



Tribunal Sitting Number 126 / Case 2

Case Reference: 18936

Level 2 provider	Book Your Theory Test Ltd
Type of Service	Fixed line theory test booking service
Level 1 provider	Numbers Plus Ltd
Network Operator	Telecom 2 Ltd

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

BACKGROUND

In early 2013, PhonepayPlus received four complaints regarding the “Book Your Theory Test” service (the “**Service**”) operated by the Level 2 provider Book Your Theory Test Online Ltd. The Service operated without a premium rate number from August 2011; however, on 16 January 2013, the Level 2 provider began operation of a booking service on the premium rate number 09131308378. Calls were charged at £1.53 per minute.

The Level 1 provider for the Service is Numbers Plus Ltd. The Network operator is Telecom 2 Ltd.

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 and, at the time of the investigation, was displayed as the top sponsored link when searching “book theory test” on Google (**Appendix B**).

Complainants raised concerns regarding pricing prominence and customer service. The maximum cost incurred by a consumer was £8.70 (the average cost incurred by complainants was £8.13) 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.

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 22 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

The Level 2 provider responded on 24 April 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 a result of undue delay caused by calls being immediately placed into a call waiting system upon connection with 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 (refer to section 4 below for an explanation and example).



The Executive noted that promotional material on the Service website directed consumers to call the premium rate number 09131308378. Calls to the number were placed immediately into a call waiting system upon connection with the Service.

The Executive conducted monitoring of the Service. On 21 March the Executive called the number at 13:37 and 17:25. The Executive was entered straight into a call waiting system. On both occasions the Executive waited for over ten minutes before terminating the call, during this time no messages were relayed; only background music was heard.

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 stated:

“Of the last 12560 calls the total call time is 33,983 minutes and call answer time is 12,780 minutes leaving 12,203 of waiting or unanswered time, Average call length = 162 seconds Average waiting time = 58 seconds.”

From the monitoring evidence, the Executive submitted that the call waiting system unreasonably prolonged calls and resulted in undue delay. PhonepayPlus Guidance indicates that any call waiting system is likely to be considered to be cause undue delay. In this instance the call waiting system appeared to have been standard practice for the Service and the Level 2 provider had not provided any explanation for the delay experienced by the Executive.

The Executive submitted that the Level 2 provider had acted in breach of rule 2.3.4 of the Code as a result of undue delay in connecting consumers to a live operator which resulted in unreasonably prolonged calls.

2. The Level 2 provider stated that the issue of delay was only brought to its attention during the PhonepayPlus investigation. The Level 2 provider stated that it was unaware of the consequences of a breach of the Code, and at no point did it intentionally act in a non-compliant manner. The Level 2 provider also asserted that it had learnt about the regulation of premium rate services during the investigation.

The Level 2 provider stated that it had made the necessary changes to ensure that the Service is compliant, including the cost of the call being clearly stated on connection with the Service and by ensuring that the Service line is active from 9am to 5pm Monday to Friday (the Service is closed at weekends, there is a recorded message advising candidates of opening hours).

The Level 2 provider stated that it had three operators, which was the maximum number it could have. In relation to the delay experienced by the Executive it asserted that it was confused as to why this had occurred as it had no call waiting system in place.

The Level 2 provider added that it was:

“[E]xtremely sorry for this [the breach] however naïve I may have been in regards to this it was and is a genuine mistake and I have made the necessary steps to ensure the rule is not breached again.”

In addition to its responses to each breach, the Level 2 provider submitted a lengthy letter. The Level 2 provider stated that although it took full responsibility for its actions, it honestly believed that the Service was fully compliant. It added that it was a “complete novice” in



relation to premium rate services but that it accepted that, due to its inexperience and lack of understanding relating to risks involved, damage had been caused.

It stated that, as it was now aware of the breaches, it had either taken, or would take, all necessary action to ensure compliance and co-operate with PhonepayPlus. It stated that it intended to seek compliance advice from PhonepayPlus.

