence to the Executive of all of the changes made to the Service. In light of this, the Level 2 provider submitted that the proposed sanctions and severity ratings were completely disproportionate. The Level 2 provider stated that a total of 1.15 percent of Service users had made a complaint about the Service, which was accelerated by the fact that Sky and HMRC directed consumers who wished to complain to the PSA, the total complaints to the PSA equating to 0.3 percent of users. Therefore the Level 2 provider submitted that any imposed sanction should reflect the fact that 98.85 percent of Service users were presumably happy with the service and anyone who was not happy had been refunded in line with the “no quibbles” refund policy.

The Level 2 provider further stated that the Executive’s proposed fine would leave it with no option but to fold the company, as it simply did not have the funds; it would also prevent 68 consumers who were currently awaiting a refund from obtaining it, and that this matter had already been discussed with the Executive. The Level 2 provider stated that it would be morally unacceptable if it were not able to refund consumers as

promised. It indicated that it would not be fair, either to the Level 2 provider or to consumers, if the proposed sanctions were upheld. The Level 2 provider stated that it would continue to refund all consumers who made a complaint, should the cash flow to do so be available from withheld funds. The Level 2 provider stated that the fine amount should be reduced to 1.15 percent to reflect the proportion of users who had complained and that a proportionate fine amount would therefore be £10,925.

Initial overall assessment

The Tribunal's initial assessment of the breaches of the Code was as follows:

Rule 2.2.1 – Transparency and Pricing

The initial assessment of the breach of rule 2.2.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The case had a clear detrimental impact on consumers; and
- The nature of the breach meant the service would have damaged consumer confidence in premium rate services; and
- The cost incurred by consumers was higher and the service had generated higher revenues, as a result of the breach, as consumers were unlikely to have appreciated the key Service information or understand the true nature of the Service and would therefore have been unlikely to appreciate that they were not directly calling the organisation they wished to reach; and
- The service had been operated in such a way that demonstrated reckless non-compliance with the Code.

Rule 2.2.7 – Pricing Information

The initial assessment of the breach of rule 2.2.7 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The case had a clear detrimental impact on consumers; and
- The nature of the breach meant the service would have damaged consumer confidence in premium rate services; and
- The cost incurred by consumers was higher and the service had generated higher revenues, as a result of the breach, as consumers may not have been aware of the price for using the Service; and
- The service had been operated in such a way that demonstrated reckless non-compliance with the Code.

Rule 2.3.2 – Misleading

The initial assessment of the breach of paragraph 2.3.2 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The case had a clear detrimental impact on consumers; and
- The nature of the breach meant the service would have damaged consumer confidence

- in premium rate services; and
- The cost incurred by consumers was higher and the service had generated higher revenues as a result of the breach, as consumers may not have been aware that a call connection via the Service would incur a charge; and
- The service had been operated in such a way that demonstrated reckless non-compliance with the Code.

Paragraph 3.11.3 – Breach of Special Condition ICSS 1

The initial assessment of the breach of paragraph 3.4.1 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The breach had a highly detrimental impact on consumers; and
- The nature of the breach and scale of the harm and potential harm caused to consumers was likely to severely damage consumer confidence in premium rate services; and
- Consumers had incurred an unnecessary cost; and
- The breach demonstrated fundamental non-compliance with Code and the Special Conditions in relation to ICSS. The Tribunal noted that the Service had resulted in a high degree of actual and potential consumer harm in that a large number of consumers had used the service over a short period of time and the Service had quickly generated very high levels of revenue as a result, this being the very harm the Special Conditions had been introduced to prevent. The Tribunal noted that the Special conditions were highly prescriptive and provided guidance in the clearest terms to providers who wished to run a compliant service.

Paragraph 4.2.2. – Provision of False Information

The initial assessment of the breach of paragraph 4.2.2 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The breach demonstrated fundamental non-compliance with the Code; and
- The Level 2 provider had deliberately supplied misleading information to the Executive.

Final overall assessment

The Tribunal's initial assessment was that, overall, the breaches were **very serious**.

The Tribunal did not find any aggravating factors.

The Tribunal found one mitigating factor, namely that the Level 2 provider had voluntarily suspended the Service. However, the Tribunal noted that this did not occur until approximately three weeks after the Executive's first contact with the Level 2 provider in respect of its concerns about the Service, and only after the Interim Warning Notice in respect

of the application for interim measures had been served on the Level 2 provider. For these reasons, the voluntary suspension could only provide limited mitigation.

The Level 2 provider's evidenced revenue in relation to the Service in the period from September 2016 to December 2016 was in the range of Band 2 (£500,000 to £999,999).

Having taken into account the circumstances of the case, the Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**. In determining the final overall assessment for the case, the Tribunal took into account the fact that the Special Conditions in respect of ICSS had been imposed in light of the evidence that ICSS are a high risk service type with the capacity to result in high levels of revenue being generated in a short period of time and a high degree of consumer harm, which was the case here.

The Tribunal also took into account that the breaches, when viewed in combination, were highly likely to have resulted in a misleading consumer journey in respect of the Service.

Sanctions imposed

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

- a formal reprimand;
- a total fine of £645,000, comprised of:
 - £85,000 fine in respect of breach of rule 2.2.1 (transparency and pricing);
 - £85,000 fine in respect of breach of rule 2.2.7 (pricing prominence);
 - £75,000 fine in respect of breach of rule 2.3.2 (misleading);
 - £250,000 fine in respect of breach of paragraph 3.11.3 (Special Condition ICSS 1);
 - £150,000 fine in respect of breach of paragraph 4.2.2 (Provision of false information).
- a requirement that the Level 2 provider obtain compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority before charging any new consumers;
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made.

In reaching the above fine amounts, the Tribunal had regard to the principle of proportionality and took into account the overall seriousness of the case, the nature of the consumer complaints and the actual and potential consumer harm occasioned by the breaches, together with the Level 2 provider's representations with regard to sanctions and their likely impact. The Tribunal was mindful that there was a degree of overlap in the harm occasioned by the breaches of rules 2.2.1, 2.2.7 and 2.3.2 of the Code and reflected this in the fine amounts imposed in respect of those breaches, which would otherwise have been higher. The Tribunal

noted that it viewed any breach of the Special conditions to be of the utmost seriousness, given that Special conditions had been put in place to protect consumers from serious harm caused by high risk services, and in order to provide clear guidance to providers as to how to run a compliant service. The Tribunal considered there to be a need to impose sanctions in respect of this breach, and in respect of the case as a whole, which were sufficient to punish and deter malpractice of this nature and to protect consumers from similar malpractice in the future.

The Tribunal took into account the Level 2 provider's gross revenue, noting that the service had generated very high levels of revenue over a short period of time. It also took into account the Level 2 provider's submission that 30-40% of consumers had obtained a recording of their calls and that the Level 2 provider had previously actively refunded consumers, these being submissions which the Tribunal accepted. In light of these factors, the Tribunal were satisfied that a total fine in the amount of £645,000 was proportionate in all the circumstances of the case.

Administrative charge recommendation

(reduced by 5% as two breaches were not upheld) :

95%

Appendix A

Application for interim measures pursuant to Code of Practice paragraph 4.6

Case ref:	116798
Service:	“Record the Call” - Information Connection and Signposting Service (“ICSS”)
Level 2 provider:	DK Calls Ltd
Level 1 providers:	TelecomIQ Ltd
Cost:	£3.60 per minute
PRNs:	09846533500 to 09846533548 09846531002 to 09846531501 09846532002 to 09846532369 09846530210 to 09846530219 09846532370 to 09846532501 09846536252 to 09846536501
Tribunal number:	197

Adjudication

- The Tribunal has paid full regard to the material supplied by the Executive. In respect of the material submitted by the Executive, the Tribunal noted in particular:
 - a) 48 complaints had been received about the Service from members of the public;
 - b) The very serious nature of the apparent breaches referred to by the Executive, including their submissions on the apparent lack of transparent pricing and the potentially misleading promotional material in relation to the service;and
 - c) The information in the Debt Collection Withhold Assessment
- The Tribunal has paid full regard to the representations provided by the Level 2 provider. The Tribunal noted in particular:
 - a) The Level 2 provider’s representations that it had made improvements to the promotional material. However, in relation to these improvements the Tribunal noted that:
 - the changes appeared to be minimal and were not sufficient either to deal with any past harm caused to consumers or to make the service compliant moving forwards;
 - the pricing still did not appear to be sufficiently clear and it was likely that some additional wording would be required in order to make the service compliant with the Special Conditions in relation to ICSS;

- the newly introduced 12.5 minute cap on call duration potentially made the service more harmful to consumers, as the chances of a consumer resolving any issues with the entity it was calling within the 12.5 minute time frame were slim.
- b) The Level 2 provider's indication that it had received high numbers of complaints in respect of the service, and that complainants often did not digest or understand the service information.
- c) The Level 2 provider's representation that it had not been previously asked by the Executive to make changes to the service, which was not persuasive, noting that it was the Level 2 provider's responsibility to run a compliant service.
- d) The Level 2 provider's representation that only 0.07% of calls to the service resulted in complaints was noted, but the Tribunal considered that many consumers of the service may not have received or reviewed their telephone bills yet.
- e) Any separate action by BT in relation to concerns over Artificially Inflated Traffic ("AIT") did not affect the Tribunal's decision making.
- f) The Level 2 provider's representations with regard to the value offered by the service were noted, however it appeared from the available evidence that consumers were likely to be misled by the service and that the service was designed to generate as much revenue as quickly as possible.
- g) The Level 2 provider's representations did not persuade the Tribunal that interim measures were unnecessary and the Tribunal were not satisfied that they had been provided with substantial information to support the Level 2 provider's representations about the background reasons for the apparent breaches.
- The Tribunal has paid regard to the Supporting Procedures, including the factors set out at paragraph 80 and paragraph 91.

Having considered the evidence before it, the Tribunal has made the following determinations:

1. At first appearance (and subject to evidence, arguments or information being later supplied and/or tested), there does appear to be sufficient evidence that could support a breach of Code of Practice rules 2.2.1, 2.2.7, 2.3.2, and 3.4.14(a).
2. The Tribunal does consider that the Level 2 provider will not be able or willing to pay such refunds, administrative charges and/or financial penalties that may be imposed by a Tribunal in due course. The Tribunal notes in particular:
 - a) the potential seriousness of the breaches, and high service revenue, which could result in a higher level of fine or a universal refunds sanction;
 - b) the Level 2 provider's failure to provide any evidence to show that it could or will pay any financial penalty that may be imposed;
 - c) the Tribunal takes into account the Executive's comments in its Debt Collection Withhold Assessment regarding:

- i. the Level 2 provider's recent date of incorporation, which was 13 May 2016
 - ii. the Level 2 provider's lack of filed accounts as a newly incorporated company which the Tribunal considered in the context of the concerns raised by the Executive about the apparently deliberately misleading nature of the service.
3. Having noted the previous case referenced by the Executive, the Tribunal considers this case to be more serious than the referenced case in light of the apparent breaches. The estimated fine is a reasonable assessment at this stage of a sanction which may be imposed by a Tribunal in due course, noting that this could also be a case in which a universal refund sanction is imposed in due course. The Tribunal considers that the top estimate of service revenue provided by the Executive is likely to be the more accurate estimate, given the Level 2 provider's own representation that 67,000 calls have been made to the service to date, and noting that the revenue figures provided for September 2016 represent approximately 2 weeks revenue due to the commencement of the service halfway through that month.
4. The Tribunal considers that the interim measures set out below are appropriate and proportionate to take in the circumstances of this case, noting the apparent serious harm to consumers and the need for there to be funds available to refund consumers in due course.
5. Accordingly, the Tribunal hereby directs that:
 - a) PSA is authorised to direct a withhold of up to £900,000.
 - b) The sums directed to be withheld may be allocated and re-allocated between any Network operators or Level 1 providers for the Service as the Executive sees fit from time to time, provided that the total sum withheld by all providers does not exceed the maximum sum authorised in this decision.
 - c) The Executive is given discretion to vary the total directed to be withheld downwards in the event that it is provided with alternative security which is, in its view, sufficient to ensure that such refunds, administrative charges and/or financial penalties as it estimates a CAT may impose in due course are paid.
 - d) Such interim measures are to be revoked upon the case being re-allocated to Track 1 or otherwise discontinued without sanction.

Robin Callender Smith

6 December 2016