

Tribunal Sitting Number 126 / Case 1

Case Reference: 17843

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| Level 2 provider | Waqar Ashraf trading as book-theory-test-online |
| Type of Service | Customer support |
| Level 1 provider | N/A |
| Network operator | Premium O Limited |

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

BACKGROUND

Between November 2012 and March 2013, PhonepayPlus received 17 complaints regarding a driving theory test booking service (the “**Service**”) operated by the Level 2 provider Waqar Ashraf, a sole trader, trading as book-theory-test-online. Between 5 August 2012 and 1 March 2013 (when the Service was suspended by the Level 1 provider), the Service operated a telephone booking service on the premium rate number 09050020024. Calls were charged at £1.53 per minute. The Network operator was Premium O Limited.

The Service offered consumers the opportunity to book a theory test either online or by calling the premium rate number. Consumers who called the number incurred a £31 charge plus the cost of the premium rate telephone call. The costs incurred by consumers, using either the online or telephone booking service, were significantly higher than the cost of booking a test through the official channels.

Driving theory tests can be booked online for £31 on the Direct Gov/ GOV.UK website. Although booking online is strongly encouraged, tests can also be booked by telephone, on a 0300 number, where a consumer has a disability, or no personal or public internet access (for example at a library).

The Service website (**Appendix A**) was promoted using Google AdWords (**Appendix B**).

Complainants raised concerns regarding the length of calls, pricing prominence and customer service. A number of complainants also stated that they were under the impression that they were calling the official Driving Support Agency (“**DSA**”) contact number. The maximum cost incurred by a complainant was £94.82 (the average cost incurred by complainants was £52.74) excluding the £31 charge for the test. After monitoring the Service and viewing promotional material, PhonepayPlus had concerns regarding the clarity of pricing, pricing prominence, undue delay and the potentially misleading nature of promotional material. PhonepayPlus also noted a delay in the registration of numbers by the Level 2 provider.

The Investigation

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the “**Code**”).

The Executive sent a breach letter to the Level 2 provider on 19 April 2013. Within the breach letter the Executive raised the following breaches of the Code:

- 2.3.4 - Undue delay



- 2.2.1 - Provision of information likely to influence the decision to purchase
- 2.2.5 - Pricing prominence and proximity
- 2.3.2 - Misleading
- 2.6.1 - Complaint handling
- 3.4.12(a) - Registration of numbers

The Level 2 provider responded on 2 May 2013. On 16 May 2013, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

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 submitted that the Level 2 provider acted in breach of rule 2.3.4 of the Code as telephone calls to the Service were unreasonably prolonged. Specifically, the Executive asserted that the Level 2 provider breached rule 2.3.4 for the following two reasons:
 1. Consumers were placed immediately into a call waiting system upon connecting with the Service.
 2. Internal monitoring, consumer complaints and call logs supplied by the Level 2 provider indicated that undue delay occurred once callers were connected to the Service.

The Executive relied on the content of PhonepayPlus Guidance on the avoidance of undue delay (the “**Guidance**”). The Guidance states:

Paragraph 1.1

Once a consumer has chosen to engage with any type of premium rate service, the service should either offer prompt engagement with the service itself, or the service goods purchased should be promptly delivered (pay-for-product services), where this is possible.

Paragraph 1.2

A live service that employs any variation of a queuing system that prevents (either with intention, or otherwise) a consumer from immediately engaging with that service is likely to be considered to be operating under undue delay.

Paragraph 1.3

While providers may argue that the employment of a call queuing system is of benefit to consumers – if it spares the consumer the frustration or expense of having to redial a service, for example – compliance with the PhonepayPlus Code of Practice requires that no premium rate service be designed specifically to operate in this way. This includes services that may have been programmed to inform callers of their position in a queue.

Paragraph 1.4

If a temporary queuing system must be employed by a service (i.e. it can be proven by a provider that there was no other option available at that time), then the queuing should be:

- Kept to an absolute minimum; and, critically,
- It should not be the 'norm' – meaning that the service must not have been designed in such a way as to allow call queuing as normal practice, but rather, there were circumstances at a particular point in time that made it absolutely unavoidable.