In relation to the alleged breach of rule 2.3.4, the Level 2 provider stated that it had made enquiries with the Network operator, who had stated that test calls had been made and:

“[F]rom what I have been advised... [the calls] both got stuck. He has advised me that both calls show as being answered but it looks like the whisper message was looping rather than timing out having connected to the first operator’s voicemail. He believes you have mistaken this for a call waiting system and interpreted this as a deliberate ploy to increase our revenue. I can honestly state that this was not my intention and I had no knowledge of this happening... [I have been advised] that this seems to be a console setting error rather than a deliberate error and this can be explained as such by him as he is happy to verify this.”

Since being made aware of this information, the Level 2 provider stated that the Service had been updated several times and currently has a suitable price warning message. It asserted that these changes were made prior to the investigation being brought to its attention. It had also been notified that in future the Service will time out after a maximum of one minute ten seconds if there are no operators available. The Level 2 provider stated that it never intended to have a call waiting system or realised it had one (or anything akin to one).

The Level 2 provider stated that it had now removed the premium rate number from the Google AdWords promotion and replaced it with “£31 Theory Test Call Now”. It stated that:

“If this reduces the risk of consumers obtaining the number directly from the sponsored ad and assuming we are the DSA then hopefully this will reduce the risk of any future breaches as necessary steps have been taken by myself to ensure that we are not misleading candidates into assuming we are the DSA or an official government service.”

In conclusion the Level 2 provider added:

“I am willing to cooperate, listen and learn in order to address any price warning and undue delay issues. I am completely new to this service and I admit mistakes have been made by myself and I am willing to take the punishment for any damage caused. I have been made aware four customers have complained and I willing to refund the full amount of the call to the consumers for the inconvenience caused due to our negligence and incompetence of not understanding the risks involved. I will also refund the full amount of the two calls made by PhonePayPlus for the investigation.

I have been operating Book Your Theory Test Ltd since August 2011. I am the one who created the website, I am the same person who does the marketing, and I am also one of the operators on the phone. This is a small business with five members of staff in total. We are simply trying to provide the best service possible in order to compete with our competitors. We have always followed and listened to the governing bodies within our industry to ensure that we are not misleading or duping candidates into using our service. I am also willing to do the same by PhonePayPlus as PRN is another service that we have added to our original online booking service.

I am extremely sorry for the inconvenience we have caused as an investigation is not something I wish to be involved in as all the rules I have breached are genuine mistakes made by an inexperienced individual in regards to providing a PRN service. I am much more aware now of the consequences involved and will be looking to contact PhonePayPlus for best practise advice and guidance in the future.[sic]"

3. The Tribunal considered the evidence, including additional information from the Network operator on which the Level 2 provider had had the opportunity to comment. The Tribunal noted that the Network operator had stated that the Service was set up on a package which did not include a call queuing facility, however:

"For these calls we have established that the call was connected but had the wrong whisper setting and behind the scenes the mobile answerphone had picked up the call and was receiving the looped whisper message until the call was disconnected. The operator then had a 10 minute voicemail of our whisper message. This error has been rectified and [the Level 2 provider] is now aware of the correct settings."

The Tribunal found that there had clearly been undue delay in connecting calls to the Service and therefore concluded that a breach of rule 2.3.4 had occurred.

In addition, the Tribunal noted that the Level 2 provider had made admissions in relation to a breach of rule 2.2.4, as consumers were not told that the Service was not available 24 hours a day. As a breach of rule 2.2.4 of the Code was not raised by the Executive, the Tribunal placed no weight on this. The Tribunal also noted that promotional material had been amended to include the operational hours of the Service.

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 asserted that the Level 2 provider acted in breach of rule 2.2.1 of the Code as consumers were not given all of the necessary information required in order to make an informed decision to use the Service. Specifically, the Executive asserted that the Level 2 provider acted in breach of rule 2.2.1 as the Service was promoted using sponsored adverts on Google which contained the full premium rate number but no pricing information.

