

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS
TRIBUNAL DECISION**

**Thursday 10 May 2012
TRIBUNAL SITTING No. 99 / CASE 3
CASE REFERENCE: 04891**

Level 2 provider: London & Southern Housing Limited
Type of service: Housing support information telephone line
Network operator: Zimo Communications Limited

**THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER
UNDER PARAGRAPH 4.4 OF THE CODE**

BACKGROUND

Between October 2011 and February 2012, PhonepayPlus received eight complaints in relation to calls made to premium rate number 090116146145 which was used for a Housing Support Agency and Housing Support Line service (“**Service**”). In the main, the complainants called the Service after viewing an advert promoting a “DSS friendly” housing information line on websites, or in other local classified print publications (**Appendices A, B, C, D and E**).

All eight complainants reported that they had not been informed of the £1.53 per minute cost of calling the service, either within any promotion, or upon connection of the call. During the call, complainants reported being left on hold and/or being asked a large number of questions which significantly lengthened the call time. In addition, the complainants stated that, despite the claims made in promotional material, the Service did not have any “DSS friendly” accommodation and simply provided callers with a list of phone numbers. On calling the numbers it was found that there was no affiliation to the Service and assistance was not offered to people on benefits and/or people with the needs provided to the Service operator. Monitoring by the Executive provided evidence supporting the complainants’ claims regarding pricing, delay and the content of the Service.

According to the Network operator, Zimo Communications Limited, 090116146145 had been allocated to the Level 2 provider, London & Southern Housing Limited, to operate the Service.

Further investigation by the Executive revealed that the Advertising Standards Authority (the “ASA”) had adjudicated and banned adverts promoted by a similar service called the “Housing Support Line” and operated by the Level 2 provider in August 2011. The Executive noted that promotional material identified by the Executive in February and March 2012, was strikingly similar to the advert banned by the ASA.

The Investigation

Following use of PhonepayPlus’ informal fast track procedure in November 2011, the Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the Code.

The Executive sent a breach letter to the Level 2 provider on 16 April 2012. Within the breach letter the Executive raised the following potential breaches of the Code:

- Rule 2.3.10- Vulnerable groups;
- Rule 2.3.2- Misleading;

- Rule 2.3.4- Undue delay;
- Rule 2.2.5- Pricing;
- Paragraph 3.1.4- General responsibilities; and,
- Paragraph 3.9.1- Responsibilities of Level 2 providers.

On 10 May 2012, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

Rule 2.3.10

“Premium rate services must not seek to take advantage of any vulnerable group or any vulnerability caused to consumers by their personal circumstances.”

1. The Executive submitted that customers using the Housing Support Agency were, or were likely to be, experiencing financial difficulty and/or homelessness. The Executive noted that part 4.2 of the Guidance defined vulnerability as: “[A]n illness, bereavement or financial difficulty”. As such, the Executive asserted that a service promoting and operating a £1.53 per minute helpline providing information and/or advice (which was available for free on websites) appeared to take advantage of a vulnerability caused to consumers by their personal circumstances.

Accordingly, the Executive submitted that the Level 2 providers had breached rule 2.3.10 of the Code.

2. The Level 2 provider maintained that it was dedicated to providing individuals with access to housing “Benefit friendly” properties and advice on related housing issues. It was asserted that the vast majority of their clients were in receipt of housing benefit, which was the key reason why they utilised the service in order to find property. It also stated that it provided clients with relevant advice and information about acquiring deposits, bonds and crisis loans, along with additional advice on general tenancy matters. It further outlined that its service had been in operation since October 2010, and that it had assisted over 10,000 individuals and families to acquire property throughout the UK and that the charity Shelter had highlighted the difficulties faced by those on benefits searching for accommodation.
3. The Tribunal considered the evidence and concluded that callers were vulnerable as a result of their personal circumstances (seeking housing and in receipt of benefits) and that the Level 2 provider had sought to take advantage of this vulnerability by targeting the service at them. The Tribunal upheld a breach of rule 2.3.10 of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

Rule 2.3.2

“Premium rate services must not mislead or be likely to mislead in any way.”