Reason 1: Call waiting system

The Executive submitted that, on calling the premium rate number, users were placed in a queue.

Complainants' accounts

The Executive received the following complaints from consumers:

"[W]hen i rang the number it said i was a a queue i was the 5th caller in line and to hold the line so i held the line to be answered to book my theory and when i got to caller number 1 they cut me off dead. and i was on the line over a hour. [sic]"

"The cost was £45 - 29 minuites (only spoke for a couple of minutes the rest was on hold) queuing system. [sic]"

"[W]e were kept waiting for approximately for thirty minutes a male telephonist answered the telephone and promptly disconnected us, we tried again and kept waiting for a further 20 minutes."

The Executive's monitoring

The Executive conducted monitoring of the Service. Three monitoring calls were made in succession on the afternoon of 1 March 2013. Monitoring indicated that telephone calls were automatically entered into a queuing system on connection. During one monitoring call, the Executive was informed that it was "caller number five". After almost seven minutes the Executive progressed only to third position in the queue and terminated the call. The Executive asked the Level 2 provider to provide details of how the call waiting system operated, including the average waiting time. The Level 2 provider responded stating that:

"The call waiting system is an industry standard digital telephone call waiting system, which has an average waiting time of up to 10 seconds per call."

However, the Level 2 provider failed to provide an explanation for the delays experienced by consumers and the Executive.

From the monitoring evidence and the complaint accounts detailed above, the Executive submitted that, contrary to the Level 2 provider's statement above, the call waiting system unreasonably prolonged calls and resulted in undue delay.

The Executive noted that paragraph 1.2 of the Guidance indicates that any call waiting system is likely to be considered to cause undue delay. The call waiting system appeared to have been normal practice for the Service. Further, the Level 2 provider did not provide any explanation for the delay experienced by both consumers and the Executive.

Reason 2: Call length

Internal monitoring, consumer complaints and call logs supplied by the Level 2 provider indicated that undue delay also occurred once consumers were connected to the Service.

The Level 2 provider indicated on its website, book-theory-test-online.co.uk, that calls, “should last between 5 to 7 minutes or may be more”. However, on two occasions the Executive’s monitoring calls lasted over five minutes, at which point the Executive disconnected the call while still in the queue waiting to be connected.

Complainants’ accounts

The Executive received the following complaints from consumers:

“Consumer advises she was unaware of network charges or that total call time would be 47 minutes.”

“The call was for 14 minutes and 53 seconds and cost £22.90 which is massive!”

The Executive’s monitoring

The Level 2 provider supplied a table containing information relating to all calls made to the Service since it began operation in August 2012. From the table, the Executive calculated the average call time for calls to the Service. The Executive did not consider calls of under one minute, as it submitted that it seemed unlikely that the booking function could be performed in this time and, on the balance of probabilities, it was likely that consumers hung up after being entered into the call waiting system. The average call time, excluding all calls under one minute, was nine minutes ten seconds and 52% of 5209 calls lasted over the prescribed seven minutes.

The Executive asked the Level 2 provider to provide details relating to specific complainants’ accounts, one of whom incurred a charge of £94.82 for a 62 minute telephone call. The Level 2 provider responded that, “an excessive waiting length as in this case is rare and unusual,” but failed to give an explanation for the call length.

The Executive concluded that, from the evidence available, it appeared that calls frequently exceeded the call time indicated on the website of five to seven minutes and that there was no evidence to suggest that the Level 2 provider made consumers aware that calls could take considerably longer. As a result of the above, the Executive submitted that the Level 2 provider failed to promptly deliver the Service.

The Executive submitted that the Level 2 provider acted in breach of rule 2.3.4 of the Code as there was undue delay in connecting consumers to an operator and calls were unreasonably prolonged.

