

**Tribunal meeting number 200**

**Case reference:** 90803  
**Level 2 provider:** GameNation (UK) Ltd  
**Type of service:** Games subscription service  
**Level 1 provider:** Veoo Ltd; Tap2Bill Limited  
**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 a games subscription service operating under the brand name 'Gamenation' on dedicated shortcode 88450 and 87066 (the "**Service**").

The Level 2 provider for the Service was GameNation (UK) Limited (the "**Level 2 provider**"). The Level 2 provider had been registered with the Phone-paid Services Authority since 3 November 2015. The Level 1 provider for shortcode 88450 was Veoo Limited ("**Veoo**"). The Level 1 provider for shortcode 87066 was Tap2Bill Limited ("**Tap2bill**") (previously known as IMI Mobile Limited ("**IMImobile**").

**The service**

The Service was stated to be a games subscription service charged at £4.50 per month. The Executive understood that consumers enter the Service via a wireless application protocol ("**WAP**") PIN opt-in or Mobile Originated ("**MO**") opt-in. However, the Level 2 provider had not clarified what method(s) of opt-in were available to consumers, in what period(s). The Level 2 provider's response to initial enquiries stated the Service had a PIN opt-in route, but the promotional material it provided showed an MO opt-in mechanism. Message logs obtained by the Executive did not include confirmation of method of opt-in, only confirming the time and date (showing October/November 2015 opt-in). 19 out of 20 logs provided by Veoo purported to show an MO opt-in route with the keyword "**GAMES**" used (1 showed a PIN opt-in route was used). The MO opt-ins shown were dated from the end of 2014 to start of 2015.

The Level 2 provider stated that the Service promotion commenced in October 2015. Tap2bill advised that the Service commenced operation on its platform on 18 February 2016 and was suspended on 24 March 2016.

The Level 2 provider supplied promotional material for the Service. Attached at **Appendix A** is a screen shot which is an extract from a document supplied by the Level 2 provider.

## Preliminary issue

The Executive noted that the Level 2 provider failed to respond to formal directions for information. An Interim Warning Notice was issued to the Level 2 provider on 9 September 2016. Following this the Executive received a notification letter from Wilson Field Limited (“the Joint Administrators”) informing them that the Level 2 provider had gone into administration and two of their staff had been appointed as Joint Administrators of Gamenation (UK) Limited on 2 September 2016. The Executive noted that under the terms of the Insolvency Act 1986, an automatic moratorium is imposed in respect of proceedings against a company in administration. The Executive noted that on 12 October 2016, the Joint Administrators had consented to the lifting of the moratorium, subject to confirmation that the administrators will not participate in the process, that the administrators will not be liable for any administrative costs of the process, and that any fine imposed would be classified as an unsecured claim in the administration.

## Summary of complaints

The Executive had received 31 complaints concerning the Service since 7 December 2015. Complainants variously alleged that the Service charges were unsolicited.

A sample of complainant accounts is provided below:

*I was charged and I didn't know until I checked my bill. I called at EE and they stopped this and blocked all of these kind of unwanted charging. But I want my money back. I didn't ask for anything from Veoo or what ever is their name. [sic]*

*I have no idea how or why I'm being billed for this and I don't know what its for I would like to stop it. So far £9.00 has appeared on my bill. [sic]*

*I am not happy that i have been billed for something i did not subscribe to or authorise. Please take me off your system so NO further payments are taken. i request a full refund of all payments taken from my mobile a d sent by cheque to my home address. [sic]*

## 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 on 19 October 2016 with a deadline for response of 2 November 2016. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the “Code”):

- Rule 2.3.3 – Consent to charge
- Paragraph 4.2.5 - Failure to disclose requested information
- Paragraph 3.12.5 – Subscription spend reminders

- Paragraph 3.4.1 – Failure of a provider to register with the Phone-paid Services Authority

On 21 December 2016, 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 and the Level 2 provider's responses including supporting documentation, and the previous complaint resolution procedure);
- Correspondence between the Executive and Level 1 providers (including Zamano Solutions Limited and Fonix Mobile Limited);
- Correspondence between the Executive and a third-party verifier;
- Complainant message logs from the Level 2 provider and Level 1 provider;
- PSA Guidance on "Consent to Charge" (Code 13) and on "Privacy and Consent to Charge" (Code 12);
- The Notice of Specified Service Charges and Duration of Calls published in accordance with paragraph 3.12.6 of the 13th Code of Practice;
- Revenue statistics for the Service;
- The Warning Notice dated 19 October 2016, including attachments;
- Correspondence from the Joint Administrators for the Level 2 provider dated 13 September 2016 onwards, including a response to the Warning Notice dated 19 October 2016; and
- Correspondence from the solicitors to the purchaser of the GameNation service, dated 11 November 2016.

## Submissions and Conclusions

### Alleged Breach 1

**Rule 2.3.3** – “Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent.”

1. The Executive asserted that the Level 2 provider had breached rule 2.3.3 of the Code as the Level 2 provider had not provided any evidence to establish that complainants who had entered the Service had consented to being charged. The Executive requested evidence of consent to charge following receipt of a number of complaints from consumers alleging that they had incurred Service charges without their consent.

The Executive noted that MO opt-ins shown in Veoo’s message logs occurred in the period that the Code (12<sup>th</sup> Edition) was in force, and the Service charges in the time period after the Phone-paid Services Authority Code of Practice, 13<sup>th</sup> Edition came into force. Given that rule 2.3.3 is effectively identical in the two versions of the Code that were in force when complainants supposedly opted-in and incurred Service charges, the Executive raised an alleged breach of rule 2.3.3 of the Phone-paid Services Authority Code of Practice, 12<sup>th</sup> Edition and the Phone-paid Services Authority Code of Practice, 13<sup>th</sup> Edition.

The Executive relied on correspondence exchanged with the Level 1 providers and ETX (UK) Ltd, complainant accounts, Phone-paid Services Authority General Guidance Note ‘Privacy and consent to charge’ in support of the Code (12th Edition) (the “**Code 12 Guidance**”), Phone-paid Services Authority General Guidance Note ‘Consent to Charge’ in support of the Code (13th Edition) (the “**Code 13 Guidance**”) and text message logs.

Code 12 Guidance states:

#### **“2. What is robust verification of consent to charge?”**

**2.1** Robust verification of consent to charge means that the right of the provider to generate a charge to the consumer’s communication bill is properly verifiable (see section 5 below). By ‘properly verifiable’, we mean a clear audit trail that categorically cannot have been interfered with since the record, either of consent to purchase or simply of consent to future marketing (see Part Two for guidance around consent to marketing), was created.

#### **For charges generated by entering a mobile number on a website**

*For the avoidance of doubt, this section applies to the consent evidence required for services initiated from a web page and where premium SMS is the chosen billing mechanic. This section does not apply to ‘web’ Payfortit.*

**2.5** Some services are initiated by a consumer entering a mobile number on a website, or a mobile website (i.e. a website browsed on the mobile handset). In recent years, consumers have not appreciated that doing so can result in a charge being generated to their mobile device, or that the entry of their number can be taken as being consent to future marketing by the provider concerned.

**2.6** As a result, some consumers have entered a mobile number belonging to someone else (either by mistake or deliberately) and this has generated a charge to a second – unwitting – consumer. Even if there are no chargeable messages, just free marketing messages, the unwitting consumer often feels that their privacy has been invaded (see Part Two for further information around marketing).

**2.7** For this reason, we recommend that consumers should always be encouraged to initiate services, or future marketing, with an MO. Failing that:

- All costs should be clearly stated and be proximate and prominent to the field where the consumer is to enter their number;
- After entering the number, a Mobile Terminating message ('MT') should be sent to the consumer. As an example, this should state:

*"FreeMsg: Your PIN is [e.g. 0911], please delete if received in error"*

**2.8** An MT message, in these circumstances, should not promote the service itself (e.g. use its name), or give the consumer the option to reply YES to initiate the service. In addition, this method would require robust systems for verifying any PIN once entered (see paragraph 2.12 below for further details).

**2.9** It is more difficult to verify where a charge is generated by a consumer browsing the mobile web, or by using software downloaded to their device. In these circumstances, where the consumer may only have to click on an icon to accept a charge, the MNO has no record of an agreement to purchase, and so robust verification is not possible through an MNO record alone.

**2.10** In both of the instances set out above, we would expect providers to be able to robustly verify consent to charge (or to marketing, see Part Two of this General Guidance Note). Factors which can contribute to robustness are:

- An opt-in is PIN-protected (e.g. the consumer must enter their number to receive a unique PIN to their phone, which is then re-entered into a website);
- A record is taken of the opt-in, and data is time-stamped in an appropriately secure web format (e.g. https or VPN);
- Records are taken and maintained by a third-party company which does not derive income from any PRS. We may consider representations that allow a third-party company which receives no direct share of PRS revenue from the transaction, but does make revenue from other PRS, to take and maintain records. It will have to be proven to

the Phone-paid Services Authority' satisfaction that these records cannot be created without consumer involvement, or tampered with in any way, once created;

- The Phone-paid Services Authority is provided with raw opt-in data (i.e. access to records, not an Excel sheet of records which have been transcribed), and real-time access to this opt-in data upon request. This may take the form of giving Phone-paid Services Authority password-protected access to a system of opt-in records;
- Any other evidence which demonstrates that the opt-in cannot be interfered with.

2.11 Providers who are considering using a method of verifying consent to charge, which employs a method that does not involve independent Network operator records of consent, are advised to contact the Phone-paid Services Authority before they begin to operate it.”

In the absence of any response from the Level 2 provider to Formal Directions for information, the Executive made enquiries with the Level 1 providers Veoo and Tap2Bill in order to establish whether they held any information which would clarify the issue of consent to charge.

The Executive noted that both Veoo and Tap2Bill stated that they were advised by the Level 2 provider that the Gamenation service was migrated from the Level 1 provider Zamano Solutions Limited (“Zamano”). However, when the Executive subsequently contacted Zamano, it advised the Executive that *“Game Nation has never been contracted with Zamano Solutions Ltd. Furthermore, they have never ran traffic on any of our short codes”*.

In addition, Veoo stated that there was a migration file submitted by the Level 2 provider to them in respect of shortcode 89099, which was provided by Fonix Mobile Limited (“Fonix”). When the Executive contacted Fonix for further information, Fonix advised they have never heard of Gamenation (UK) and that they have never been a client of Fonix.

The Executive also made enquiries of ETX (UK) Ltd (a third-party verifier of Service charges) to establish whether they could verify that the complainants had consented to being charged. ETX (UK) Ltd were unable to verify that the complainants had consented to the Service charges.

The Level 2 provider had suggested in its communications with the Level 1 provider, Tap2Bill, that Zamano may have stated that they had never contracted with it because *“It is possible that Zamano know of GNUK better by our alternative branding Browser Games, which we operate with Zamano; which we use in all aspects of our service provision with Zamano, including our customer care (browser-games.mobi).*

In response to this suggestion, the Executive contacted Zamano by telephone and via a confirmatory e-mail. However, Zamano confirmed that this *“alternative branding”* had not caused any confusion and reiterated that they had never contracted with Game Nation (UK). The Executive also noted that in correspondence between the Level 1

providers Tap2Bill and Zamano, Zamano had stated that they were not aware of a client called Gamenation.

The Executive noted that Tap2Bill advised them the Service commenced operation on its platform on 18 February 2016 and was suspended on 24 March 2016 for the following reason:

*“The reason for suspending the service on our platform was specifically due to uncovering information that led us to doubt the validity of the subscribers that were being migrated over from the Zamano Limited platform. Conversations with Phone-paid Services Authority and Zamano made it clear that we had reason to doubt that the MSISDNs that were migrated were actually subscribers of the Level 2 provider and as such we suspended the service.”*

When Tap2bill sought to verify MSISDNs that had supposedly been migrated from Zamano, the logs show the provider of the service was another named provider (**“Third Party Provider”**). The Executive noted that in correspondence between the Level 2 provider and the Level 1 provider Tap2Bill, the director of the Level 2 provider had denied that GameNation(UK) were connected to the Third-Party Provider. However, some of the statements made by the Level 2 provider about their relationship with the Third-Party Provider appeared to contradict this. In one e-mail exchange dated 22 March 2016, the director of the Level 2 provider stated “It is foolish to link GNUK with the Third-Party Provider, they are separate commercial entities and competitors.” However, in a telephone conversation on 24 March 2016 she stated “in non - UK territories, GameNation and the Third-Party Provider work very closely together and that GameNation assist in the promotion of the Third Party Provider’s service. It was clarified that this did not happen in the UK”.

In response to questioning by the Tribunal regarding the Third-Party Provider, the Executive stated that it was aware the Third-Party Provider was a different legal entity who had operated a similar subscription game service via Zamano. The Executive stated that it was not aware of any shared owners or directors between the two companies, and referred the Tribunal to the Level 2 provider’s statements in evidence regarding the lack of relationship.

The Executive stated that, due to the Level 2 provider’s failure to respond to any directions made by the Executive, it has not been possible to further clarify the relationship between the Third-Party Provider and the Level 2 provider.

In any event, the Executive asserted that Level 2 provider did not hold robust evidence of consent to charge for any consumer whom it says subscribed prior to the migration to Veoo or Tap2bill for the following reasons:

- The failure of the Level 2 provider to respond to directions or to provide robust evidence of consent to charge consumers
- The inability of ETX (UK) Limited to provide verification of consent to charge in respect of the complainants to the Executive

- The incorrect information provided by the Level 2 provider to the Level 1 provider Tap2bill, namely that all of the MSISDNs were subscribed to the service whilst the Level 2 provider was contracted to Zamano, when it appeared they had never contracted with Zamano.
- The incorrect information provided by the Level 2 provider to the Level 1 provider Veoo, namely that all of the MSISDNs were subscribed to the service whilst the Level 2 provider was contracted to Zamano and Fonix, when it appeared they had never contracted with Zamano or Fonix.

In response to questioning by the Tribunal regarding the number of subscribers and their provenance, the Executive referred to the evidence in the papers regarding revenues, and noted that Veoo had not provided any figure for the number of migrated subscribers.

In response to questioning by the Tribunal regarding the correspondence from the solicitors to the purchaser of the Service, the Executive noted that the solicitors had stated that consumer opt-ins had in fact been obtained via WAP, not MO, but that no evidence that such WAP opt-ins had been robustly verified was supplied. The Executive noted that the solicitors stated that the MOs were opt-ins for marketing purposes, however the Executive submitted that this appeared to be inconsistent with the logs supplied by Veoo which showed a migrated MO opt-in with the keyword "GAMES". The logs had been supplied by Veoo when the Executive had asked for consumer opt-in information.

For the reasons set out above the Executive asserted that the Level 2 provider had been unable to provide sufficient evidence which established consent to charge complainants. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of rule 2.3.3 of the Code.

2. The Joint Administrators had responded to the Warning Notice. The Joint Administrators reiterated the terms of their consent to the lifting of the statutory moratorium. The Joint Administrators did not wish to take part in the process, and stated that they would not be liable for any costs associated with the process. Subsequently, the Joint Administrators had no further comments on this matter.
3. The Tribunal considered the Code and all the evidence before it, including the consumer complaints, the message logs which appeared to show migrated MO opt-ins, and the correspondence from the Level 1 providers which indicated that the Level 2 provider had not contracted with certain Level 1 providers at the time that the logs showed MOs on the relevant shortcodes.

The Tribunal noted the explanation of consents provided by the solicitors to the purchaser of the Service, which suggested that consumer opt-ins had in fact been obtained via WAP, not MO. The Tribunal however noted that the solicitors to the purchaser of the Service had not produced any evidence that such WAP opt-ins had been obtained, or robustly verified. The Tribunal considered it was not adequately clear how consumers had consented to be charged for the Service (if at all), and that the Level

2 provider should have provided clear evidence on this in response to the Executive's direction.

On any analysis, the Tribunal was satisfied that the Level 2 provider had not provided robust evidence that consumers had given their consent to charge. Accordingly, the Tribunal upheld a breach of rule 2.3.3 of the Code.

**Decision: UPHELD**

**Alleged Breach 2**

**Paragraph 4.2.5.** - "A party must not fail to disclose to Phone-paid Services Authority when requested any information that is reasonably likely to have a regulatory benefit in an investigation."

1. The Executive asserted that the Level 2 provider had breached paragraph 4.2.5 of the Code because the Level 2 provider failed to respond to formal directions for information to allow the Executive to fully investigate the service.

The Executive relied on correspondence exchanged with the Level 2 provider and correspondence exchanged with the Level 1 provider Veoo Limited.

The Executive noted that they had sent a Formal Direction for information dated 3 June 2016 (pursuant to paragraph 4.2.3 of the Code) with a deadline for response of 10 June 2016. Following a request for an extension on 14 June 2016, via email address [help@gamenationuk.com](mailto:help@gamenationuk.com) from a "Sam" in the GameNation (UK) Customer Help Team, an extension was granted to 17 June 2016. Following no response from the Level 2 provider by the extended deadline, the Executive sent reminder e-mails on 21 June 2016 and 22 June 2016. In addition, on 2 August 2016, the Executive sent the Formal Direction with a new extended deadline of 9 August 2016 via e-mail, post and called the Level 2 provider and left a message.

The Executive noted that on 9 August 2016, the director of the Level 2 provider contacted the Executive by telephone. During this call, she advised the Executive that she had not received the Formal Direction and requested it to be sent again. The Executive resent the Formal Direction by e-mail and received a reply e-mail from the director confirming receipt. On 22 August 2016, having still received no response to the Formal Direction, the Executive called the director on her mobile number. The person receiving the call answered, giving the director's first name, and the Executive advised her that a response was required to the direction sent to the Level 2 provider. The person who answered then advised the Executive that the director was not available and she was just using her phone but would pass on the message.

The Executive noted that on 31 August 2016, it had called the Level 2 provider on telephone number \*\*\*\*\*074, and left a message for the director to call the Executive back. The Executive also called the director's mobile number and asked to speak to the

director by name. The Executive was advised that the director was not available. Again, the Executive left a message stating that they had still not received a response to formal direction and requested that the director contact the Executive.

In addition, the Executive had corresponded with the Level 1 provider Veoo Limited, seeking their assistance to get their client to respond and engage with the Executive.

The Executive submitted that the Level 2 provider had failed, when directed, to provide the following information, which was of a regulatory benefit to the investigation:

- The identity of the 3<sup>rd</sup> party company who did their PIN opt-in verification
- Provide robust verifiable evidence of consent to charge for sample of MSISDNs if they did not use a 3<sup>rd</sup> party company, including real-time access to opt-in data.
- The date the service started
- Step by step user flow of the full consumer journey for the PIN opt-in promotion
- A working link to the games portal
- When the service started PIN opt-in verification
- When the service started MO opt-in verification
- Confirm all methods of opt-in to the service

For the reason set out above the Executive asserted that the Level 2 provider did not comply with the Code in relation to responding to formal directions for information. Accordingly, the Executive submits that the Level 2 provider has acted in breach of paragraph 4.2.5 of the Code.

2. The Joint Administrators had responded to the Warning Notice. The Joint Administrators reiterated the terms of their consent to the lifting of the statutory moratorium. The Joint Administrators did not wish to take part in the process, and stated that they would not be liable for any costs associated with the process. Subsequently, the Joint Administrators had no further comments on this matter.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the Level 2 provider had not provided a response to the Executive's formal direction requiring provision of information, and considered that the information requested was reasonably likely to have been of regulatory benefit. Consequently, the Tribunal upheld a breach of paragraph 4.2.5 of the Code.

**Decision: UPHELD**

### **Alleged Breach 3**

**Rule 3.12.5** – “Any reference to compliance with the rules or obligations under this Code shall include compliance with all specified amounts, call durations and actions set by Phone-paid Services Authority under paragraph 3.12.1. A breach of any specified amount, duration or action set under that paragraph shall be a breach of the Code.”

1. The Executive asserted that the Level 2 provider had breached paragraph 3.12.5 of the Code as, although monthly billing started in November 2015, message logs showed a monthly reminder only being sent from January 2016 onwards, or not at all.

The Executive referred to rule 3.12.1 of the Code which states:

“Phone-paid Services Authority may, in relation to the service categories set out in paragraph 3.12.2 below, specify:

- (a) the service charges which may be spent per call or calls taken together in any 24-hour period or monthly billing cycle,
- (b) the duration permitted for a call or calls to a service in any specified time period,
- (c) the actions which must be taken at specified intervals, or after specified service charges or call duration have been reached, including but not limited to:
  - (i) The provision of a spend or call duration reminders;
  - (ii) The immediate termination of the service after provision of a spend or call duration reminder unless the consumer positively confirms a wish to continue to use the service;
  - (iii) The immediate termination of the service.”

The Executive also referred to the Notice of Specified Service Charges and Duration of Calls published in accordance with paragraph 3.12.6 of the 13th Code of Practice. The Notice at paragraph 8.2. specifies that:

“...for all subscription services, once a month, or every time a user has spent £20.45 (inclusive of VAT) if that occurs in less than a month, the following information must be sent free to subscribers:

- (i) The name of the service;
- (ii) Confirmation that the service is subscription-based;
- (iii) What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;
- (iv) The charges for the service and how they will or can arise;
- (v) How to leave the service; and
- (vi) Level 2 provider contact details.”

The Executive relied on the message logs supplied by the Level 2 provider. A summary of two example message logs is provided below:

Level 2 provider message log for mobile number \*\*\*\*\*8895

The Executive noted that the Level 2 provider log showed that once monthly billing started on 28 November 2015, a subscription / spend reminder message was only sent on 28 January 2015, 2 months after the initial charge had been incurred.

“GAMESNATION Club £4.50 per month with 1<sup>st</sup> month free or send STOP to quit. GET GAMES: tinyurl.com/pgx6nkv 01302 215009 GNUK”

## Level 2 provider message log for mobile number \*\*\*\*\*0890

The Executive noted that the Level 2 provider log showed that once monthly billing started on 28 November 2015 through to 28 January 2016, no subscription / spend reminder message was sent.

For the reasons set out above the Executive asserted that the Level 2 provider did not comply with the Code in relation to spend reminder messages for subscription services. Accordingly, the Executive submitted that the Level 2 provider has acted in breach of paragraph 3.12.5 of the Code.

2. The Joint Administrators had responded to the Warning Notice. The Joint Administrators reiterated the terms of their consent to the lifting of the statutory moratorium. The Joint Administrators did not wish to take part in the process, and stated that they would not be liable for any costs associated with the process. Subsequently, the Joint Administrators had no further comments on this matter.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the Level 2 provider had not complied with the requirements of rule 3.12.1 of the Code (and the Notice of Specified Service Charges and Duration of Calls) in relation to reminder messages for subscription services, and consequently, for the reason advanced by the Executive, the Tribunal upheld a breach of paragraph 3.12.5 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 Phone-paid Services Authority subject only to paragraph 3.4.3 below.”

1. The Executive asserted that the Level 2 provider had breached paragraph 3.4.1 of the Code because the Level 2 provider had not been registered with Phone-paid Services Authority in a period of time when the Service was operational.

The Executive noted that:

- i. From 1 September 2011, all Level 2 providers must have been registered (or re-register if they had previously been “registered” under Code 11) with Phone-paid Services Authority prior to providing any premium rate services;
- ii. Code 12 registration must be renewed annually (paragraph 3.4.6 of the Code);
- iii. Phone-paid Services Authority 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 Phone-paid Services Authority website:

<http://psauthority.org.uk/for-business/register-or-renew-your-registration>).

The Executive noted that the Level 2 provider had stated “Web campaigns started in October 2015.” The Registration Scheme database shows that the Level 2 provider registered with Phone-paid Services Authority on 3 November 2015.

The Executive submitted that, based on the Level 2 provider’s statement, the Level 2 provider was not registered on the Registration Scheme as required in the Code. The Registration Scheme provides details of all PRS providers operating in the UK and is in place to benefit consumers, by giving them information about providers which operate premium rate services (for example customer care telephone numbers), to benefit PRS providers by assisting them with their due diligence, and to assist Phone-paid Services Authority in taking targeted enforcement action at providers causing consumer harm. The Executive submitted that providers which fail to register with the Registration Scheme undermine the ability of the Registration Scheme to achieve these goals.

Accordingly, the Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.1 of the Code.

2. The Joint Administrators had responded to the Warning Notice. The Joint Administrators reiterated the terms of their consent to the lifting of the statutory moratorium. The Joint Administrators did not wish to take part in the process, and stated that they would not be liable for any costs associated with the process. Subsequently, the Joint Administrators had no further comments on this matter.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the Level 2 provider had not (until 3 November 2015) registered itself with the Phone-paid Services Authority as it was required to do by paragraph 3.4.1 of the Code, and consequently, for the reason advanced by the Executive, the Tribunal upheld a breach of paragraph 3.4.1 of the Code.

**Decision: UPHELD**

## SANCTIONS

### Representations on sanctions made by the Executive

1. The Executive submitted that the following sanctions were appropriate:

- a formal reprimand; and
- a fine of £300,000

based on a preliminary assessment of breaches 1 and 2 as “very serious”, breach 3 as “serious” and breach 4 as “moderate”. The Executive also noted that it originally had considered that a bar on the Service until compliance advice was implemented to the satisfaction of Phone-paid Services Authority should be recommended. However, since the Warning Notice was issued on 19 October 2016, the Level 1 provider Veoo advised on 31 October 2016 it had permanently suspended the service on 28 October 2016.

The Joint Administrators on behalf of the Level 2 provider did not comment on sanction, save to state that should any fine be imposed upon the Level 2 provider it would be ranked as an unsecured claim in the administration proceedings.

### Initial overall assessment

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

#### Rule 2.3.3 – Consent to Charge

The initial assessment of the breach of rule 2.3.3 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Level 2 provider charged consumers without having reliable evidence of consent to charge;
- The case had a clear and highly detrimental impact on consumers; and
- The nature of the breaches, and/or the scale of harm caused to consumers, was likely to severely damage consumer confidence in premium rate services

#### Paragraph 4.2.5 – Failure to provide information

The initial assessment of the breach of paragraph 4.2.5 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Level 2 provider had deliberately and without good reasons provided no response to directions to provide information; and
- The nature of the breaches was likely to severely damage consumer confidence in premium rate services.

### Paragraph 3.12.5 – Subscription reminders

The initial assessment of the breach of rule 2.3.3 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The subscription service had been operated in such a way that consumers have not been properly informed of the method of exit;
- The case had a clear and highly detrimental impact or potential impact on consumers;
- The nature of the breaches, and/or the scale of harm caused to consumers, was likely to severely damage consumer confidence in premium rate services; and
- Consumers had incurred an unnecessary cost

### Paragraph 3.4.1 – Failure to register the provider

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

- The Level 2 provider failed to register as an organisation operating premium rate services, but rectified this within a short period of time;
- The breach, if continued, would have been capable of having a slight impact on consumer confidence in premium rate services; and
- The breach was likely to have had a discernible effect, directly or indirectly, on consumers.

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

### Final overall assessment

In determining the final overall assessment for the case, the Tribunal took into account the following aggravating factors:

- The Level 2 provider appeared to have made misleading statements to the Level 1 providers regarding where and how it had obtained consumer opt-in to charges; and
- After the service was suspended by Tap2Bill, the Level 2 provider was undoubtedly on notice of the need to refrain from charging consumers unless it held robust evidence of consent to charge, but it had not taken this opportunity to remedy the breach.

The Tribunal did not find any mitigating factors. The Tribunal noted that although some consumer complaints mentioned offers of refunds, the Level 2 provider had failed to provide evidence to show it had in fact proactively refunded consumers.

The Level 2 provider's evidenced revenue in relation to the Service in the period from November 2015 to June 2016 was in the range of Band 3 (£250,000 to £499,999).

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 (including the fact of the Level 2 provider's administration), the Tribunal decided to impose the following sanctions:

- a formal reprimand;
- a fine of £200,000;
- a requirement that access to the Level 2 provider's Service is barred until compliance advice regarding the Level 2 provider's procedures for ensuring that it only charges consumers for whom it holds robust and verifiable evidence of consent to charge has been obtained, and implemented to the satisfaction of the Phone-paid Services Authority; 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.

**Administrative charge recommendation:**

**100%**

## Appendix A

<http://uk.gamenationuk.com/ad/76git8/>

# GAME NATION



**£4.50 a month for unlimited access to the hottest mobile GAMES  
in your web browser - no App required!!**

**text GAMES to 88450**

**This is a subscription service costing £4.50 per month. To end  
subscription send STOP to 88450**

GAME NATION is a mobile games portal enabling users to browse games and play them using their mobile browser. You must have prior permission from the bill payer. Unlimited usage and browsing is included in the monthly service subscription charge. No additional fees are chargeable except your standard operator data charges (where applicable). Service charged at £4.50 once per month via premium SMS, plus standard network charges. We reserve the right to contact individuals with occasional free promo info texts. To stop promo msgs or stop the service just text stop to 88450. For customer support email us at [help@gamenationuk.com](mailto:help@gamenationuk.com) or call us on +44 130 221 5009

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