1. The Executive submitted that the service was promoted with explicit references and claims regarding the provision of assistance to those on benefits, that the service was affiliated to and/or worked with estate and letting agents and that the service had access to flats available to those on benefits. The Executive submitted that as a result of the nature of the promotion, consumers were misled into believing that the service had actual properties available to rent to those in receipt of benefits, and that the service had connections to “Benefit friendly companies”, “DSS friendly agents”

and “private landlords” (**Appendices A, B, D and E**). The Executive submitted that its monitoring, together with the complainants’ evidence contradicted the claims made in promotional material by the Level 2 provider. The Executive asserted the consumers’ expectations were defeated, as the Level 2 provider did not appear to be affiliated with “Benefit friendly” landlords and or agents, did not have properties to offer callers and could only provide a list of estate agents (which did not meet the criteria specified) and therefore the promotions were misleading, or likely to mislead consumers.

The Executive noted that no evidence had been provided from any individuals who had obtained accommodation with the assistance of and/or through the service.

The Executive accordingly submitted the Level 2 provider had breached rule 2.3.2 of the Code.

2. The Level 2 provider maintained it was dedicated to providing access to housing “Benefit friendly” properties and advice on related housing issues. It outlined that its service had been in operation since October 2010, and that it had assisted over 10,000 individuals and families to acquire property throughout the UK.

The Level 2 provider stated the Executive’s interpretation of the service was in “stark contrast” to the feedback received from hundreds of satisfied clients and the testimonials which had been received by its team that go to support its claims. The Level 2 provider noted that during the Executive’s monitoring of a: “[S]mall sample selection from [its] affiliates database, the name used was ‘London and Southern’ whereas the affiliates know the service by the trading name of ‘Housing Support Agency’”. The Level 2 provider completely refuted the statement that they had no affiliation with any agencies or landlords, or that they had no properties to offer. In contrast, the Level 2 provider stated that they had documentary evidence demonstrating that affiliates had made properties available to their clients. The Level 2 provider described ongoing development of its records to ensure they are constantly updated and to ensure information stayed relevant and correct for all clients.

3. The Tribunal considered the evidence, including the submissions and documents provided by the Level 2 provider, and concluded that consumers were misled for the reasons advanced by the Executive. The Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH THREE

Rule 2.3.4

“Premium rate services must be provided without undue delay after the consumer has done what is necessary to connect with the service and must not be unreasonably prolonged.”

1. The Executive referred to the PhonepayPlus Guidance note on The Avoidance of Undue Delay which states: *“Holding or delaying consumers from reaching key information is not permitted on any service”*

The Executive stated that complainants had reported being delayed or put on hold during calls. The complainants’ accounts were supported by monitoring of the service by the Executive. The Executive submitted that many of the questions asked by operators during calls did not materially assist the operator in the provision of information to the caller and simply delayed consumers from reaching the key

information the service purported to supply. The Executive accordingly submitted that the Level 2 providers had breached rule 2.3.4 of the Code.

2. The Level 2 provider strongly refuted the breach. In its response it provided a detailed explanation of how the service worked and why information was gathered. It was submitted that the information had to be gathered from each call in order to provide the client with a relevant list of affiliates who would accept their personal circumstances. The Level 2 provider referred to documentation which they submitted contained examples of the different criteria potential tenants needed to fulfil for specific properties and/or affiliates.

The Level 2 provider responded to a specific complaint regarding a trainee operator allegedly causing delay by stating that had it been brought to their attention they would have dealt with the matter internally and provided a full refund.

3. The Tribunal considered the evidence, including the detailed submissions and documents submitted by the Level 2 provider, and concluded that on a balance of probabilities callers had been subjected to undue delay. The Tribunal was particularly persuaded by the monitoring evidence produced by the Executive in relation to the experience they had encountered when using the service and the evidence advanced by the complainants. The Tribunal upheld a breach of rule 2.3.4 of the Code.

Decision: UPHELD

ALLEGED BREACH FOUR

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.”

1. The Executive referred to the definition of ‘promotion’ contained in paragraph 5.3.29 of the Code and submitted four reasons in support of its conclusion that the Level 2 provider had breached rule 2.2.5. These were that:
 - i. Contrary to requirements contained in the Guidance note titled The Conduct of Live Services, complainants stated they were not notified of the cost of calls on connection with the service.
 - ii. One complainant stated that she had received a text message from the service requesting her to call the number 09116146145. The text message did not contain any pricing information. The Executive submitted the message was sent by London & Southern Housing Limited with the intention of directly encouraging use of a premium rate number and was therefore a ‘promotion’, which should have included pricing information.
 - iii. Pricing information on some promotional material on the Level 2 providers’ website required navigation to a different part of the website and was unclear (**Appendix A**).
 - iv. In order to view pricing information in some online promotional material, including on “Gumtree”, “the Ilford Recorder”, “1 Classified”

and “Wales Ad”, consumers had to scroll down the page (**Appendices D and E**).

2. The Level 2 provider submitted that Guidance does not constitute immediate and formal changes to the Code and that they were fully compliant with the rules relating to pricing contained in the Code.

Specifically, it was maintained that:

- i. The provider had never operated a marketing strategy incorporating text messages.
 - ii. The provider’s website was clearly not in operation and not promoted to clients in any advertisement or on the telephone (**Appendix A**).
 - iii. The provider had no control over information contained on the websites www.1classified.com and www.walesads.co.uk, which “crawl the web” for adverts and did not seek the providers’ consent.
3. The Tribunal considered the evidence. The Tribunal concluded that the lack of pricing information on connection to the service did not breach rule 2.2.5 as the service had already commenced and this could not be defined as being part of a ‘promotion’. In relation to the text message complaint, the Tribunal preferred the evidence of the complainant and found that on the balance of probabilities it had either been sent by, or on the behalf of, the provider and that it constituted a promotion. The Tribunal also accepted the Executive’s submissions in relation to the pricing information on the Level 2 provider’s website and in other online promotions. The Tribunal upheld a breach of rule 2.2.5 of the Code.

Decision: UPHELD

ALLEGED BREACH FIVE

Paragraph 3.1.4

“All Network operators, Level 1 and Level 2 providers must:

act on any direction, instruction, notice or request for information given by PhonepayPlus in pursuance of its duties as a regulator. Where PhonepayPlus specifies a timeframe for action or response that timeframe must be adhered to or an extension promptly requested in writing setting out clear reasons. Any such extension will be granted only in exceptional circumstances.”

1. On 28 December, the Executive sent a preliminary investigation letter to the Level 2 provider containing a formal direction to respond to 19 specific questions and/or requests for information and/or documents. The Executive submitted that the Level 2 provider had failed to respond, or respond adequately, to eight of the requests and had therefore breached paragraph 3.1.4.
2. The Level 2 provider submitted that it had provided the Executive with a response to the original direction and that it had not been made aware of any omissions. The provider maintained that if it had been notified of the omission it would have addressed the situation immediately and provided additional information as per the original request. The Level 2 provider further commented that all of their submissions were double-checked by the Network operator, who was furnished with a detailed breakdown of the call times requested.

3. The Tribunal considered the evidence, including the submissions made by the provider, and concluded that the Level 2 provider had not provided an adequate response to the Executive's request for information and that a partial response was not enough to discharge its obligation under the Code provision. The Tribunal upheld the breach of paragraph 3.1.4 of the Code.

Decision: UPHELD

ALLEGED BREACH SIX

Paragraph 3.9.1

“Before promoting or providing services, Level 2 providers must have readily available all documentary and other evidence necessary to substantiate any factual claims made. This material, together with a statement outlining its relevance to the factual claim in question must be provided without delay if requested by PhonepayPlus.”

1. The Executive submitted the service was held out as a specialist information line for people in receipt of housing benefits. As a result, the Executive expected that operators had received training on the UK welfare system. Given that the Level 2 provider had claimed to work with affiliate estate agents and landlords, the Executive further submitted that the Level 2 provider should have been able to provide evidence in support of the existence of such affiliations. The Executive submitted that despite expressly requesting evidence in relation to staff training and the existence of affiliates, the Level 2 provider had failed to provide the information. Therefore the Level 2 provider did not have readily available all documentary and other evidence necessary to substantiate any factual claims made and had thereby breached paragraph 3.9.1.
2. The Level 2 provider submitted it had provided information to the Executive in the faith that what was provided was the relevant and correct information. The Level 2 provider stated that it had checked its submissions with the Network operator and that it had not been notified that it had provided incorrect information. The Level 2 provider maintained that it would have provided the correct information had it been notified and that there was no intention to withhold information from the Executive.
3. The Tribunal considered the evidence and concluded, for the reasons given by the Executive, that the Level 2 provider had breached paragraph 3.9.1. Accordingly, the breach of paragraph 3.9.1 of the Code was upheld.

SANCTIONS

Initial Overall Assessment

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

Rule 2.3.10– Fairness/ vulnerable groups

The initial assessment of rule 2.3.10 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The nature of the breach is such as to take advantage of a consumer who is in a position of vulnerability.

Rule 2.3.2– Fairness/ misleading

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

- There was no evidence the service had assisted anyone to obtain “Benefit friendly” rented accommodation and therefore the service was designed with the specific purpose of generating revenue streams for an illegitimate reason.

Rule 2.3.4– Fairness/ undue delay

The initial assessment of rule 2.3.4 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The cost incurred by consumers was higher and the service had generated higher revenues as a result of the breaches.

Rule 2.2.5 –Transparency and pricing

The initial assessment of rule 2.2.5 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The cost incurred by consumers was higher and the service had generated higher revenues as a result of the breaches.

Paragraph 3.1.4– General responsibilities

The initial assessment of paragraph 3.1.4 of the Code was **significant**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider had negligently failed to comply with a PhonepayPlus requirement.

Paragraph 3.9.1– Responsibilities of the Level 2 provider

The initial assessment of paragraph 3.9.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The service had a clear and damaging impact on consumers. The failure to provide evidence confirmed that the service had little or no value.

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

Final Overall Assessment

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

- The Level 2 provider failed to implement the recommendations made by PhonepayPlus during the Fast Track procedure.

There were no mitigating factors.

The joint revenue in relation to this service was in the mid range of Band 3 (£100,000-250,000).

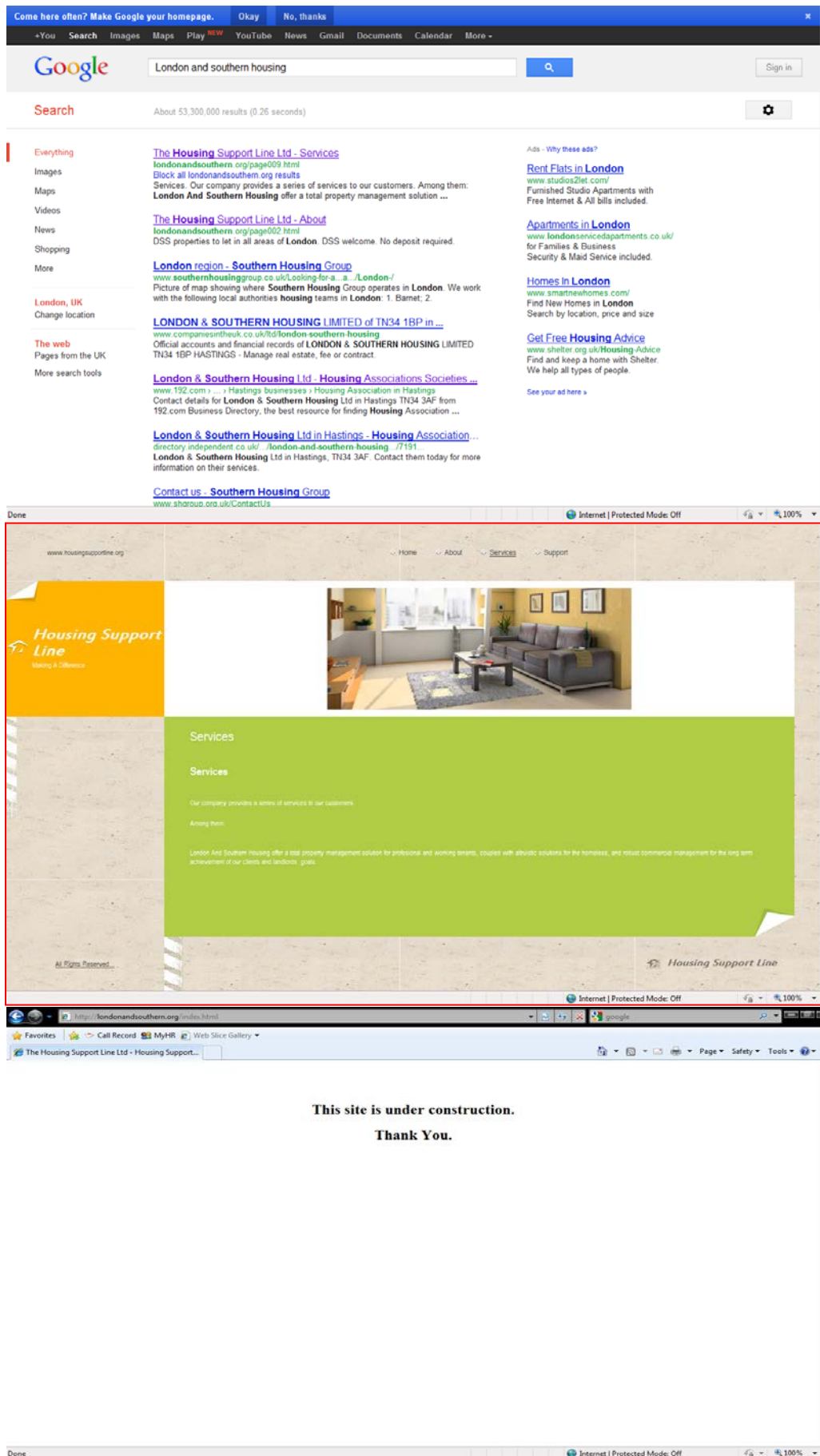
Having taken into account the aggravating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

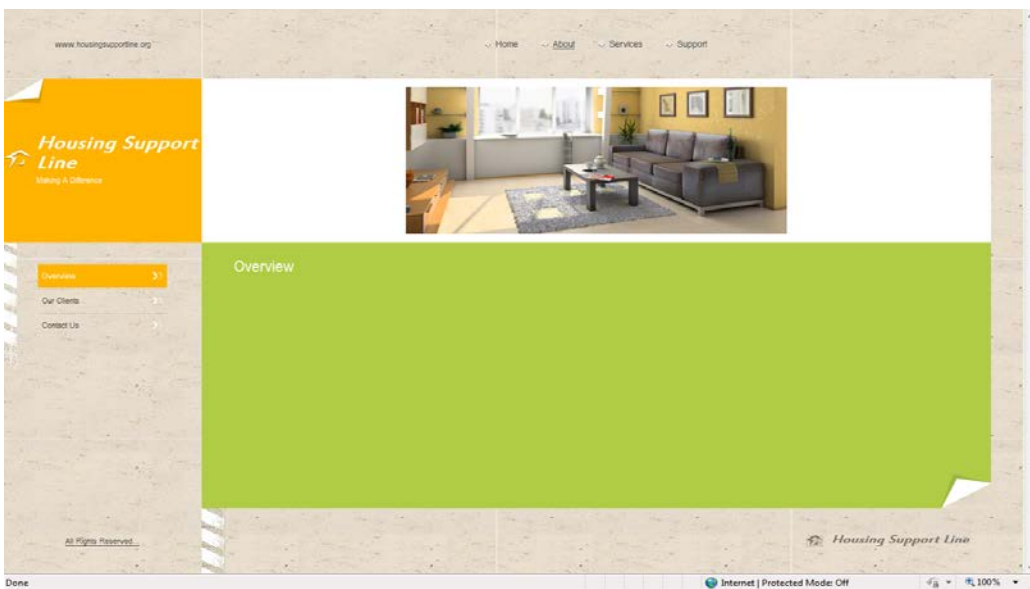
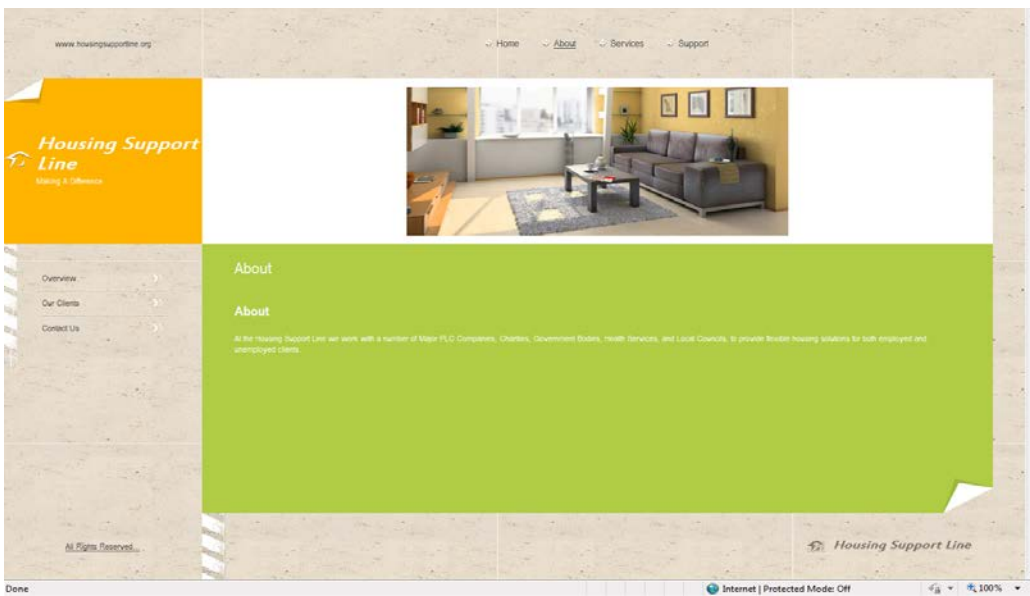
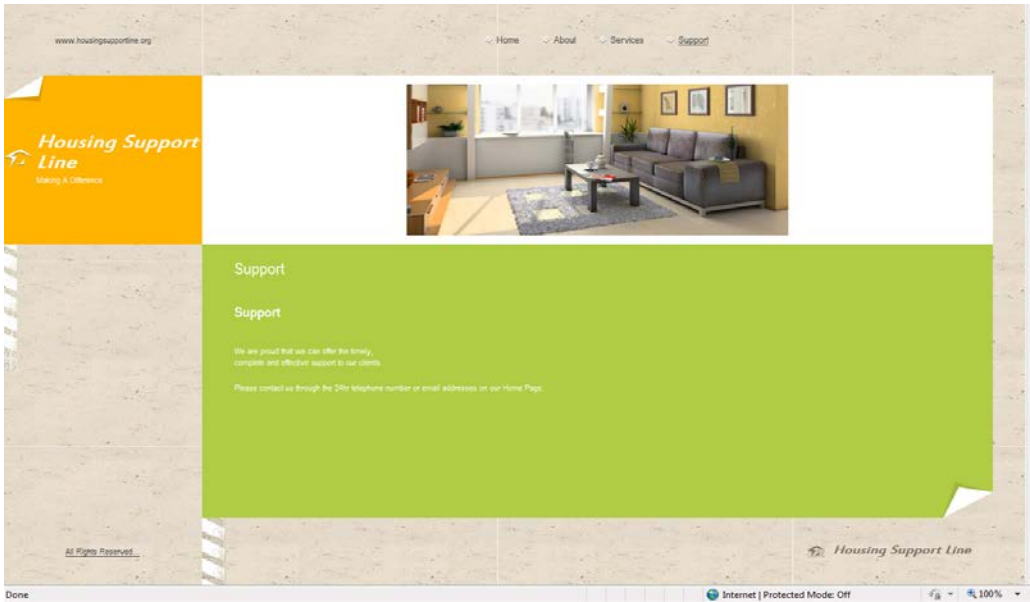
Sanctions Imposed