2. The Level 2 provider denied the breach. The Level 2 provider submitted that consumers were often unclear about their driving licenses, and required extensive step-by-step guidance to communicate the required information to call operators. The Level 2 provider stated that:

“Some customers did not understand how the license can be used, or even if their licenses were valid or void. Our representatives would often need to go through the details of the

license with them carefully to avoid mistakes on their test booking, and this is why some calls required calls beyond the average 5-7 minute period.”

3. The Tribunal considered the evidence, including the brief written submissions made by the Level 2 provider. The Tribunal noted that the Level 2 provider’s response was limited and did not adequately address the issues raised by complainants and the Executive. The Tribunal found that callers were not connected to an operator in a timely manner and that calls to the Service were unreasonably prolonged. Therefore, the Tribunal upheld a breach of rule 2.3.4 of the Code for the two reasons given by the Executive.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.2.1

Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.

1. The Executive submitted that the Level 2 provider had acted in breach of rule 2.2.1 of the Code as there was inaccurate pricing information on Google AdWords promotions for the Service.

The Executive relied on the content of Guidance on Promotions and promotional material (the “**Guidance**”). The Guidance states:

Paragraph 2.17

PhonepayPlus is aware that there are some promotional mechanics... where it may not be possible to list pricing information due to a lack of available character space. In these circumstances, we would refer to rule 2.2.1 of the Code.

Paragraph 2.18

PhonepayPlus interprets this to be that the consumer must be informed of the price, and indeed any other necessary information, prior to purchasing. In other words, as long as the consumer is clearly informed of the price prior to purchase, then there is no need to inform the consumer in each individual part of a cumulative promotional process.

The Service was promoted using Google AdWords. Promotional material for the Service displayed as one of the top sponsored links when searching “book theory test” or “theory test phone number” on Google.

The Executive received the following complaints from consumers:

“At the time I was not aware that I was using that service and I expected to be charged the local rate.”

“I found this number on the internet to book my driving theory test it did not give any cost of call.”

“I called to book a theory test for my son but I was not advised that this number was at

premium rate therefore I was not aware of how much this was costing me.”

“Their home page correctly details the cost of the phone calls. Their Adwords however go to <https://www.book-theory-test-online.co.uk/personal-details.php> where there is no mention of premium rate costs.”

The Executive monitored the Service on 19 February by searching “book theory test” on Google. The Executive observed that the Level 2 provider’s website was listed as the second sponsored link (**Appendix B**). The Executive noted that the premium rate number for the Service was included in the sponsored link. Therefore a consumer could call the Service without accessing the Service website. Although the promotion stated a cost of “£31”, in reality the cost of calling the premium rate number was £1.53 per minute, in addition to the fixed fee of £31.

Having reviewed the monitoring evidence alongside the complainant accounts set out above, the Executive asserted that, because full cost information was omitted from the sponsored advertisement, consumers were not provided with sufficient information in order to make an informed decision prior to purchase and therefore a breach of rule 2.2.1 had occurred.

2. The Level 2 provider stated:

“We had been advised by Google Adwords to optimise our advertisement in this manner and use this format to promote our business most effectively. The advert was approved by Google’s monitoring team.”

3. The Tribunal considered the evidence, including the brief written submissions made by the Level 2 provider. The Tribunal noted that the Level 2 provider’s response was limited and did not adequately address the issues raised by complainants and/or the Executive. The Tribunal found that the cost of calling the premium rate number for the Service was not included in Google AdWords promotions for the Service. Therefore, a consumer who dialed the Service as a result of seeing the Google AdWords promotion would not have been aware of the full cost of using the Service. The Tribunal commented that, as a matter of common sense, there would be no requirement for a consumer to view the Service website after obtaining the Service number on the Google AdWords promotion. Therefore, for the reason advanced by the Executive, the Tribunal concluded that consumers were not fully and clearly informed of all information likely to influence the decision to purchase. Accordingly, the Tribunal upheld a breach of rule 2.2.1 of the Code.

Decision: UPHELD

ALLEGED BREACH 3

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 asserted that the Level 2 provider had acted in breach of rule 2.2.5 because pricing on the Service website was not prominent or proximate to the premium rate number.

The Executive relied on the content of PhonepayPlus Guidance on Promotions and promotional material.

Paragraph 2.2

As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code 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).

Paragraph 2.10

Lack of prominence, or proximity, most often takes place online (both web and mobile web), where the price is provided in small print elsewhere on the page from the call to action.

The complainants' accounts

The Executive received the following complaints from consumers:

“At the time I was not aware that I was using that service and I expected to be charged the local rate.”

“I found this number on the internet to book my driving theory test it did not give any cost of call.[sic]”

“I called to book a theory test for my son but I was not advised that this number was at premium rate therefore I was not aware of how much this was costing me.”

One complainant's account included correspondence with the Level 2 provider, in which the issue of pricing proximity was raised. The complainant made the following statements:

“Without any warning on you web site, and with the prospect of saving £10 by phoning and booking...I now have a phone bill of £36.92 for one call...Your call value warning does not appear on the booking options page...From the attached page (**Appendix C**) on which I based my decision to call, the cheaper option is a phone call. There is no indication that this is a premium rate. [sic]”

Executive monitoring

The Service website promoted the premium rate number 09050020024 prominently under the Service name on the landing page. Pricing information was provided underneath the number and read:

“Book Your Theory Test on the phone for £31 calls are charged at £1.53 per minute and should last between 5 to 7 minute.”

Monitoring demonstrated that when consumers moved away from the landing page to the “Contact Us” page, the premium rate number was still prominently displayed at the top of the page but without any pricing information. The Executive contacted the Level 2 provider requesting that changes be made to the website on 1 March 2013. As a result of this the Level 2 provider removed the premium rate number from the “Contact Us” page.



Notwithstanding recent amendments to the website, the Executive submitted that pricing information was still not sufficiently prominent or proximate to the premium rate number.

The Executive noted that the premium rate number was displayed in large orange text at the top of the page. Although the cost was provided below the number, there was a gap which resulted in consumers' attention not necessarily being drawn to the pricing information. Furthermore the price of the test was highlighted in bold and set out before the cost of the call which resulted in the booking cost being more prominent than the subsequent pricing information.

In light of the above, the Executive submitted that a breach of rule 2.2.5 of the Code had occurred as the pricing information was not sufficiently prominent or proximate to the premium rate number.

2. The Level 2 provider stated that it had been in contact with PhonepayPlus during the relevant period and that any issues should have been raised at that time. The Level 2 provider submitted that it would have addressed any issues had they been brought to its attention.
3. The Tribunal considered the evidence, including the brief written submissions made by the Level 2 provider. The Tribunal found that pricing information was not consistently proximate and prominent to the premium rate number on the Service website. The Tribunal was particularly concerned, that as a result of the way the premium rate booking option was described, without proximate and prominent pricing information on the website, consumers may have been led to choose the premium rate booking option in the mistaken belief that this was cheaper than booking the test online. The Tribunal upheld a breach of rule 2.2.5 of the Code on the basis of the Executive's submissions, its own assessment of the pricing information on the Service website and the complainant account which specifically referred to pricing prominence and proximity issues.

Decision: UPHELD

ALLEGED BREACH 4

Rule 2.3.2

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

1. The Executive submitted that the Level 2 provider acted in breach of rule 2.3.2 of the Code as consumers were misled into using the Service and thereby incurred premium rate charges. Specifically, the Executive asserted that the Level 2 provider breached rule 2.3.2 for the following two reasons:
 1. Consumers were likely to have been misled by the sponsored advertisement for the Service into believing that they were contacting the DSA directly.
 2. Consumers were likely to have been misled into the belief that the total cost of booking the test would be £31.

The Executive relied on the content of the PhonepayPlus Guidance on Promotions and promotional material.

Paragraph 3.1

If consumers are to have trust and confidence in using PRS, it is important that they have

available all the key information about a service as part of their consideration of whether to make a purchase or not. For this reason, it is important that promotions do not mislead consumers by stating an untruth or half-truth. It is also important that promotions do not omit, or make insufficiently prominent, an important term or condition likely to affect their decision to use the service.

Reason 1: Consumers were likely to have been misled by the sponsored advertisement for the Service into believing that they were contacting the DSA directly

On 19 February the Executive searched “book theory test” using the Google search engine. The results of the search contained a Google AdWords promotion (sponsored link) for the Service (the second result) (**Appendix D**). In a later search, the sponsored link appeared to have been amended (**Appendix E**).

The Executive received the following complaints from consumers:

“Daughter Google searched for the number and believed it was linked to the DVLA.”

“[Customer’s] son tried to contact dvla in google and was charged.”

The Executive asserted that some consumers were misled (and or likely to have been misled) by the sponsored links, as it was not clear that the Level 2 provider was providing a third party booking service. The Executive asserted that the use of the word “official”, in addition to the reference to a cost of £31, which is the cost of booking the test directly with the DSA, was likely to result in customers believing that the number was the official DSA contact number from which they could book their test directly for £31. Additionally, the Level 2 provider used “DSA” and “GOV.UK” (**Appendices D and E**) in the URLs for the Service website, which further added to the impression that the Service was linked to the actual DSA.

The Executive submitted that when viewing the Google search results, consumers would have clicked on the sponsored link, believing it to be directly linked to the DSA, without seeing the official DSA website listed further below.

The Executive submitted that the Level 2 provider acted in breach of rule 2.3.2 of the Code as the sponsored link for the Service misled or was likely to have misled consumers into believing that the promotion was for the official driving theory test provider.

Reason 2: Consumers were likely to have been misled into the belief that the total cost of booking the test would be £31

The Executive asserted that consumers were likely to have been misled into believing that booking the test using the premium rate number would cost £31.

The Service was promoted using Google AdWords.

The Executive received the following complaints from consumers:

“The Adwords and landing page state that a test can be bought over the phone for £31 which is not the case.”

“From the attached page on which I based my decision to call, the cheaper option is a phone call. There is no indication that this is a premium rate.”

On 19 February the Executive searched “book theory test” in Google which resulted in the Level 2 provider’s website being listed as the second sponsored link. The Service’s home page also advertised the option to “Book Your Theory Test on the phone for £31”. A booking fee was set out at the bottom of the page but only in relation to online bookings. By scrolling through three pages of terms and conditions on the Service’s website, some information could be obtained in relation to the online booking administrative costs imposed by the Level 2 provider.

The Executive submitted that it was not clear, even after reading the terms and conditions, whether the administrative fee applied to telephone bookings or just online bookings.

The Level 2 provider supplied the following information in relation to the pricing model:

“Customers may book and pay either online, or via a premium rate phone call. The charge applied includes the fee charged by the DSA for the theory test, as well as a service charge element. For customers who book online, the fee includes a free Pass Protection Guarantee Scheme, entitling them to one free retest. For bookings made over the phone, a retest is not included in the price.”

The Executive asserted that pricing information on the Service website was misleading. From the monitoring conducted and the complainants’ accounts, it was apparent that consumers were misled into thinking that booking the theory test would cost £31, when in fact they would also be charged for a premium rate call. Accordingly, the Executive submitted that a breach of rule 2.3.2 has occurred.

2. The Level 2 provider stated that on each page of the website it stated that, “this is not an official DSA website”. It added that there were also numerous indicators that the website was not an official DSA or GOV.UK site. For example, on the main landing page, there was a button redirecting users who wished to visit the official DSA site. Further, the DSA or GOV.UK logos were not displayed on the website. The Level 2 provider submitted that visually its website was clearly different from the DSA official website. The Level 2 provider stated that it also, “ran the site past both Trading Standards and Google – both of whom felt that the site or service was not misleading in any way”.
3. The Tribunal considered the evidence, including the Level 2 provider’s submissions. The Tribunal found that the Google AdWords promotion misled or was likely to have misled consumers into believing that the premium rate number was either for or connected with the official DSA. This was as a result of the use of the wording “DSA” and “.GOV.UK” in the URL, the reference to a £31 charge (and the omission of any detail in relation to additional charges) and the use of the word “official”. The Tribunal commented that the use of wording “DSA” and “.GOV.UK” was particularly misleading. Accordingly, the Tribunal upheld a breach of rule 2.3.2 for the reasons detailed above. The Tribunal did not uphold a breach for the grounds set out within the Executive’s reason 2, as a breach of rule 2.2.5 had been upheld on similar grounds.

Decision: UPHELD

ALLEGED BREACH 5

Rule 2.6.1

Level 2 providers must ensure that consumers of their services are able to have complaints resolved

quickly, easily and fairly and that any redress is provided quickly and easily.

1. The Executive submitted that the Level 2 provider had acted in breach of rule 2.6.1 of the Code as a result of its customer service number not operating effectively.

The Executive relied on the content of PhonepayPlus Guidance on the Complaint handling process.

Paragraph 2.4

Where a Level 2 provider chooses to employ a voicemail facility or an email service, rather than a human operator upon first contact, the provider should return messages promptly. Also, where an email service is offered by a provider, a non-premium rate UK customer service number must also be available as per rule 2.6.2 of the PhonepayPlus Code of Practice.

Paragraph 2.5

Having engaged directly with a consumer, the Level 2 provider should attempt to identify and resolve their issue and communicate their proposed resolution within a reasonable period.

A customer services number was provided within the “Contact Us” section of the Service website. Consumers were also provided with an online form in order to submit comments.

On 26 March 2013 the Level 2 provider stated that, “A landline telephone number is listed online to provide customer service support. This number is for support use only and bookings cannot be made via this number.”

The Executive received the following complaints from consumers:

“[C]onsumer tried to contact [Level 2 provider] to dispute but no answer from supplied c/s number.”

“We attempted to telephone 0845180030 with no response.”

As a result of the two complaints detailed above, the Executive asserted that, on the balance of probabilities, it appeared that consumers who called the Level 2 provider’s advertised customer service number did not have their complaints resolved and/or receive any redress. The Executive therefore submitted that the Level 2 provider acted in breach of rule 2.6.1 of the Code.

2. The Level 2 provider stated that during occasional very busy periods it was possible that calls were not answered, but that a “message option” was available. The Level 2 provider added, “However we found that some customers would leave a message but would fail to hang up after speaking, leaving their phone still active on the line for a long time.”
3. The Tribunal considered the evidence, namely the two complainant accounts and the Level 2 provider’s explanation. The Tribunal commented that there was no evidence of an efficient and effective call handling service but determined that there was insufficient evidence to support the uphold of a breach of rule 2.6.1 of the Code. Accordingly, the Tribunal did not uphold a



breach of rule 2.6.1 of the Code.

Decision: NOT UPHELD

ALLEGED BREACH 6

Rule 3.4.12 (a)

Level 2 providers must provide to PhonepayPlus relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service.

1. The Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.12(a) of the Code as the Service began operation prior to registration of the premium rate number with PhonepayPlus.

The Executive stated that the Code requires that Level 2 providers supply relevant details to identify services to consumers. The PhonepayPlus Registration Scheme is in place to facilitate providers to supply relevant details to identify their services to consumers. Once a provider has supplied details of its services, including which premium rate numbers it operates on, the details appear on the “Number Checker” section of the PhonepayPlus website. The Number Checker allows consumers to enter any phone number that they do not recognise on their phone bill, and find out information regarding that number.

Providers must enter information about their services on the Registration Scheme online themselves.

Call logs supplied by the Level 2 provider indicated that the first call to the Service was received on 7 August 2012. In addition, the Level 2 provider confirmed that the Service commenced operation on 5 August 2012.

The available information on the PhonepayPlus Number Checker indicates that the Service was connected on 18 September. This means that the Service was not registered with PhonepayPlus until one month and 13 days after it was launched.

In addition, the Executive noted that as of 9 April 2013, the Service entry on the Number Checker contains no information on the service type, the name of the service is incorrect and there is also no service description or cost information.

The Executive submitted that the Level 2 provider acted in breach of rule 2.4.1 of the Code as the Service was in operation for one month and 13 days before the Level 2 provider registered the premium rate number with PhonepayPlus.

2. The Level 2 provider submitted that:

“We did not realise that we needed to register twice with Phone Pay Plus. We had registered once initially over the phone, and it was only later when talking to a representative that we realised we also had to register online. The representative assured us that we could do it with him online at the time, and that there would be no problem as a result of the delay. [sic]”

3. The Tribunal noted the Executive’s submissions and the Level 2 provider’s response, and



concluded that there is an obligation on Level 2 providers to register services within a reasonable period having regard to paragraph 3.4.12(a) and (c) of the Code and the “Notice[s] to Industry”. The Tribunal found that the period of delay was excessive and concluded that paragraph 3.4.12(a) had been breached. Accordingly, the Tribunal upheld a breach of paragraph 3.4.12(a) of the Code. The Tribunal noted that, although it is desirable for a provider to register additional information relating to a service, for example the service type and cost, there is no mandatory obligation to do so.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

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

Rule 2.3.4 Undue delay

The initial assessment of rule 2.3.4 was at the top end of **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 generated higher revenue as a result of the breach.

Rule 2.2.1 Provision of information likely to influence the decision to purchase

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

- The Service generated high revenue through promotions that either intentionally or recklessly omitted information that was key to consumers' decisions to use the Service.

Rule 2.2.5 Pricing prominence and proximity

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 Service generated revenue as a result of non-compliant pricing information on promotional material on the Service website.

Rule 2.3.2 Misleading

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

- The nature of the breach meant that the Service would have damaged consumer confidence in premium rate services.

Rule 3.4.12 (a) Registration of numbers

The initial assessment of rule 3.4.12(a) 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 failed to comply with a PhonepayPlus requirement.

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



Final Overall Assessment

The Tribunal considered all the aggravating and mitigating factors put before it.

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

- The Level 2 provider failed to follow Guidance in relation to promotions, the avoidance of undue delay and the conduct of live services.

Notwithstanding the fact the Level 2 provider failed to offer any mitigation, in determining the final overall assessment for the case, the Tribunal took into account the following mitigating factor:

- The Level 2 provider took some steps to remedy non-compliance on being instructed to do so by the Executive.

The Level 2 revenue in relation with this service was in the range of Band 4 (£50,000 - £100,000).

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

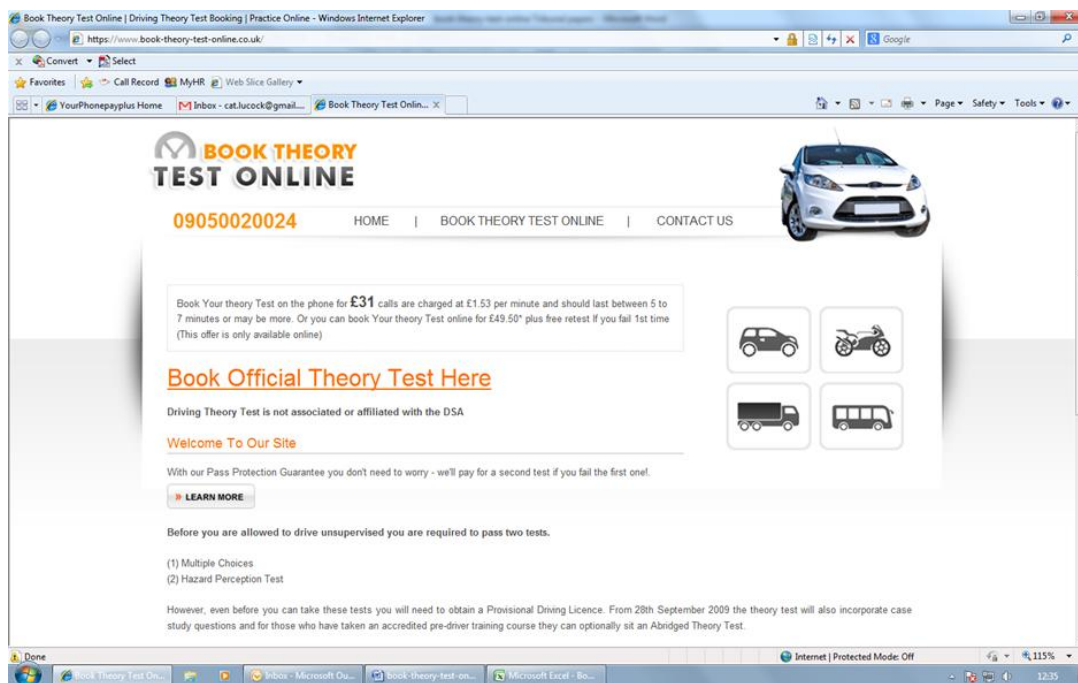
Sanctions Imposed

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

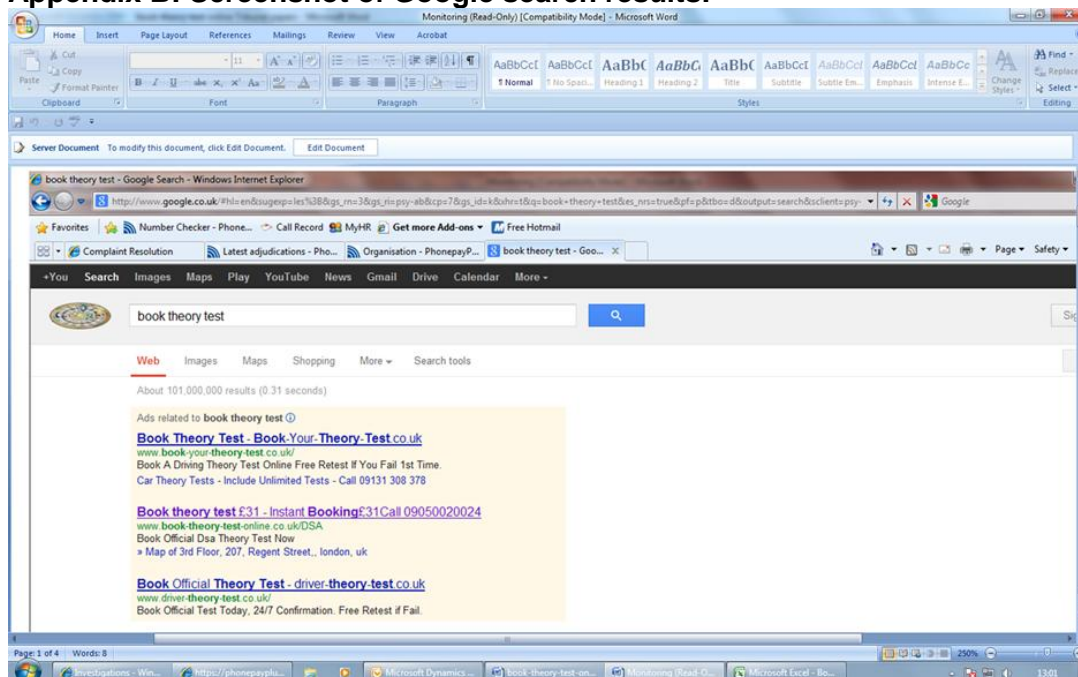
- a formal reprimand;
- a fine of £85,000; and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

Appendices

Appendix A: Screenshot of the Service website:



Appendix B: Screenshot of Google search results:



Appendix C: Screenshot of the payment options on the Level 2 provider's website (provided by a complainant):



Option1 : £39.50 book without retest

Option2 : £49.50 plus free retest if you fail first time

Option3 : £31.00 booking please call 09050020024

[Terms and Conditions](#)

I agree to the terms and conditions.

Appendix D: Screenshot of a Google AdWords promotion for the Service:

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Book Official Dsa Theory Test Now
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Appendix E: Screenshot of an amended Google AdWords promotion for the Service:

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