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

Paragraph 2.17

PhonepayPlus is aware that there are some promotional mechanics, such as the Three listed above in this heading, 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 Executive noted that the Service was promoted using Google Adwords. Promotions for the Service displayed as one of the top sponsored links when searching “book theory test” on Google.

The Executive received the following complaint from a consumer:

“Consumer saying he would not have known how much the service is going to cost him.”

The Executive monitored the Service by searching “book theory test” on Google. This resulted in the Level 2 provider’s website being listed as the second sponsored link in the search results. The Executive observed that the full premium rate number was included in the sponsored advertisement. As a result, a consumer could call the Service premium rate number without accessing the 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. (**Appendix B**)

Having reviewed the monitoring evidence alongside the complainant’s account 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 has occurred.

2. The Level 2 provider accepted that the premium rate number was not accompanied by pricing information. It stated that this was due to it being limited to 25 characters in its Google “ads” extensions. However, it stated that the promotion contained a link to the Service website, which clearly outlined all the information that is required by the consumer to read before deciding to use the Service. The information on the page clearly stated:

“The Fastest & Quickest way to book your THEORY TEST!

Book Your theory Test on the phone for calls should last between 7 to 10 minutes or may be more. Calls are charged at £1.53 per minute plus network extras calls from mobiles and other networks may cost more. Callers must be over 18 and either the bill payer, or have the bill payer’s permission to dial this number.

If you want to book your driving theory test on the phone then please call our Theory Test booking team now on 09131 308 378. Booking your driving theory test has never been simpler. Whether you are making a driving theory test booking for the first time or wish to re-take your test, you have come to the right place.

We are dedicated to providing our customers with a simple and stress free service. Simply call our booking line and representative will book your theory test with you over the phone where you will get your preferred test date. You will get to choose the date, time and location of your exam to fit around your schedule. We understand that our customers don’t have hours to spend online and that’s why we make it simple to book your driving theory test on the phone.



Alternatively we offer bookings for all UK test centres if you wish to use our online booking system. Please complete our simple online driving theory test booking form and we will book your theory test for you. If you fail your first Theory Test we will book your Theory Test retests for FREE up until you PASS.

If you fail first time, please don't worry, www.book-your-theory-test.co.uk will give you another test absolutely FREE, all we need is for you to scan your failure sheet and we will take care of the rest.

We pride ourselves on taking the stress out of your Theory Test booking 24 Hours a day.

If your circumstances have changed and you need to re-arrange your theory test We will re-arrange it as many times as you like FREE of charge.

All bookings will receive instant email confirmation consisting of the date, time and location of your theory test.”

In relation to the complainant account, the Level 2 provider stated that pricing information was clearly stated on the Service website.

The Level 2 provider commented that:

“If I had more available character spaces then I would not hesitate to provide the pricing information within the link however due to being restricted with our Google ad extension characters space the information could only be clearly displayed within the webpage.”

3. The Tribunal considered the evidence, including the admissions made by the Level 2 provider. The Tribunal noted 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 for 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 submitted that the Level 2 provider had acted in breach of rule 2.2.5 of the Code.



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.

Paragraph 2.7

While consumers may have a general awareness that calls from mobile phones and some landline networks may cost more than others, or that they may incur data charges if they do not have a data-inclusive contract with their Mobile Network Operator, it is necessary to include information in the promotional material, stating these possibilities to consumers.

The Executive noted that although pricing could be found on the Service website landing page, when the Executive attempted to make a booking, the premium rate number was displayed without proximate pricing information.

The Executive monitored the Service by completing the preliminary stages of the online booking process. After entering personal details and selecting a test location, the Executive was provided with four pricing options (**Appendix C**). Three of the options were for online booking options. The fourth option concerned booking via the premium rate number. In order to see pricing information it was necessary to scroll through the terms and conditions, which were in a small window below the four booking options. After scrolling down the full length of the window 43 times, the pricing information was displayed (**Appendix D**).

In summary, the Executive submitted that in order to see pricing information, the consumer would either need to scroll down through the terms and conditions, or scroll back to the top of the page (which would not follow a natural customer journey). As a result, the Executive submitted that pricing information was not prominent and proximate. Further, consumers may have selected the telephone booking option on the basis that it appeared to be the cheapest option. Had the pricing been proximate to the booking options, it would have been clear that this was not the case.

In light of the above, the Executive submitted that a breach of rule 2.2.5 of the Code had occurred.

2. The Level 2 provider stated that it was unaware that pricing on its website was not compliant with rule 2.2.5 of the Code. It stated that it had now have taken the necessary steps to clearly outline the cost of calling the Service by changing “option 4” content from:

“Option 4 = Book Your Theory Test £31 CALL 09131 308 378,”

to,

“Option 4 = Book Your Theory Test £31 CALL 09131 308 378 - calls are charged at £1.53 per minute plus network extras calls from mobiles and other networks may cost more. Callers must be over 18 and or have the bill payer's permission to dial this number. Call should last between 7 to 10 minutes.”

The Level 2 provider disputed that it was necessary to scroll down the terms and conditions “47” times in order to view the information required for a consumer to decide if they wished to use the phone service. It stated that this was incorrect as the terms and conditions, when copied and pasted into a word document, were only five pages long.

It stated that the positioning of the pricing within the terms and conditions was as a result of the content being added to the existing terms and conditions when it started using the premium rate service.

The Level 2 provider added that it had now moved the content to the top of the terms and conditions to make the information clearer, more transparent and visible for consumers.

The Level 2 provider stated that it felt that a natural website loading journey is the webpage loading from the top and this is why it displayed the premium rate number and cost on the top right hand corner of every page on the site and was completely unaware that it was breaching rule 2.2.5.

The Level 2 provider apologised for the inconvenience caused in relation to the breach of rule 2.2.5. It reiterated that it was unaware that pricing information had to be displayed next to the number. It asserted that it honestly thought displaying the information on the top of the page was sufficient.

3. The Tribunal considered the evidence, including the written submissions made by the Level 2 provider. The Tribunal found that pricing information was not proximate and prominent to the premium rate number booking option on the Service website, as the pricing information was not visible when a consumer was viewing the booking options. This was because the pricing was positioned at the very top of the page and at the bottom of the page within the terms and conditions (and required a significant amount of scrolling down the page to be visible). 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, 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 and its own assessment of the pricing information on the Service website. Accordingly, the Tribunal upheld a breach of rule 2.2.5 of the Code.

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.

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 Service's sponsored advertisements on Google into believing that they were contacting the DSA directly.
2. Consumers were likely to have been misled as to the cost of the test.

The Executive relied on the content of 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 Service's sponsored advertisement on Google into believing that they were contacting the DSA

On 11 April the Executive searched "book theory test" on Google. This resulted in the Level 2 provider's website being listed as the first sponsored link (**Appendix B**). The Executive asserted that consumers were likely to have been misled by the sponsored link as it was not clear that the Level 2 provider was providing a third party booking service. The Executive asserted that this was as a result of the Level 2 provider using "GOV.UK" in the URL which gave the impression that the website was an official Government site. Additionally, the cost of the test was listed as £31, which is the cost of booking the test directly with the DSA. The Executive asserted the use of the wording "GOV.UK" and the reference to the official cost of the driving theory test was likely to have resulted in consumers believing that the number was the official DSA contact number from which they could book their test directly for £31.

Reason 2: Consumers were likely to have been misled as to the cost of the test.

The sponsored Google advertisement indicated that the cost of booking the test was £31, including unlimited retests (**Appendix B**).

On the Service website, the Level 2 provider supplied the following information in relation to the pricing model:

- "Option 1 = £39.50 (No Retests Included)
- Option 2 = £49.50 (One Retest Included)
- Option 3 = £59.50 (Unlimited Retest Included)
- Option 4 = Book Your Theory Test £31 Call 09131 308 378"

The Executive asserted that the above was misleading as, due to the lack of pricing information for the premium rate number, it appeared to suggest that the telephone option was the cheapest method of booking a test.



Accordingly, the Executive asserted that consumers were likely to have been misled by promotions for the Service and therefore the Level 2 provider had acted in breach of rule 2.3.2 of the Code.

2. The Level 2 provider stated that at no point had it intentionally set out to mislead any of its potential customers and at no point had it passed itself off as the official DSA (as nowhere in its promotion did it state that it was an official service). It asserted that the "GOV.UK" wording was an extension of its campaign and "adgroup" within its Google AdWords account. It stated that it used the wording to obtain a better understanding of what campaigns worked better than others in order for it to make its marketing strategy more effective in relation to its keywords for campaigns. It added that the cost of the test was clearly stated on its website along with the applicable administration fee.

The Level 2 provider stated that the Service website clearly stated:

- "Theory test fee which currently stands at £31.00 and Book Your Theory Test Booking fee is £8.50."
- "We are not associated or affiliated with the DSA."
- A working link button was provided that clearly stated, "Book with Official DSA," and redirected all customers to the Official Government website."

Another working link to the official Government website was also situated on the booking forms. It added that it always followed Google AdWords site policy rules and regulations in order for the website to be deemed relevant and transparent. The Level 2 provider outlined Google's rules and asserted that if its website was misleading and not compliant, the promotions would not be allowed to be viewed on Google's sponsored links and would be banned.

The Level 2 provider added that,

"If consumers do assume that we are the official DSA website then we have as I have mentioned above clearly stated on the website we are not associated or affiliated with the DSA and nowhere on our website have we used the phrase "Official" to mislead any consumer into believing we are the official government DSA website."

The Level 2 provider added:

"In reply to the Executive's concerns advising that consumers were likely to be misled as to the cost of the test as the Google advert indicates that the cost of booking the test is £31 including unlimited retests is incorrect.

We are allowed in adverts:

- 25 Characters on line one (Heading)
£31 Book Theory Test
- 35 Characters on line two (Description line 1)
£31 Book Your Driving Theory Test
- 35 Characters on line three (Description line 2)
Unlimited Retests Until You Pass!
- 35 Characters on line four (url extension)

www.book-your-theory-test.co.uk/GOV-UK

We are limited to character spaces on our ads and we have to cram in as much information



as we can to promote our services in order to compete with our competitors. Yes we do offer the £31 theory test via the PRN, believing the information (content) on the site with the PRN was sufficient enough not be in breach of any rule.”

The Level 2 provider stated that as a result of the investigation, it accepted that it was in breach of rule 2.3.2 of the Code. It added that it was willing to take the necessary steps in order to resolve the issue (and in fact had taken some steps already). It suggested that it would revise the wording as set out below:

“Option 1 = £39.50 (No Retests Included)

Option 2 = £49.50 (One Retest Included)

Option 3 = £59.50 (Unlimited Retest Included)

Option 4 = Book Your Theory Test £31 Call 09131 308 378 - calls are charged at £1.53 per minute plus network extras calls from mobiles and other networks may cost more. Callers must be over 18 and or have the bill payer's permission to dial this number. Call should last between 7 to 10 minutes.”

The Level 2 provided apologised for breaching rule 2.3.2 and stated that it was a genuine and honest error and had not understood the consequences.

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

SANCTIONS

Initial Overall Assessment

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

Rule 2.3.4 Undue delay

The initial assessment of rule 2.3.4 of the Code was at the lowest 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.

The Tribunal's initial assessment was that, overall, the breach was **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.

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

- The Tribunal was impressed by the Level 2 provider's indication of its willingness to cooperate with PhonepayPlus and take all necessary steps to ensure the Service is fully compliant with the Code. The Tribunal noted that the Level 2 provider had taken steps to improve compliance with the Code. However, the Tribunal noted that the steps taken were not sufficient to remedy the breaches.
- The Tribunal noted that the Level 2 provider had made a number of admissions.