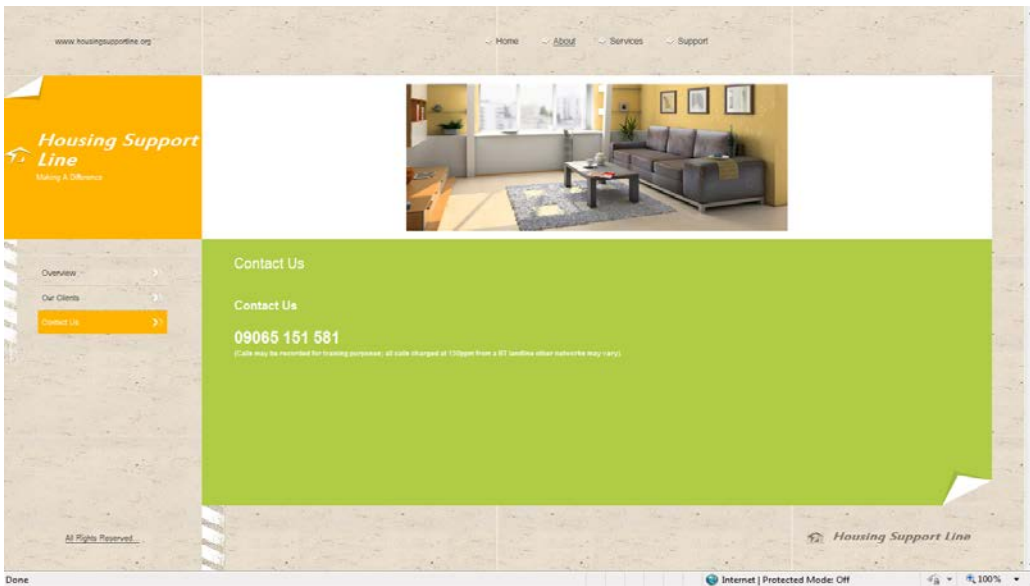
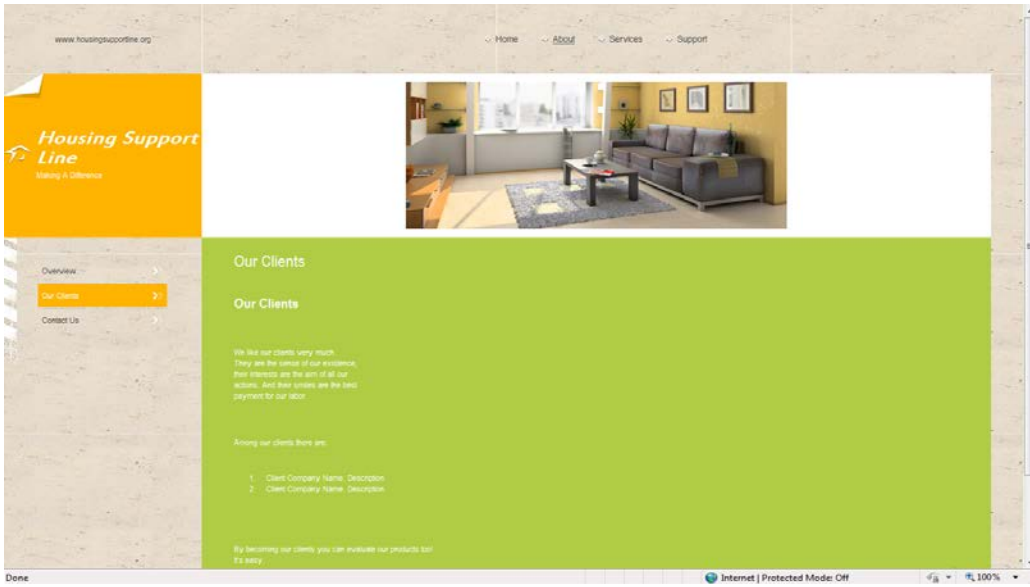
Having regard to all the circumstances of the case, the Tribunal decided to impose the following sanctions:

- A formal reprimand;
- A fine of £100,000;
- A requirement that the Level 2 provider seeks prior permission for the operation of any premium rate service for a period of 12 months; and,
- A requirement that the Level 2 provider must, within six months, refund all complainants who claim a refund, 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 PhonepayPlus that such refunds have been made.

Appendix A- Screenshots of the website www.londonandsouthern.org:







Appendix B- Screenshots of a promotion found on www.gumtree.com:

2 BED FLAT TO RENT IN BRADFORD - DSS WELCOME - £100pw Bradford

★ Save | Get email alerts | Share | Report

Request details

Date available	Property type	Number of beds	Seller type
11/07/11	Flat	2	Trade

1 and 2 bed flats, similar to the one shown, available to rent for Housing Benefit Tenants.

Housing Support Agency has properties available from our affiliates in the areas.
BRADFORD, HALIFAX, HORTON.

Rents are at local LHA rates. One months rent in advance is required together with a deposit.
We can advise you on deposits how to acquire the advance rent.

Housing Support Agency is an information service that helps people on housing benefit to
move into private rented homes....

Our database, which includes; properties from housing companies, DSS friendly agents and
private landlords will carry out a comprehensive search to bring solutions for your
accommodation requirements.

If we can't find you suitable accommodation from our first search our system will prioritise
your application until we do. We handle everything – from working out your housing benefit
(LHA rate), to advising you on deposits and rent in advance. .

TO REGISTER CALL; 0911 614 6145

LINES OPEN Mon-Fri 9am-9pm
LINES OPEN Sat-SUN 9am-6pm

(calls may be recorded for training and quality of service purposes, all calls cost £1.53 per
minute plus network extras. Customer care number 08456809764)



Enlarge picture



Hell Bunny Womens/Girls ...
£7.75 Buy It Now

ebay.co.uk

Appendix C- Screenshot of the Level 2 provider's promotion on Twitter:

The screenshot shows a Twitter profile for 'Housing Support Line' (@housingline) and a tweet. The profile header includes the name, handle, location (Hastings, East Sussex), a bio describing the organization's focus on private rental accommodation for people on housing benefits, and a website link (http://www.londonandsouthern.org/). Below the header are 'Follow' and 'Text follow' buttons. The tweet list shows three tweets, with the second one highlighted. The highlighted tweet contains the promotional text: 'Do you need help finding a property? Feel free to give us a call and register with us on 0911 614 6145 (call... (cont) http://deck.ly/~ObaT5'. The tweet is dated '11 Apr' and is viewed via 'TweetDeck'.

Housing Support Line
@housingline Hastings, East Sussex
The Housing Support Line is an organization specialising in finding privately rented accommodation for people on housing benefit.
<http://www.londonandsouthern.org/>

[+ Follow](#) [Text follow housingline to your carrier's shortcode](#)

Tweets Favorites Following Followers Lists

housingline Housing Support Line
Want to sell your house? Give it a name - Telegraph
telegraph.co.uk/finance/econom... via @Telegraph
11 Apr

housingline Housing Support Line
Do you need help finding a property? Feel free to give us a call and register with us on 0911 614 6145 (call... (cont)
<http://deck.ly/~ObaT5>
11 Apr

housingline Housing Support Line
Are you're looking for property in the private sector and in receipt of benefits? We can help, so feel free to get in touch.

@housingline Housing Support Line
Do you need help finding a property? Feel free to give us a call and register with us on 0911 614 6145 (call... (cont)
<http://deck.ly/~ObaT5>
11 Apr via TweetDeck

Appendix D- Screenshots of a promotion on www.1Classifieds.co.uk:

1Classifieds.co.uk Saturday, 17 March, 2012
Leeds, United Kingdom

Home / United Kingdom / Leeds / Housing / apts / housing

Business property Burton Versatile commercial development Freehold & Leasehold business units www.burton.co.uk
Holiday Lettings™ Over 49,411 Holiday Homes to Rent. Book now & you could save up to 40% www.holidaylettings.co.uk
Audio Visual Services Lighting, Sound, Set & Stage Most Competitive Quotes, Call us! www.audio1.co.uk

AdChoices Delete this Ad Share

Post# A2851048560

£100 / 1br - 1 Bed Flat to rent in Leeds - DSS WELCOME - (Leeds)

Like Send Sign Up to see what your friends like.

Posted on: Tuesday, 14 February, 2012 16:31
 Updated On: Monday, 20 February, 2012 02:36
 Expires On: Thursday, 24 May, 2012 16:31
 Reply to: (Use contact form below)

Price : £100.00
 Bedrooms : 1

1 and 2 bed flats, similar to the one shown, available to rent for Housing Benefit Tenants.

Our database, which includes; properties from benefit friendly housing companies, DSS friendly agents and private landlords will carry out a comprehensive search to bring solutions for your accommodation requirements.

Our advisors will put you in touch with landlords / agents throughout the UK who will accept tenants on housing benefit.

Housing Support Agency has properties available from our affiliates in the Leeds area.

Rents are aimed at local LHA rates. One months rent in advance is required together with a months deposit. We can advise you on deposits how to acquire the advance rent.

LINES OPEN Mon-Fri -- 9am-5pm
 LINES OPEN Sat-Sun -- 9am-5pm

Housing Support Agency is an information service that helps people on housing benefit to move into private accommodation.....

TO REGISTER CALL: 0911 614 6145

Categories >

- Housing (96)
 - apts / housing (34)
 - housing swp (5)
 - housing wanted (6)
 - office / commercial (10)
 - parking / storage (10)
 - real estate for sale (8)
 - rooms / shared (17)
 - sublets / temporary (0)
 - vacation rentals (6)
- For Sale (330)
- Community (21)
- Cigs (2)
- Business Directory (1434)
- Services (124)
- Jobs (137)
- Resumes (4)

For sale, 5k+ in 5k+ Out, Download Brochure France-Properties.co.uk/v

(calls may be recorded for training and quality of service purposes, all calls cost 71.53 per minute plus network extras. Customer care number 08456809764)

- Location: Leeds
- It's NOT ok to contact this poster with services or other commercial interests

It is ok to contact this poster with commercial interests.

Appendix E- Screenshots of promotion on www.Wales-Ads.co.uk:

