

Tribunal meeting number: 211

Case reference: 102051

Level 2 provider: Mark Cross

Type of service: Adult subscription service; Adult virtual chat service

Level 1 provider: Oxygen8 (UK) Ltd; Datapro Services Ltd

Network operator: All Mobile Network operators

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

Background

The case concerned an adult subscription service operating on shortcode 89179 and 89121 (Service 1) and an adult virtual chat service operating on shortcode 89077 (Service 2).

The Level 2 provider for Service 1 and Service 2 was Mark Cross (the “Level 2 provider”). The Level 2 provider had been registered with the Phone-Paid Services Authority since 19 May 2015.

The Level 1 provider for Service 1 was Oxygen8 Communications UK Limited (“Oxygen8”) and the Level 1 provider for Service 2 was Datapro Services Limited.

The top Level 1 provider for shortcode 89077 was Dialogue communications Ltd. The second Level 1 provider was BT Agilemedia, which is a trading name for British Telecommunications PLC. The third level 1 provider Datapro Services Ltd has a direct contractual relationship with the Level 2 provider.

On the 14 March 2016 the Customer Relationship Management (CRM) system automatically created a task, alerting the Phone-paid Services Authority’s Registrations Team (the “RT”) that an organisation had recently registered as a Charity and it needed to be verified. Whilst undertaking the process of verification, the RT discovered evidence to suggest that the Level 2 provider was operating adult services under the guise of a charity. This prompted the Executive to conduct further investigations into the Level 2 provider’s services.

Service 1

Service 1 was stated by the Level 2 provider to be to be an Adult SMS subscription service operating on shortcodes 89179 and 89121, charged at £1.50 per text message received. The Level 2 provider stated that a consumer would receive a maximum of three sex alerts per day.

The Level 2 provider confirmed that Service 1 commenced operation in March/April 2015 and that it was operational at the time of the investigation. However, Oxygen 8 confirmed that Service 1 commenced operation on 27 July 2015.

Service 1 was promoted on the website wickedsearch.co.uk (the Website).

The Executive visited the Website and engaged with Service 1 using a monitoring phone. The Executive sent the key word 'Dogging' to the Service shortcode 89179.

The Executive monitored the Service from 31 October 2016 to 8 November 2016.

The Executive noted that a total of 6 chargeable messages were received from shortcode 89179 and were billed to the monitoring handset.

Screenshots of the website and screenshots of the Executive's monitoring of Service 1 can be found at Annex 1.

Service 2

Service 2 was stated to be a "chat service" operating on shortcode 89077, charged at £1.50 per text message received plus network charges.

The Level 2 provider, was unable to confirm but stated that it believed that Service 2 commenced operation in 2015 and that it was currently live but producing very little traffic. However, information provided to the Executive by Datapro Services Ltd demonstrated that the Level 2 provider had first received out-payments for Service 2 in September 2014.

Whilst Service 2 was not actively being promoted, when monitoring the service, it was discovered that there were still live pages in the "sex story" sections of the website where Service 2 was advertised.

The Executive visited the Website and engaged with Service 2 using a monitoring phone. The Executive sent the key word "LEA" to Service 2 on shortcode 89077.

The Executive monitored Service 2 from 19 January 2017 until 20 January 2017.

Screenshots of the website and screenshots of the Executive's monitoring of Service 2 can be found at Annex 2.

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).

The Executive sent a Warning Notice to the Level 2 provider. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice, 12th, 13th and 14th editions (the "Code"):

- Rule 2.2.5 – Pricing Information (12th edition) (Rule 2.2.7 13th and 14th editions)
- Rule 2.2.1(a) – Transparency (12th edition) (Rule 2.2.2 13th and 14th editions)
- Rule 2.5.9 – Avoidance of Harm (12th, 13th and 14th editions)

- Paragraph 4.2.4 – Provision of false or misleading information (either by inclusion or omission) (12th and 13th editions)
- Paragraph 3.4.1 – Registration (12th edition)

The Tribunal reached a decision on the breaches raised by the Executive on 22 June 2017.

The Tribunal considered the following evidence in full:

- The Executive's monitoring evidence
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider's responses including supporting documentation, and the Level 2 provider's other evidence submitted in the course of the investigation)
- Correspondence between the Executive and the Level 1 providers
- Service revenue information
- The Warning Notice and attachments
- Level 2 provider's response to Warning Notice; and
- Post-Warning Notice correspondence between the Executive and Level 2 provider

Submissions and Conclusions

Preliminary Issue

The Tribunal considered as a preliminary issue whether the Level 2 provider had been duly notified of the Tribunal Hearing date. In response to questioning on this matter, the Executive confirmed that the hearing date had been notified to the Level 2 provider via email dated Friday 2 June 2017. The email in question was provided for the Tribunal's consideration. The Tribunal was satisfied that the Level 2 provider had been given notice of the Hearing date.

Alleged Breach 1

Rule 2.2.5 - "In the course of any promotion of a premium rate service, 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". (12th Code edition)

"(Rule 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. 13th and 14th editions)".

1. The Executive asserted that the Level 2 provider breached rule 2.2.5 of the Code due to the promotional material of Service 1 and Service 2 not containing pricing information that was sufficiently prominent or proximate to the means of access to the services.

The Executive relied upon the information presented on the service Website, the Executive's monitoring of the service and the PSA's Guidance on Promotions and Promotional material, which states:

3.1 Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase. The principle rule around transparency of pricing information in the Phone-paid Services Authority's Code of Practice is rule 2.2.7, which states the following:

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.

The Executive asserted that the Level 2 provider had failed to ensure that the pricing information on the Website was proximate and prominent to the means of access to the Service i.e. the shortcode.

The Executive noted that the pricing information for Service 1 was buried in the Terms and Conditions of Service 1. The Executive further noted during monitoring of the service that, upon first visiting the Website, a pop up appeared, but that the pricing was located deep within the Terms and Conditions, in a less prominent format and was not proximate to the call to action part of the promotion.

In respect of Service 2 the Executive asserted that the Level 2 provider had inserted the pricing as part of a block of text and that the pricing was not prominent or proximate to the shortcode.

The Executive also submitted that the text messages sent by the provider did not include any pricing information regarding Service 2. The Executive asserted that a consumer engaging with Service 2 could unknowingly incur a considerable amount of charges as a result of pricing not being prominent either on the promotional material they first saw, or in the text message they received after texting the keyword.

For the reasons set out above, the Executive asserted that Service users who engaged with Service 1 and Service 2 were likely to not have been clearly informed of the premium rate charges that would result from sending the keywords to each promoted Service's shortcode.

On the 1 February 2017, the Executive issued a further direction to the Level 2 provider whereby it outlined the potential breaches of the Code to the Level 2

provider. The Level 2 provider responded to the Executive on the 2 February 2017 and in relation to the potential breach of rule 2.2.7 stated:

“ Please can I direct you to <http://wickedsearch.co.uk/dogging> I understood this was an acceptable format but I can put a price above the shortcode, a line, a banner or sticker etc. Please advise me”.

The Executive asserted that, although the Level 2 provider had indicated a willingness to amend the prominence and proximity of the pricing on the promotion, these changes had yet to be made on the website.

In light of the above, the Executive submitted that the Level 2 provider had acted in breach of rule 2.2.7, as promotional material for Service 1 and promotional material for Service 2 did not contain pricing information that was prominent and proximate to the call to action for these services.

2. The Level 2 provider admitted the breach in part, stating that it had not been told by the PSA that the pricing information was wrong or that the cost had to be explained before the call to action. The Level 2 provider submitted that it had, however, made sure that it (the pricing) was directly beneath with the other terms and visible to consumers without scrolling down, which it thought was ok. It further stated that it had made changes to the website and that Datapro Services had supplied it with compliant banners to use.
3. The Tribunal considered the evidence before it, including the Level 2 provider's submissions. The Tribunal noted that the pricing information on the website was extremely small and would likely be very difficult for the average consumer to read. The Tribunal also noted that the pricing was located in the body of the text of the Terms and Conditions, which also made it more likely that a consumer would not notice the pricing information before entering the service.

The Tribunal considered that the use of the words “Join them now by becoming a free member of the UK's hottest dogging club” on the website also made it more likely that a consumer would not understand that their use of the service would incur charges.

The Tribunal noted that the Level 2 provider had, in part, admitted the breach and had also indicated that changes had subsequently been made to the pricing information on the website.

For the reasons set out above, the Tribunal were satisfied on the balance of probabilities that the pricing information for the service was not sufficiently prominent or proximate to the means of access to the Service.

Accordingly, it upheld a breach of rule 2.2.5 of the Code.

Decision: UPHELD

Alleged Breach 2

Rule 2.2.1(a) - Promotional material must contain the name (or brand if part of the name) and the non-premium rate UK contact telephone number of the Level 2 provider of the relevant premium rate service except where otherwise obvious. (12th edition)

(Rule 2.2.2 – Promotional material must contain the name (or brand if part of the name) and the contact details of the Level 2 provider of the relevant PRS except where otherwise obvious. If the contact details include a telephone number, it must be a UK number and not a premium rate. 13th and the 14th edition)

1. The Executive asserted that the Level 2 provider had breached rule 2.2.1(a) of the Code as the Level 2 provider had advertised a 070 number as a 24 hour customer services line on the website. This number range is classified as premium rate because of its high price point. The charge to call a 070 number exceeds 10p per minute.

The Executive relied upon a PSA publication, indentifying the different number ranges regulated by the PSA.

The Executive also relied upon Ofcom's "Simplifying non-geographic numbers" statement, published on 26 February 2015, which stated that:

(e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call or a service which is delivered by means of an Electronic Communications Service and is provided by the person who is also the provider of the Electronic Communications Service) which falls within one or more of the following categories:

(iii) the service is obtained other than through a Special Services Number or a PRS Number, and the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute inclusive of value added tax (and which also includes, for the avoidance of any doubt, a service delivered by means of an Electronic Communications Service which is charged by means of a Payment Mechanism and for which the charge exceeds 10 pence inclusive of value added tax);

The Executive had contacted the Level 1 provider (Oxygen8) regarding the customer service number, asking the date on which it was allocated to Mark Cross and the price point at which it was charged.

The Level 1 provider confirmed on 10 November 2016 that the number had been allocated to Mark Cross on 13 August 2014 and that the number was charged at 51 pence per minute.

The Executive asserted that the charge, for the 070 number, of 51 pence per minute meant that it was a premium rate number that therefore should not have been used by the Level 2 provider as a contact number for consumers, in breach of the code.

The Executive made further enquires, on 9 February 2017, to the Level 1 provider to establish whether any revenue had been generated from the number. The Level 1

provider confirmed that the Level 2 provider had received revenue from the number amounting to £79.54 in total, these were from calls received between October 2014 to March 2016.

The Executive submitted that the Level 2 provider had also not provided any pricing information proximate to where the number was located on the website. The Executive asserted that this could have misled consumers into believing that the telephone line was free or that it was a non-premium rate number.

The Executive stated that it was aware that there were other customer service numbers referenced on the website that were of a lower cost, for example in the Terms and Conditions section of both Service 1 and Service 2. However, unlike the 070 number, these numbers were only visible when a consumer interacted in more depth with the website and these numbers required more time to locate. Conversely, the Executive noted that the 070 number was present on the home page and did not require any detailed interaction with the website in order to be located.

On the 1 February 2017, the Executive had issued a further direction to the Level 2 provider, outlining the potential breaches of the Code to the Level 2 provider. The Level 2 provider had responded to the Executive on the 2 February 2017 and in relation to the potential breach of rule 2.2.2 had stated:

"...Again on the page it clearly states who runs the service and a helpline number. All in standard size text and next to the keyword/Shortcode not hidden away where you have to scroll to find it."

The Executive submitted that, since it had sent this direction, the Level 2 provider had changed the 24 hour customer service number from the 070 number to a "0844...." Number.

In light of all of the above, the Executive asserted that the Level 2 provider had acted in breach of rule 2.2.2 of the Code by advertising a 070 premium rate number as a contact number on its promotional material.

2. The Level 2 provider admitted the breach in part. It stated that the helpline in question was the website helpline and not the SMS helpline. It did however now know that this was a premium rate number. The number had been given to the Level 2 provider for call direction to his mobile, which was placed on each website header.

The Level 2 provider stated that the 0844 number was also supplied by Oxygen8 as the premium rate customer helpline number, which was located in the terms. The Level 2 provider could now see that there was confusion. It confirmed that the number had been removed and should the number be used again for anything it would be properly priced when promoted.

In respect of the revenue from the number, the Level 2 provider submitted that, because call revenue was less than £25 a month, the Level 1 provider Oxygen8 had not paid out revenue and it had therefore not received any payment. The Level 2 provider

stated that this pointed to the fact that the number had not been used to deceive or trick callers in any way.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered the Level 2 provider's representation that the number in question was the helpline number for the website. The Tribunal did not consider this to be persuasive, noting that, in any event, the number in question was a premium rate number which had been the prominent contact number presented by the Level 2 provider on the website.

The Tribunal noted the Level 2 provider's partial admission of the breach and noted also that the Level 2 provider seemed to have done little to ensure that it understood the requirements of the Code. The Tribunal concluded that the failure to comply with the Code requirement was negligent, rather than intentional on the part of the Level 2 provider. The Tribunal did not consider that the Level 2 provider had deliberately tried to exploit the issue.

For the reasons set out above, the Tribunal was satisfied, on the balance of probabilities, that the Level 2 provider had advertised a premium 070 contact number on its website.

Accordingly a breach of rule 2.2.1(a) of the Code was upheld.

Decision: UPHELD

Alleged Breach 3

Rule 2.5.9 – "Where PRS involve the possibility that two or more consumers might be able to exchange contact details or make arrangements to meet, then clear advice should be given regarding appropriate safeguards, in line with any generally available police advice."

1. The Executive asserted that the Level 2 provider had breached rule 2.5.9 of the Code in relation to Service 1, as the service gave consumers the opportunity to make arrangements to meet each other, but did not provide any advice to subscribers as to how best to safeguard themselves and others. The Level 2 provider also did not refer consumers to any other sources where such safety information could be obtained.

On 31 January 2017, in response to a direction for information from the Executive, the Level 2 provider explained the operation of Service 1 as follows:

"The service is basically an information service dogging locations around the UK. There was some user submitted information via the website and some from an swinging heaven and other online dogging sites etc. Telling the members when, where and in some cases who is going.

People subscribe to get the information by sms to their phone".

On 2 February 2017 the Level 2 provider supplied further clarification by confirming that the service gave likeminded consumers the opportunity to meet each other. The Executive submitted that, although the service was intended to allow likeminded

people to arrange to meet, the Website did not provide any advice regarding the safety or wellbeing of Service 1 participants who intended to meet with other consumers, contrary to rule 2.5.9 of the Code.

On 01 February 2017, the Executive issued a further direction to the Level 2 provider, explaining the potential breaches it had identified in respect of the services. The Level 2 provider responded to the Executive on 02 February 2017, regarding the potential breach of rule 2.5.9, the Level 2 provider stated:

"We do have an advice page <http://wickedsearch.co.uk/advice/staying-safe-when-dogging> it has been made more prominent by putting it on top menu of the site."

The Executive submitted that, although there was now a "Stay Safe" tab located on the website which contained safety information for consumers to read, during all previous monitoring of the service, it had not identified any form of advice page on the Website.

For the reasons outlined above, the Executive submitted that the Level 2 provider had acted in breach of rule 2.5.9 of the Code by offering a service that enabled two or more consumers to make arrangements to meet, but had omitted to provide clear advice regarding appropriate safeguards, in line with any generally available police advice.

2. The Level 2 provider admitted the breach in part, stating that although the safety information page had been created, it had not been put on the main menu of the website. The Level 2 provider accepted that this was an oversight which had been corrected once it had been pointed out by the PSA. The Level 2 provider confirmed that the new website now had the safety page link on the right menu and footer.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the evidence presented by the Executive was clear and compelling. The Tribunal noted the Level 2 provider's partial admission of the breach, which it considered reflected the Level 2 provider's lack of knowledge as to how to run a service of this nature in compliance with the Code.

The Tribunal considered the Level 2 provider's representation, that the failure to provide safety information was an oversight, to be unpersuasive. The Tribunal noted that, despite the Level 2 provider having accepted that it had created the safety information page, it had failed to make the page visible to consumers.

For the reasons advanced by the Executive, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had failed to provide the relevant safety advice to consumers. Accordingly, the Tribunal upheld a breach of rule 2.5.9 of the Code.

Decision: UPHELD

Alleged Breach 4

Paragraph 3.4.1 - "Before providing any premium rate service all Network operators, Level 1 and Level 2 providers must register with the PSA subject only to paragraph 3.4.3 below."

1. The Executive asserted that the Level 2 provider had not registered with the Phone-paid Services Authority (then known as PhonePayPlus) for a period of time when the Service was operational and, accordingly, was in breach of the obligation set out in paragraph 3.4.1 of the Code.

The Executive relied upon the following PSA requirements:

- i. From 1 September 2011, all Level 2 providers must register (or re-register if they had previously been “registered” under Code 11) with PSA prior to providing any premium rate services.
- ii. Code 12 registration must be renewed annually (paragraph 3.4.6 of the Code).
- iii. PSA fully publicised registration Code 12 requirements, both to individual Network operators and providers and Industry wide, prior to September 2011 and on an on-going basis since that time. The current requirements are clearly outlined on the PSA website (http://psauthority.org.uk/-/media/Files/PSA/For-Businesses/Your-phone-paid-service/Register-or-renew/How_to_register-with-the-PSA.ashx?la=en).

The Registration Scheme database showed that the Level 2 provider had registered with the Phone-paid Services Authority on 19 May 2015.

The Executive had directed the Level 1 provider to provide a monthly breakdown of opt-ins for the Service from January 2015. From the monthly breakdown supplied, the Executive observed that there had been a total of 90 opt-ins into the Service before May 2015. The Executive therefore submitted that the Service had commenced operation around March/April 2015, which was during the period when the provider was unregistered with the PSA. For a period of between twelve to fourteen weeks the Level 2 provider had been operating Service 1 and Service 2 whilst unregistered, as required by the Code.

On the 01 February 2017, the Executive issued a further direction to the Level 2 provider and outlined the potential breaches of the Code. The Level 2 provider responded to the Executive on the 02 February 2017:

“...I did register before any promotions. Please note the service was originally set up years ago but inactive until I came back into the industry.”

The Executive had considered this response, but was of the view that the explanation offered did not negate the fact that there had been opt-ins to the service for a period of twelve to fourteen weeks, between February 15 and April 15, whilst the Level 2 provider was not registered with the PSA as required.

Accordingly, for the reasons outlined above, the Executive asserted that the Level 2 provider had acted in breach of paragraph 3.4.1 of the Code by operating a premium rate service whilst not being registered with the PSA.

In response to questioning by the Tribunal, the Executive confirmed that the registration had been backdated and that this backdating ensured that the registration on the system was now accurate and that the appropriate registration had been invoiced to the Level 2 provider. The Executive confirmed that the Level 2 provider had paid the outstanding registration fee.

2. The Level 2 provider denied the breach, stating that it had in fact registered and that it had also been required to supply the registration number to its account manager at the Level 1 provider (Oxygen8). The Level 2 provider stated that, although the service was live on Oxygen8's systems, it had not been promoting it. Subsequently, Oxygen8 had asked the Level 2 provider to have its PSA registration backdated to 1st February. The Level 2 provider had requested this, and therefore it understood that the registration should have run from February to February.

The Level 2 provider had assumed that the backdating had been done, as the first invoice for generated revenue had been sent to Oxygen8. The invoice data had been modified by Oxygen8 on 19 May 2015 and it covered the period 1 March 2015 to 31 March 2015. In its representations, the Level 2 provider asked to be informed of the correct backdated registration date, stating that it was sure that Oxygen8 would have checked this before making payments. The Level 2 provider stated that there had been no payment for January or February and the previous invoice was on 29 September 2014 for 2 billed messages on JEN. 89179. There had been no invoice sent or payment made. It would have been a random message as JEN wasn't promoted, but sat on the Level 2 provider's account for a long time.

The Level 2 provider stated that, should it decide to leave the industry again, it would make sure that all accounts were closed.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal were satisfied that the evidence presented by the Executive, which it had taken from its registration system, demonstrated that the service was not registered at the relevant time.

The Tribunal noted the Level 2 provider's representations, which indicated that the Level 2 provider was disputing that the service had been operating in February. Notwithstanding this, the Tribunal considered there to be clear evidence that the Service commenced operation before it was registered with the PSA in May, noting that the Level 2 provider had itself said that the service commenced operation in either March or April.

The Tribunal noted that the registration had subsequently been backdated by the PSA and that the Level 2 provider had paid the registration fee owed. However, the view of the Tribunal was that this did not rectify the breach, nor did it alter the fact that a failure to register the service had occurred.

For the reasons set out above, the Tribunal was satisfied that the service had operated for a period of time when it was not registered with the PSA.

Accordingly, the Tribunal upheld a breach of paragraph 3.4.1 of the Code.

Decision: UPHELD

Alleged Breach 5

Paragraph 4.2.4 - “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).” (12th and 13th editions)

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 from 19 May 2015 to 18 May 2016, the Level 2 provider had registered his organisation as a charity, when he was actually operating adult services.

The Executive relied upon paragraph 3.4.2. of the Code which states:

“The PSA may make exemptions from the duty to register in accordance with paragraph 3.4.3.”

The Executive also relied on paragraph 3.4.5, which states:

“The PSA will publish on its website a full up-to-date list of exemptions.”

The current exemptions can be found on the PSA website (<http://psauthority.org.uk/for-business/register-or-renew-your-registration>).

Below is a screen grab from the PSA website outlining the exemptions to the registration obligation.

Registration fee exemptions

You don't need to pay the registration fee if:

- you're a charity registered with the Charity Commission for England and Wales or the equivalent in Northern Ireland or Scotland; or
- it's your first year of registration and your projected annual gross outpayment is less than £10,000 per year

On the 14 March 2016 the CRM system automatically created a task, alerting the RT that an organisation had recently registered as a Charity and that its status needed to be verified.

The RT established that the Level 2 provider was in a partnership with “The Sanctuary Project charity” and that it had registered using The Sanctuary Project charity number.

After conducting further research on the matter, the Executive allocated the case for investigation. The RT notified the Level 2 provider of the allocation on 10 May 2016.

The Level 2 provider replied to the RT on the same day, stating that:

"My business partner John Wilson who is the charity owner and down as a responsible person on the registration has renewed the registration this year but as the charity.

....I hadn't known he had done this and he obviously didn't know that he couldn't run adult services on a charity registration".

The Executive subsequently contacted the Level 2 provider to request further information regarding his business partner and the service:

"The Executive understands that you currently run a charity service called 'The Sanctuary Project'. Please provide a summary of the way in which this Service is intended to operate, including full details of any terms and conditions".

On 12 September 2016 the Level 2 provider responded that:

"No I don't run a charity. (name redacted) runs the Sanctuary project charity. There was a mix up on this year's registration when (name redacted) thought he could run his charity donations on the same registration until you kindly pointed it out to me. I corrected his error".

The Executive requested the business partner's contact details, which were duly provided.

The Executive subsequently contacted the Level 1 providers to identify the period during which the Level 2 provider was operating services and to confirm the type of services they were. The Level 1 providers confirmed that the Level 2 provider was actively operating adult services during the relevant period of registration and provided revenue statements in respect of the services.

As a result of the above information, the Executive asserted that the Level 2 provider was operating adult services whilst registered as a charity, and that in incorrectly registering the service as a charity, it had provided false and misleading information to the PSA in breach of paragraph 4.2.2.

In addition, the Executive asserted that the Level 2 provider had further breached paragraph 4.2.2 of the Code as a result of previously registering with the PSA as different entities and declaring those entities as being exempt from the PSA registration fee requirement "due to low turnover".

According to the PSA rules, an organisation could only be exempt from registration fees if it was in its first year of registration and the projected revenue turnover was less than £10,000.

Despite having been in operation for over a year, the Level 2 provider had declared itself exempt on several occasions after its first year of operation.

The RT sent an email to the level 2 provider on 16 June 2015 regarding the numerous registration entries created throughout the years, requesting an explanation for the various entries:

"Dear Mark,

Thank you for your email.

We have four entries for Mark Cross in the PhonepayPlus registration database, all with 5 Old Rectory Gardens, Scunthorpe DN17 2BF as the contact address.

Please explain the following registrations:

| Organisation Status | Primary Contact | Date Registered | Registered To | Current Status | Fee Paid |
|---------------------|-----------------|-----------------|---------------|-------------------------------|------------------------|
| Mark Cross | Mark Cross | 14/07/2011 | 13/07/2012 | De-Registered after 12 months | Payable |
| Wicked Kit | Mark Cross | 17/08/2012 | 16/08/2013 | De-Registered after 12 months | Exempt due to turnover |
| Wicked Telecom | Mark Cross | 15/02/2014 | 14/02/2015 | De-Registered after 12 months | Exempt due to turnover |
| Mark Cross | Mark Cross | 19/05/2015 | 18/05/2016 | Registered-Exempt from fee | Exempt due to turnover |

In response, The Level 2 provider provided explanations for the numerous entries to the RT:

"Mark Cross Mark Cross 14/07/2011 13/07/2012 De-registered after 12 months Payable (Didn't trade and didn't generate any revenue)

Wicked Kit Mark Cross 17/08/2012 16/08/2013 De-registered after 12 months Exempt due to turnover (Partnership with Wicked Kit lasted 3 months generated about £700 in billed SMS revenue then the service provide closed down)

Wicked Telecom Mark Cross 15/02/2014 14/02/2015 De-registered after 12 months Exempt due to turnover (Attempt on my own, didn't get off the ground due to lack of funds for advertising) Also lost login details. Even though new password sent I couldn't login.

Mark Cross Mark Cross 19/05/2015 18/05/2016 Registered – exempt from fee Exempt due to turnover (Partnership with The Sanctuary Project Charity 1157232, started early February 2015)

I hope this all makes sense. Oxygen8 have asked me to backdate the registration to February 1st if possible to when the partnership started.

Please advise me what best to do here.”

However, the Executive’s view was that the explanations provided did not adequately explain the Level 2 provider’s repeated claiming of an exemption, when it no longer fell within either exemption criteria. Having considered the above correspondence, the Executive’s view was that the Level 2 provider was only legitimately exempt from the registration fee in its first year of trading, as ‘Mark Cross’, from 14/07/2011-13/07/2012.

The Executive noted that, in the following years, Mark Cross operated services under the names “Wicked Kit” and “Wicked Telecom”, which were operated by Mark Cross as a partnership and as a sole trader, respectively.

The Executive therefore asserted that for the period starting from 17 August 2012 until 14 February 2015, the Level 2 provider did not fall within the registration exemption criteria “exempt due to low turnover”, as it was not in its first year of registration.

The Executive further asserted that by registering under the names “Wicked Kit” and “Wicked Telecom” whilst still operating as a partnership and sole trader, the Level 2 provider had deliberately attempted to evade payment of the registration fee to the PSA.

In light of all of the above, the Executive submitted that the Level 2 provider had recklessly provided false and misleading information to the PSA by incorrectly registering itself as a charity whilst operating adult services, and by claiming exemptions to which it was not entitled. Accordingly, the Executive asserted that the Level 2 provider had breached paragraph 4.2.2 of the Code.

2. The Level 2 provider denied the breach, stating that there had been no intention to give misleading information. It stated that there were gaps between the partnership projects and registrations. The charity registration had been a mistake by Mr (name redacted) who did not know that he could not run adult services on a charity registration.

The Level 2 provider further stated that it had corrected the mistake and had asked for the new registration to be backdated to the original date, rather than from when it had been required to register again because of the error.

The Level 2 provider stated that Mr (name redacted) had started his own registration but that it had not taken any services through the Level 2 provider's account, as far as it was aware.

The Level 2 provider stated that Lisa from PSA, who had brought this to its attention, indicated that the Level 2 provider may be invoiced for the previous registrations. The Level 2 provider had agreed to this but had assumed that, as it had not been invoiced, the registration team had looked into the matter and had not needed to invoice.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted the Level 2 provider's partial admission of the breach, which the Tribunal considered amounted to an acceptance that the Service had been incorrectly registered.

The Tribunal noted the Level 2 provider's representation that Mr (name redacted) had made a mistake when registering the service. Nonetheless, the Tribunal considered that responsibility under the Code for the registration of Services, together with the duty to ensure that false or misleading information was not provided to the PSA, ultimately rested with the Level 2 provider.

The Tribunal considered that the Executive had presented clear evidence to demonstrate that false information had been provided by the Level 2 provider. For the reasons advanced by the Executive, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had provided false information to the PSA, both by wrongly registering the service as a charity and by claiming registration fee exemptions to which it was not entitled.

The Tribunal was not satisfied on the evidence before it that the Level 2 provider had knowingly provided false information, noting that the errors appeared to have occurred in part due to the confused and sporadic business dealings of the Level 2 provider. However, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had recklessly provided false information to the PSA.

Accordingly, the Tribunal upheld a breach of paragraph 4.2.4 of the Code.

Decision: UPHELD

SANCTIONS

Representations on sanctions made by the Executive

The Executive submitted that if breaches were upheld, the following sanctions were appropriate:

- a requirement that the Level 2 provider remedy the breach by ensuring that all numbers and services are correctly registered, that any customer helpline number listed is non premium rate, that pricing on all promotions is prominent and proximate to the call to action.
- a formal reprimand
- a fine of £5,000
- a requirement that the Level 2 provider must seek compliance advice and approval regarding any existing or future PRS for a period of two years.
- a bar to access to all number ranges associated with the Services which it currently operates and any subscription Service until it has sought and implemented (a) compliance advice on consent to charge and (b) remedied the apparent breaches; 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 the PSA that such refunds have been made.

The Level 2 provider submitted that, if breaches were upheld:

- The recommended sanctions of remedy the breach, compliance advice, a formal reprimand, a bar, and general refunds were appropriate; it did not accept that a fine was appropriate, stating that had the PSA made it aware earlier of the issues earlier, it could have put things right in August the previous year, thus avoiding fees and a fine.

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

Rule 2.2.5 – Pricing information

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

- The breach had a clear detrimental impact directly or indirectly on consumers
- The nature of the breaches was likely to damage consumer confidence in premium rate services; and
- The cost to consumers may be higher as a result of the breach
- The service had been operated in such a way that demonstrates a degree of recklessness or intention of non-compliance with the Code.

Rule 2.2.1 (a) - Transparency

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

- The breach was likely to have had a material impact, directly or indirectly on consumers and showed potential for substantial harm to consumers
- The nature of the breaches was likely to have caused, or have potential to cause, a drop in consumer confidence in premium rate services; and
- The cost incurred is likely to be material to consumers

Rule 2.5.9 – Avoidance of harm

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

- The breach could have had a material impact, directly or indirectly on consumers and showed potential for substantial harm to consumers.

Paragraph 3.4.1 - Registration

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

- The breach was likely to have had a material impact, directly or indirectly on consumers and showed potential for substantial harm to consumers
- The nature of the breaches was likely to have caused, or have potential to cause, a drop in consumer confidence in premium rate services

Paragraph 4.2.4 – False/misleading information

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

- The service had been operated in such a way that demonstrated a degree of recklessness or intention of non-compliance with the Code

Final overall assessment

In determining the final overall assessment for the case, the Tribunal took into account no aggravating factors.

The Tribunal took into account the following mitigating factors:

- The Level 2 provider had taken some steps to rectify the breaches identified
- The Level 2 provider had removed and replaced the premium rate customer services number
- The Level 2 provider had added a safety advice information to the website

The Level 2 provider's evidenced revenue in relation to the Service was in the range of Band 6 (£5000 - £49,999).

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**.

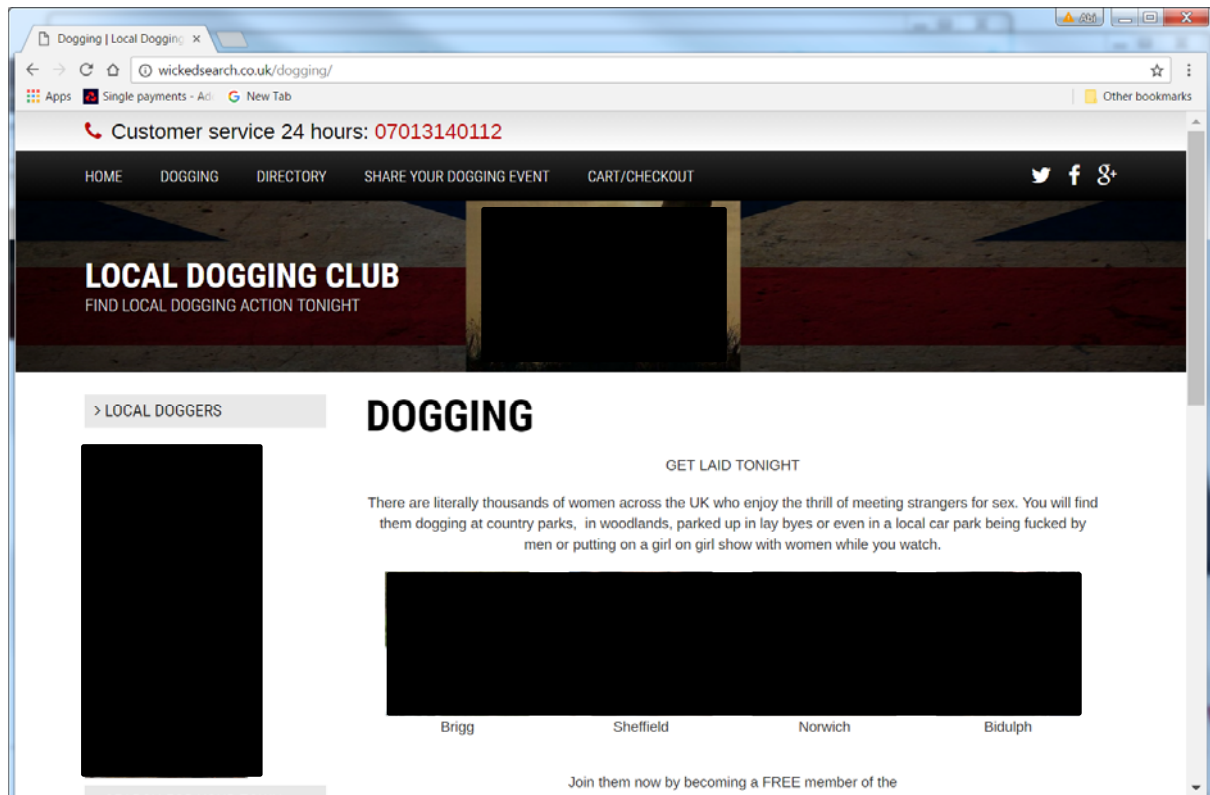
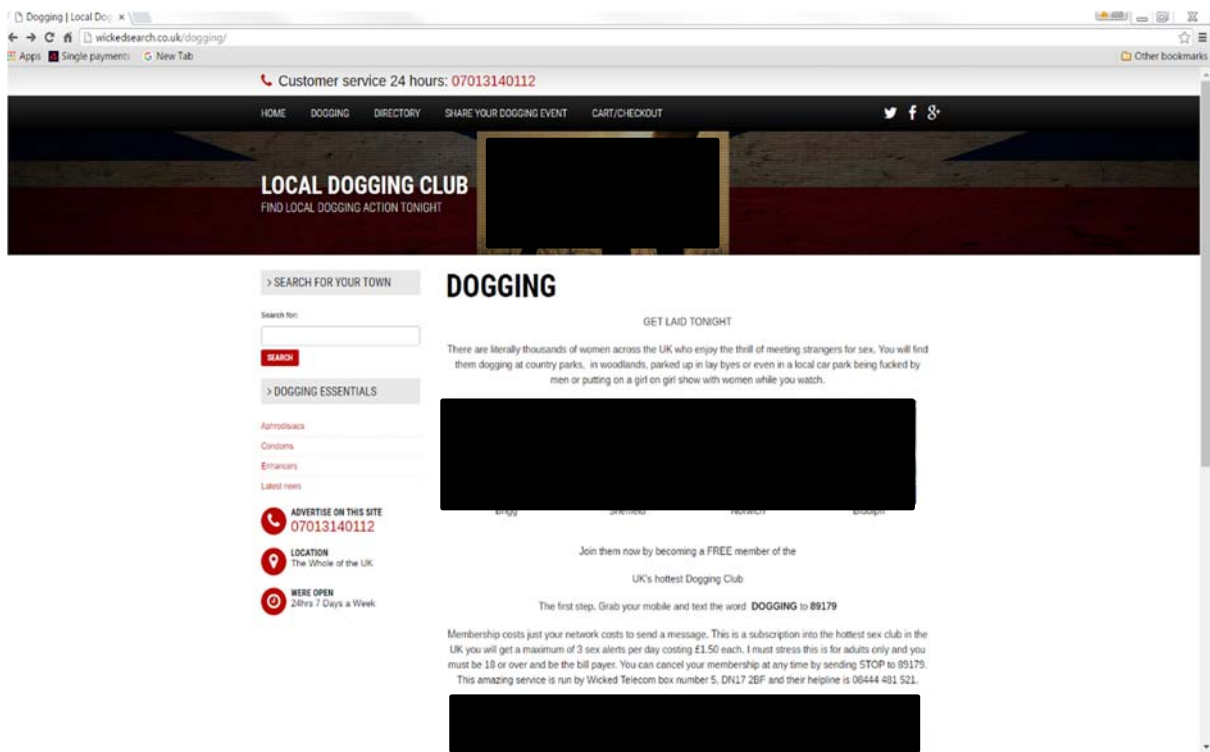
Sanctions imposed

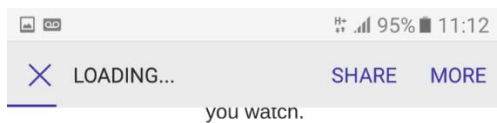
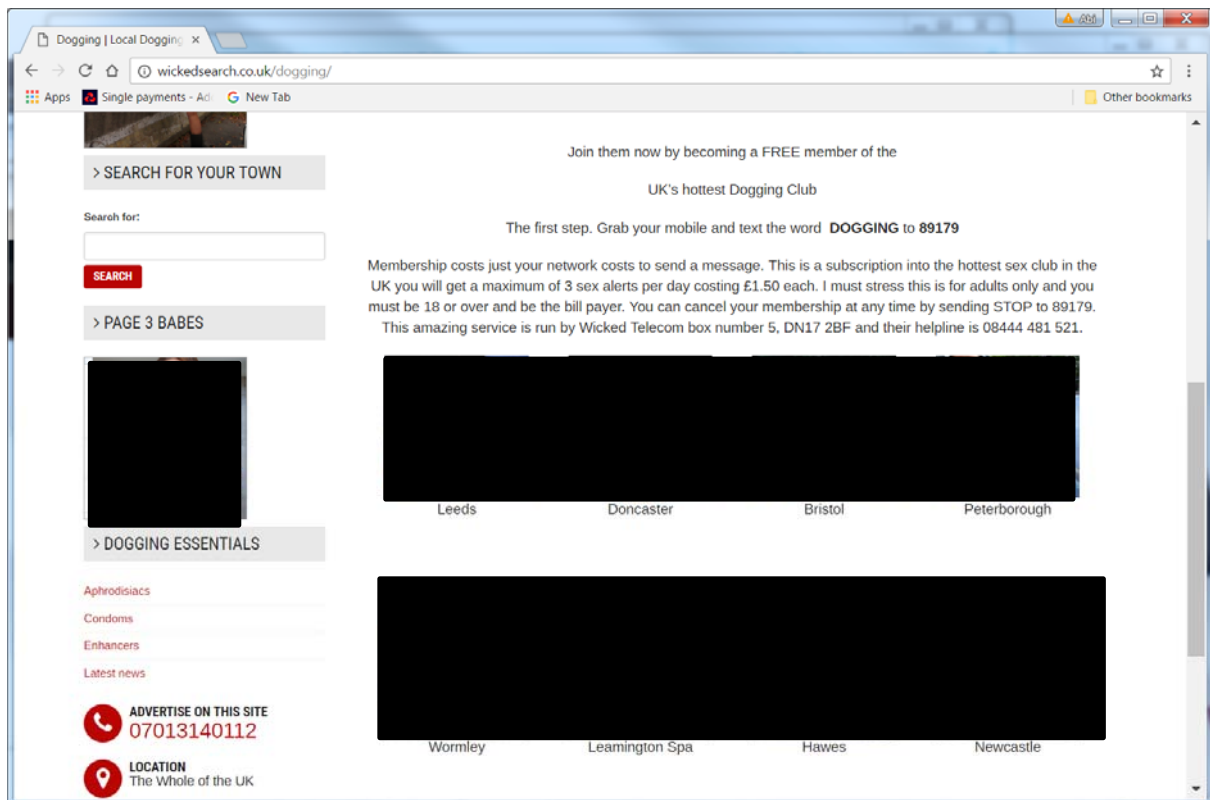
Having regard to all the circumstances of the case, and noting that the Level 2 provider appeared to lack knowledge of how to run a compliant service in accordance with Code requirements, the Tribunal decided to impose the following sanctions:

- a formal reprimand;
- a fine of £5,000;
- a requirement that the Level 2 provider seeks prior permission for the operation of any premium rate service for a period of 5 years from the publication of this decision;
- a requirement that the Level 2 provider seeks and implements compliance advice to the satisfaction of PSA;
- that access to the service be barred until the Level 2 provider has sought compliance advice and implemented it to the satisfaction of PSA and;
- a requirement that the Level 2 provider must refund all complainants who claim a refund, within 28 days, for the full amount spent by them on the Service, save where there is good cause to believe that such claims are not valid, and provide evidence to Phone-paid Services Authority that such refunds have been made.

Administrative charge recommendation: 100%

Appendix 1 – Screenshots from the Executive’s monitoring of Service 1



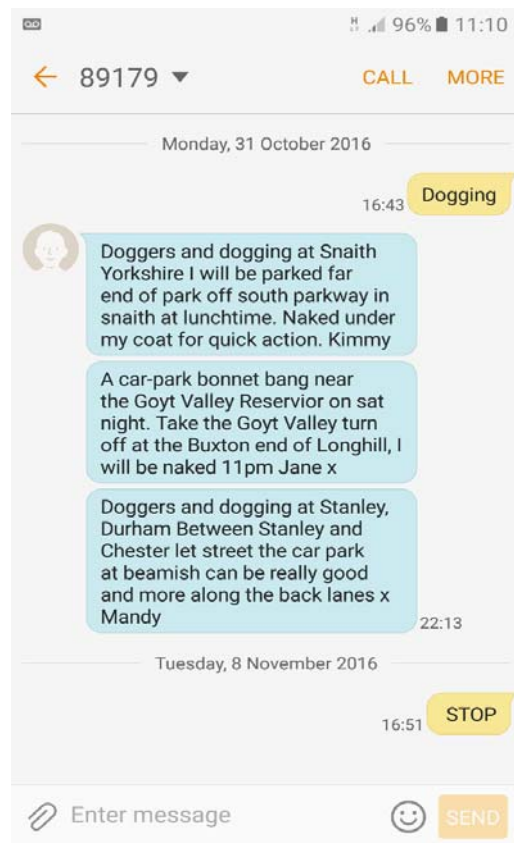
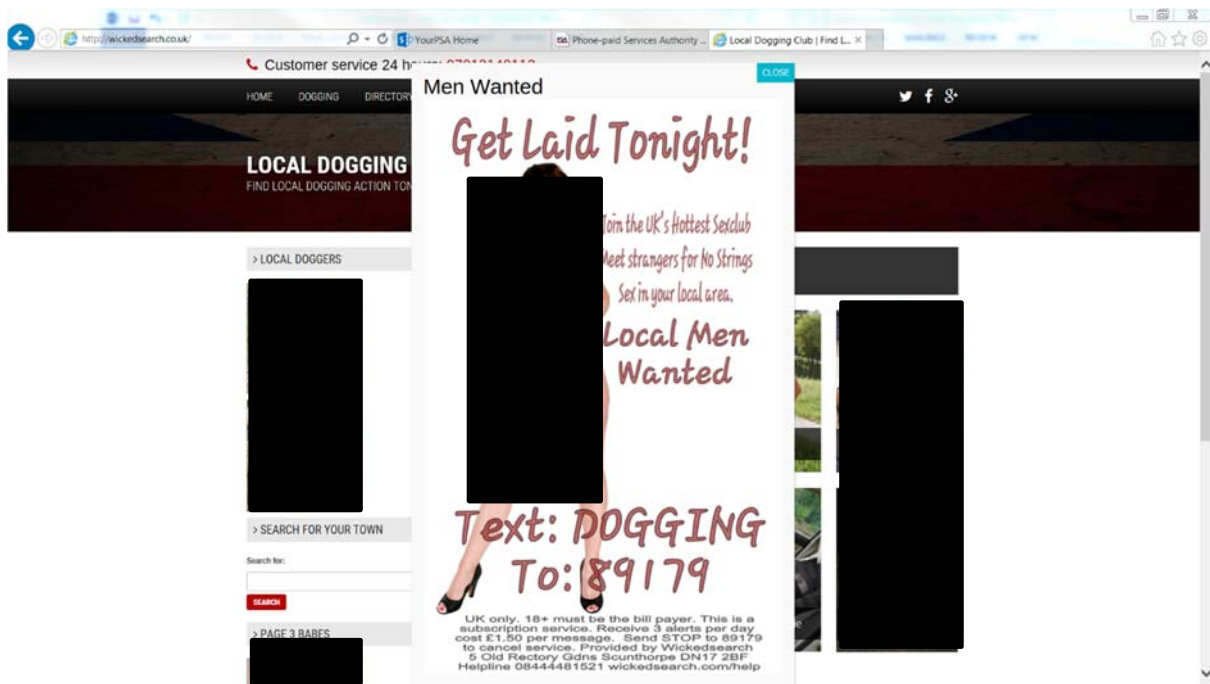


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|---------------|--|--|--|----------------|--|--|--|--|--|--|
| Invoice Owner | | | | Invoice Number | | | | | | |
| 07718424610 | | | | 91191092 | | | | | | |

| | | | | | |
|---|----------|-------|--------------|-------------|---------|
| Q | Download | Print | Address Book | Show Charts | Filters |
|---|----------|-------|--------------|-------------|---------|

| Date | Time | Number/Descri | Duration | Total units | Destination | Address descrij | Original cost | Discount value | Allowance valu | Cost |
|-------------|----------|------------------|----------|-------------|---------------|-----------------|---------------|----------------|----------------|-------|
| 12 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 2320 KB | Data Event | | £0.06 | £0.00 | £0.06 | £0.00 |
| 11 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 2382 KB | Data Event | | £0.06 | £0.00 | £0.06 | £0.00 |
| 10 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 26573 KB | Data Event | | £0.65 | £0.00 | £0.65 | £0.00 |
| 09 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 23874 KB | Data Event | | £0.58 | £0.00 | £0.58 | £0.00 |
| 08 Nov 2016 | 16:51:14 | 89179 | 00:00:01 | 00:00:01 | Other | | £0.13 | £0.00 | £0.00 | £0.13 |
| 08 Nov 2016 | 11:12:00 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 08 Nov 2016 | 11:11:55 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 08 Nov 2016 | 11:11:53 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 08 Nov 2016 | 11:11:30 | mobile.o2.co.... | 00:00:00 | 9899 KB | Data Event | | £0.24 | £0.00 | £0.24 | £0.00 |
| 02 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 224 KB | Data Event | | £0.00 | £0.00 | £0.00 | £0.00 |
| 01 Nov 2016 | 00:00:00 | mobile.o2.co.... | 00:00:00 | 21740 KB | Data Event | | £0.53 | £0.00 | £0.53 | £0.00 |
| 31 Oct 2016 | 22:13:10 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 31 Oct 2016 | 22:13:08 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 31 Oct 2016 | 22:13:04 | 89179 | 00:00:01 | 00:00:01 | Other | | £1.25 | £0.00 | £0.00 | £1.25 |
| 31 Oct 2016 | 16:47:10 | 7402492221 | 00:00:01 | 00:00:01 | Mobile Number | | £0.00 | £0.00 | £0.00 | £0.00 |
| 31 Oct 2016 | 16:45:29 | 07402492221 | 00:00:10 | 00:00:10 | Mobile Number | | £0.00 | £0.00 | £0.00 | £0.00 |
| 31 Oct 2016 | 16:43:28 | 89179 | 00:00:01 | 00:00:01 | Other | | £0.13 | £0.00 | £0.00 | £0.13 |
| 31 Oct 2016 | 16:42:30 | mobile.o2.co.... | 00:00:00 | 1808 KB | Data Event | | £0.04 | £0.00 | £0.04 | £0.00 |
| 30 Oct 2016 | 10:57:44 | mobile.o2.co.... | 00:00:00 | 235 KB | Data Event | | £0.01 | £0.00 | £0.01 | £0.00 |

Appendix 2 – Screenshots from the Executive’s monitoring of Service 2

Customer service 24 hours: 07013140112

HOME DOGGING **DIRECTORY** SHARE YOUR DOGGING EVENT CART/CHECKOUT

LOCAL DOGGING CLUB
FIND LOCAL DOGGING ACTION TONIGHT

> LOCAL DOGGERS

UK DOGGERS

> SEARCH FOR YOUR TOWN

Search for:

SEARCH

> PAGE 3 BABES

Customer service 24 hours: 07013140112

HOME DOGGING DIRECTORY SHARE YOUR DOGGING EVENT CART/CHECKOUT

LOCAL DOGGING CLUB
FIND LOCAL DOGGING ACTION TONIGHT

> LOCAL DOGGERS

DIRECTORY

- Aberdeen City (495)
- Aberdeenshire (4034)
- Argus (1,944)
- Artrim (160)
- Ards (208)
- Argyll and Bute (3,128)
- Armagh (248)
- Ballymena (184)
- Ballymoney (200)
- Barbridge (200)
- Barking & Dagenham, Greater London (63)
- Barking & Dagenham, Greater London (9)
- Barnet, Greater London (280)
- Bedfordshire (2,528)
- Belfast (152)
- Berkshire (3,080)
- Bexley, Greater London (184)
- Blisnau Gwent (400)
- Brent, Greater London (232)
- Bridgend (680)
- Bristol (504)
- Bromley, Greater London (464)
- Buckinghamshire (4,520)
- Caersphilly (968)
- Cambridgeshire (3,784)
- Camden, Greater London (152)
- Cardiff (472)
- Carmarthenshire (2,560)

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Customer service 24 hours: 07013140112

HOME DOGGING DIRECTORY SHARE YOUR DOGGING EVENT CART/CHECKOUT

LOCAL DOGGING CLUB
FIND LOCAL DOGGING ACTION TONIGHT

> LOCAL DOGGERS

Leanne from Seaton has free time to cheat

Posted on: July 7th, 2015

Me and my husband have been married nearly 6yrs I am 27 and he is 36. We live in a quiet spot on the outskirts of Seaton so I don't get to see many people around here and he has just started to work away again with a new job so through the week we only have sex text by phone and this carries on till Friday night when he comes home.

The text he sends me have got more adventurous with him calling me slut and me calling him master which I find a turn on so this weekend when he came in through the door I was waiting for him on the corner of the bed with just a g-string on playing with my pussy. I hear him put his bags down in the hall then start walking to the bedroom then I hear the door handle open and the door opening and him stepping in and closing the door.

I looked over my shoulder to see him lowering his trousers and moving behind me as I'm already wet for him he slides straight into me and starts to fuck me hard which he knows I really enjoy.

His bollocks banging against my pussy lips, this went on for 10 mins in which time I had about 4 orgasms. I then pulled him out of me so I could give him a surprise. I then went to the kitchen to find the biggest chocolate bar we have got, which was only a Mars bar. Back into the bedroom the opened Mars bar slid into my pussy and I started to fuck myself with it while he watched and kissed my tits, sucking on my nipples.

After another couple of orgasms I pulled the Mars bar out and moved myself so I was sat on his face with chocolate up my pussy and starting to mix with my juices which was now running down my thighs so he then started to lick and suck my pussy for all he was worth for the next 15mins.

He was licking my pussy and swallowing a lot of my juices and chocolate. I lost

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SEARCH

PAGE 3 BABES

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soaking wet pussy which wasn't his hard cock. I looked around to see the bottom of the massage oil bottle sticking out of my pussy, he pushed it in further then thrust it in and out hard and slow then got faster and faster while I was screaming out with pleasure until I couldn't take any more cos I needed him to ram is hard juicy cock up my pussy.

Ramming and thrusting as hard as he could making me scream even louder than before for the next 15 mins or so then I took his cock out made him start wanking himself while I pulled is balls and rubbed my finger over his arse hole. He wanked faster and faster while moaning all the time until he couldn't take it any more and shot is load all over my tits. I lost count of the amount of times I came that night but I think it was around 50-60 times which is normal for when we having sex.

Well as I say I only get sex at the weekends when he is home. Do you think you can make me cum during the week? You don't have to live in Sheddocksley

Grab your mobile and text LEA to 89077

But for now I got to go as my pussy is getting wet and again and needs a good seeing to.

Text chat costs £1.50 per message received plus your standard network rate. You must be 18 or over and have the bill payer's permission. We may send you free promotional SMS. Send 'STOP ALL' to 89077 to opt out. Datapro Services Ltd. Customer Careline: 0203 455 2145

Sheddocksley...
View larger map

Sheddocksley Sports Centre

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← 89077 Thu, 19/01/2017

LEA 16:44

FREE MSG: So you're after filthy text sex! This is an Adult 18+ only service, please reply with your age, then the dirty fun can begin. DSL c/c [02034552145](https://www.89077.co.uk) 16:44

19 16:45

Free Msg:Hi,I could not verify your age.Please reply with your age or DOB (dd.mm.yy) so we can start chatting! 16:45

19/12/1997 16:46

Enter message

← 89077 16:46

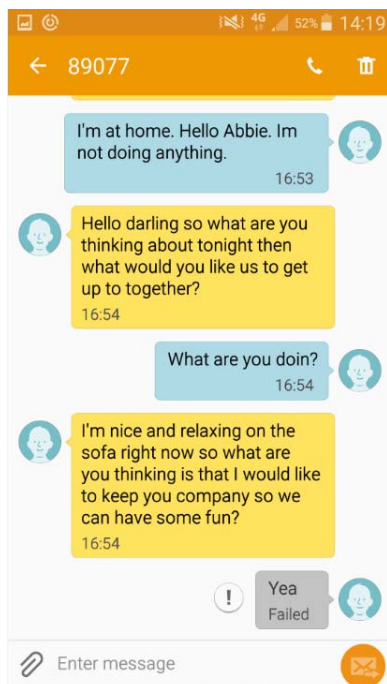
Hello darling what are you up to tonight what's your name where are you texting me from what naughty things do you like to get up to? 16:48

My names Will. Im texting from Kent. 16:49

Hello darling my name is Abbie so what have you been up to today did you go out or are you in bed what are you thinking about? 16:50

I'm at home. Hello Abbie. Im not doing anything. 16:53

Enter message



Hello Alex

07584830100

- Account summary
- Your balance
- A breakdown of your usage
- Exclusive offers
- TopUps & payments
- Manage your extras
- Manage services
- Sure Signal
- Your details

Usage for the last 90 days Mobile (07584830100)

Out-of-bundle usage Show all usage

| Date and time | Usage type | Number | Amount | Charge |
|-------------------|--------------|-----------------|--------|--------|
| 19 Jan 17 - 16:54 | SMS | 447584830100 | 1 | £1.50 |
| 19 Jan 17 - 16:53 | SMS | 89077 | 1 | £0.12 |
| 19 Jan 17 - 16:50 | SMS | 447584830100 | 1 | £1.50 |
| 19 Jan 17 - 16:49 | SMS | 89077 | 1 | £0.12 |
| 19 Jan 17 - 16:48 | SMS | 447584830100 | 1 | £1.50 |
| 19 Jan 17 - 16:46 | SMS | 89077 | 1 | £0.12 |
| 19 Jan 17 - 16:44 | SMS | 89077 | 1 | £0.12 |
| 10 Jan 17 - 12:51 | Purchase | | | £5.00 |
| 10 Jan 17 - 12:51 | Globalcharge | BadooSuperPower | | £5.00 |

Show 15

How we've worked this out

This table shows your usage for the last 90 days. It may take an hour to update, or a bit longer if you're abroad.