The Level 2 revenue in relation with this service was in the range of Band 5 (£5,000 - £50,000).

Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as at the lower end of the range of 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 £25,000;
- a requirement that access is barred to the Service until compliance advice has been implemented to the satisfaction of PhonepayPlus; 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.

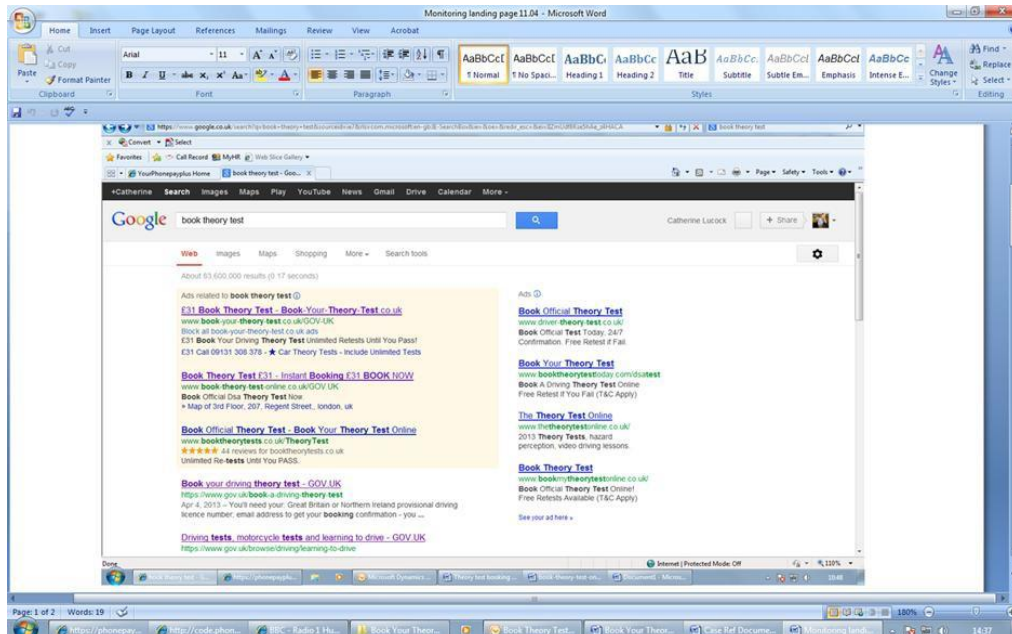


Appendices

Appendix A: Screenshot of the Service website:

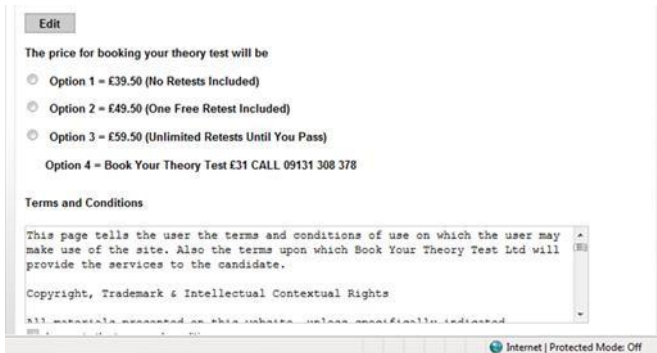


Appendix B: Screenshots of a Google search result for “book theory test”:



[£31 Book Theory Test - Book-Your-Theory-Test.co.uk](http://www.book-your-theory-test.co.uk)
www.book-your-theory-test.co.uk/GOV-UK
Block all book-your-theory-test.co.uk ads
£31 Book Your Driving Theory Test Unlimited Retests Until You Pass!
£31 Call 09131 308 378 - ★ Car Theory Tests - Include Unlimited Tests

Appendix C: Screenshot of driving theory test pricing options on the Service website:



Appendix D: Screenshot of pricing in the terms and conditions on the Service website:

