MATTER DECIDED BY THE TRIBUNAL

Tribunal Meeting Number, Case Number and Date	Case Ref	Network operator	Level 1 Provider	Level 2 Provider	Service Title and Type	Case Type	Procedure
125 Case 1 02/05/13	17699	All Mobile Network operators	Netsize UK Limited	Amazecell Limited and M.E. Media Market Limited	N/A – Risk assessment and control	Level 1 provider	Track 2

In late 2012, the Tribunal adjudicated against two separate interactive competition services operated by the Level 2 providers Amazecell Limited (29 September 2012, case reference 08341) and M.E. Media Market Limited (25 October 2012, case reference 09826). The services operated by both the Level 2 providers were promoted using affiliate marketing. There was evidence, from both consumers and internal monitoring, that some of the affiliate promotions for the services were misleading.

The Level 1 provider in both cases was Netsize UK Limited. During the course of the investigations against both of the Level 2 providers, the Executive had concerns regarding the Level 1 provider's assessment of risk and the adequacy of the continuing steps taken to control risk in relation to the promotion of both services.

The Executive raised the following potential breach of the PhonepayPlus Code of Practice (12th Edition) (the "**Code**"):

- Paragraph 3.1.3(b) – Risk assessment and control (promotion, marketing and content)

The Tribunal upheld the breach. The Level 1 provider's revenue in relation to the underlying services was within the range of Band 3 (£100,000 - £250,000). The Tribunal considered the case to be **very serious** and issued a formal reprimand and a fine of £100,000.

Administrative Charge Awarded 100%

Tribunal Sitting Number 125 / Case 1

Case Reference: 17699

Level 1 provider	Netsize UK Limited
Level 2 providers	Amazecell Limited and M.E. Media Market Limited
Type of service	N/A – Risk assessment and control
Network Operator	All Mobile Network operators

THIS CASE WAS BROUGHT AGAINST THE LEVEL 1 PROVIDER UNDER PARAGRAPH 4.4 OF THE CODE

BACKGROUND

In late 2012, the Tribunal adjudicated against two separate interactive competition services operated by the Level 2 providers Amazecell Limited (29 September 2012, case reference 08341) and M.E. Media Market Limited (25 October 2012, case reference 09826). The services operated by both the Level 2 providers were promoted using affiliate marketing. There was evidence, from both consumers and internal monitoring, that some of the affiliate promotions for the services were misleading.

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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 preliminary investigation letters to the Level 1 provider on 18 July 2012 and 8 August 2012, and a breach letter on 11 April 2013. Within the breach letter the Executive raised the following breach of the Code:

- Paragraph 3.1.3(b) – Risk assessment and control (promotion, marketing and content)

The Level 1 provider responded on 25 April 2013. After hearing informal representations made on behalf of the Level 1 provider, the Tribunal reached a decision on the breach raised by the Executive on 2 May 2013.

ALLEGED BREACH 1

Paragraph 3.1.3(b)

All Network operators, Level 1 and Level 2 providers must assess the potential risks posed by any party with which they contract in respect of:
…(b) the promotion, marketing and content of the premium rate services which they provide or facilitate
…and take and maintain reasonable continuing steps to control those risks.

1. The Executive submitted that the Level 1 provider had breached paragraph 3.1.3(b) of the Code for the following reasons:

    1. The Level 1 provider did not adequately assess the potential risks posed by the promotion and marketing techniques that their Level 2 provider clients employed.
    2. The Level 1 provider did not take and maintain steps to control the risks posed by the promotion and marketing techniques.

    The Executive relied on the content of the PhonepayPlus Guidance on, "Due diligence and risk assessment and control on clients" (the "**Guidance**").

    Reason 1: The Level 1 provider did not adequately assess the potential risks posed by the promotion and marketing techniques that their Level 2 providers employed

    Lack of Adequate Risk Assessment Conducted

    On 18 July 2012, the Executive submitted a direction to the Level 1 provider requiring it to provide information concerning the risk assessment and control measures taken to ensure that the Level 2 provider, Amazecell Limited, operated a specific service in a compliant manner. On 25 July 2012, the Level 1 provider responded and addressed what steps it had taken to i) complete a risk assessment on the client and ii) how the risks posed by the client and its service were controlled. The Level 1 provider stated that it was aware that the Level 2 provider was using, "several advertising techniques with random elements". Yet this knowledge did not appear to have prompted the Level 1 provider into requesting specific information from the Level 2 provider to confirm what the, "techniques with random elements," involved. The Level 1 provider appeared to have based its view of the service on its assessment of the service landing pages controlled by the Level 2 provider. However, the majority of the consumer harm was caused by the misleading marketing techniques used by affiliate marketers, who were paid by the Level 2 provider.

    On 8 August 2012, the Executive submitted a further direction to the Level 1 provider requiring it to provide information concerning the risk assessment and control measures taken to ensure that another Level 2 provider, M.E Media Market Limited, operated a compliant service. On 22 August 2012, the Level 1 provider responded and addressed what steps it had taken to i) complete a risk assessment on the client and ii) how the risks posed by the client and its service were controlled. The Level 1 provider confirmed that it was aware that the Level 2 provider was using, "several advertising techniques with random elements". Yet, as set out in relation to Amazecell Limited, this knowledge did not appear to prompt the Level 1 provider into requesting specific information from the Level 2 provider to confirm what the, "techniques with random elements," involved. The Level 1 provider appeared to have based its view of the service on its assessment of the landing pages controlled by the Level 2 provider. However, the majority of the consumer harm was caused by the misleading marketing techniques used by affiliate marketers, who were paid by the Level 2 provider.

Paragraph 4.1 of the Guidance confirms that Level 1 providers bear a:

> "…[P]roportionate responsibility to avoid consumer harm by assessing the risk of any harm occurring and putting reasonable controls in place to prevent it."

Additionally, paragraph 6.2 of the Guidance advises Level 1 providers to: "[P]roperly assess the level of risk posed by a Level 2 client," and suggests, "…an assessment of risk based on the promotional material the client is using," and specifically refers to the risk of using web-based affiliate marketing.

The Executive asserted in relation to both Level 2 providers that without having specifically questioned what the, "several advertising techniques with random elements," were the Level 1 provider was unable to adequately assess the potential risks posed by the services and take steps to exert some form of control over them.

Reason 2: The Level 1 provider did not take and maintain steps to control the risks posed by the promotion and marketing techniques

Lack of adequate control exerted prior to the services commencing operation

In response to the potential harm posed by the Level 2 providers' service promotions and marketing techniques, the Executive asserted that the Level 1 provider did not act adequately to control risks and simply relied on responding to internal alerts (at which point significant consumer harm had already occurred). The Level 1 provider stated in its response:

> "If internal alerts occurs in the flowing cases, periodic testing will occur on the service, based on URLs provided by the content provider for (enter provider name) the tests that we conduct involved testing the billing to ensure the live service is in accordance to the service submitted to us on the project description form, on an informal basis.
>
> "Internal alert occur in following cases:
> - High rate of end-user complaints
> - Any operator warning (also informal)
> - Consumer association warnings (also informal)
> - Regulatory body warnings (also informal)
> - Press articles, internet forum."

The Executive noted that the assessment of risk by the Level 1 provider strongly indicated that the services were deemed to be a low risk that did not require proactive monitoring.

Paragraph 6.1 of the Guidance states:

> "If a registered party contracts directly with a client who is responsible for ensuring the consumer outcomes of the…Code…are met (the client being considered by PhonepayPlus to be a Level 2 provider), we would expect the risk assessment and control to be of a nature that ensures that the consumer outcomes that PhonepayPlus' Code of Practice requires are able to be met."

The Level 1 provider was not aware of how the services were being promoted and marketed, and relied on external parties to flag potential issues. The Executive submitted that this demonstrated that reasonable controls were not put in place to pre-empt and prevent

consumer harm. The Executive asserted that the steps put in place to control the risks posed by the promotion and marketing techniques were purely reactive measures and therefore not reasonable in the circumstances to ensure that the Level 2 providers were able to meet the required Code outcomes.

Complaints managed individually and lack of adequate control exerted during the services period of operation

At the time of sending the preliminary investigation letters to the Level 1 provider, PhonepayPlus had received 198 complaints regarding the two services, which were almost identical in terms of i) the content of complaints received and ii) the marketing and promotion techniques. The complaint breakdown was as follows:

- 102 – M.E Media Market Limited (8 August 2012); and
- 96 – Amazecell Limited (18 July 2012)

Complainants consistently reported that they had been misled into entering the premium rate services and expressed shock at being in receipt of premium rate charges. Some complainants stated that they had been misled by marketing techniques on Facebook. Having received the complaints, the misleading consumer journey was quickly and easily replicated and monitored by PhonepayPlus.

The Level 1 provider's responses to PhonepayPlus' preliminary investigation letters stated that they had been contacted by 6,833 consumers regarding the two services. The contact breakdown was as follows:

- 2,468 – M.E Media Market Limited; and
- 4,365 – Amazecell Limited

Upon receiving complaints from PhonepayPlus, the Level 1 provider confirmed that each complaint was, "…managed individually with escalation to [the respective Level 2 provider]," to be resolved. The Level 1 provider also confirmed that during the operational period of both services, it had become aware of potential issues with marketing and had brought these concerns to the attention of the Level 2 providers to address. Its response stated:

> "During the performance of the Amazecell Competition Service, Netsize have been informed of issues with Amazecell marketing, and forthwith informed Amazecell requesting immediate remedy."
>
> "During the performance of the M.E. Media Market Ltd competition service, Netsize have been informed of issues with the marketing and promotion of other similar services through social networking websites, and forthwith informed M.E. Media Market Ltd requesting immediate attention and care on the matter."

Paragraph 6.5 of the Guidance confirms that, "Any assessment of risk should be an on-going process and reconsidered in light of any new information".

The Executive asserted that despite the large numbers of complaints and the knowledge of misleading marketing techniques, the Level 1 provider did not appear to have taken steps to amend its reactive stance on risk assessment and control for both of the services that it was facilitating. It appears that, rather than take pro-active steps, such as conducting internal monitoring of the consumer journeys in light of the consumer complaints, the Level 1 provider simply passed the responsibility to the Level 2 providers to address the service issues and

therefore did not take adequate steps to itself control the consumer harm. The Executive acknowledged that the Level 1 provider was in regular contact with the Level 2 providers but asserted that its reliance on the Level 2 providers to control the risks associated with their marketing techniques was not enough to reduce consumer harm or fulfil their own obligations under the Code.

The Level 1 provider's preliminary investigation responses stated:

> "Please note that Netsize can neither act on nor control its clients marketing due to the fact that they use several advertising techniques with random elements."

The Executive disputed this statement as the Level 1 provider could have acted on the complaints received, both internally and from PhonepayPlus, by conducting its own monitoring and could have exerted control to reduce consumer harm before it complied with the Executive's requests to voluntarily suspend the services. The Executive stated that it found it extremely unlikely that the 6,833 contacts that the Level 1 provider received did not raise the types of misleading marketing concerns that PhonepayPlus had received.

Paragraph 8.1 of the Guidance confirms that:

> "PhonepayPlus will determine on a case-by-case basis whether the risk that harm might arise was reasonably identifiable and controllable. PhonepayPlus will seek to examine what actions were taken by the provider that contracted with the party which caused the consumer harm to ensure this risk was managed appropriately."

The Executive submitted that the Level 1 provider had not met the required standard (referred to above) and therefore acted in breach of paragraph 3.1.3(b) of the Code as a result of not having satisfactorily assessed the potential risks posed by the promotion and marketing techniques that their Level 2 provider clients had posed. Further, the Level 1 provider had not taken and maintained reasonable steps to control those risks both prior and during the operation of the services

Accordingly, the Executive submitted that, for the reasons outlined above, the Level 1 provider had acted in breach of the obligations set out at paragraph 3.1.3(b) of the Code.

2. The Level 1 provider denied the breach and/or that it was responsible for any breach of the Code.

The Level 1 provider submitted that affiliate marketers were not a generally known issue in the market at the time of launch of both services in early 2012 and that it did not have any prior knowledge or experience of affiliate marketers when these issues arose. It asserted that the topic of affiliation was not an obvious topic to discuss with Level 2 providers and it thus had no particular reason to focus on the issue of affiliate marketing at the launch of the services. Instead, it stated that it focused on ensuring that the services themselves were compliant in accordance with mobile network and regulatory rules and that any issues related to the services were highlighted to the respective Level 2 providers**.**

The Level 1 provider stated that, before the launch of the services in question, it requested information about promotion and marketing from the Level 2 providers, but did not receive any information about affiliate marketers. The steps put in place by it to control the risks posed by the promotion and marketing techniques were thus not purely reactive measures. The Level 1

provider stated that when it asked its Level 2 providers to provide information about marketing, they provided their landing pages, i.e. their own homepages, thus not providing it with the actually requested information. In addition, the Level 1 provider asserted that Level 2 providers and their affiliate partners do not generally wish to share information about their marketing strategies as it is a key business asset and the Level 1 provider is a service provider for their competitors. The Level 1 provider stated that the reason for the lack of disclosure is the great revenue that a Level 2 provider can raise through these types of services, provided that they are adequately promoted, and also the potential financial loss that such a sharing of information can incur for both a Level 2 provider and an affiliate marketer.

The Level 1 provider stated that it checked its service payment flow continuously and strictly.

In relation to the large number of un-subscription requests, the Level 1 provider stated that it first tested the services and when no faults were found, it sent specific e-mails with requests for information to the Level 2 providers as to why this issue had started appearing, but got no response. Because of the lack of response, the Level 1 provider stated that it demanded that the Level 2 providers check their marketing partners and strategies.

Regarding the amount of contacts received in connection with the services and the Executive's assertion that those contacts must have raised, "the types of misleading marketing concerns that PhonepayPlus had received," the Level 1 provider stated that the vast majority of the contacts received constituted requests for information and less than 1% of the contacts contained complaints. It added that it had extracted and analysed the monthly "Customer Summary Reporting" for the past 12 months for both Level 2 providers. The Level 1 provider stated that the percentage of contacts compared with traffic was under 5% (a low figure). The Level 1 provider stated that it reacted to the actions taken by the affiliate marketers a whole month before PhonepayPlus demanded that action had to be taken.

Furthermore, the Level 1 provider noted that paragraph 6.2 of the Guidance provides a list of steps that, "might be taken to help a Network operator and/or Level 1 provider to properly assess the level of risk posed by a Level 2 client". The steps are thus not mandatory and should not be referred to as such.

In summary, the Level 1 provider stated that it had acted proactively and had taken all reasonable steps before launch of the two services as well as immediately when issues with the services started appearing. The Level 1 provider requested that the Tribunal consider this in light of the fact that the potential risk of affiliate marketing as a promotional tool was not widely known in the market at the time and that it thus had no means of being aware of this phenomena, and also that online businesses generally today see their marketing strategies as a core and unique strategic point, and rarely want to share any detailed information about this.

During informal representations the Level 1 provider asserted that it had taken all the practical steps it could to ascertain where the services were promoted and added that it, "would like to see a practical way of how to do better". It stated that it monitored the services regularly, but was not aware of the issues of affiliate marketing on social networking sites. It asserted that there was a limit to how much could be checked by a Level 1 provider on the internet. As the internet is a large place and to test advertisements on multiple sites is a huge task. The Level 1 provider stated that Level 2 providers have access to information on how consumers access services (namely which websites led them to the service landing page) and not the Level 1 provider. The Level 1 accepted that it could ask Level 2 providers questions. However, the Level 1 provider stated that it, "cannot check what they tell us".

The Level 1 provider stated that the breach was by the affiliate marketers and was fraudulent behaviour that was not under the control of a third party aggregator. This was because it did not know which affiliate marketers would be used and it was only contracted to the Level 2 providers (and not the affiliate platforms or marketers). It queried how it could control the fraudulent behaviour of a third party and stated that it did not see how it could. Although, it added that it was open to receiving advice from PhonepayPlus. It accepted that affiliate marketing was beginning to get "out of control".

On being questioned by the Tribunal in relation to Amazecell Limited, the Level 1 provider stated that it had taken steps to assess and control the potential risks relating to the services; namely by asking questions regarding service landing pages and promotional material and requiring the Level 2 to complete a "customer application form" and a "service description form". It stated that it obtained promotional material with the service description form and obtained the URLs of the landing pages and the terms and conditions of the services. However, on further questioning, the Level 2 provider accepted that the boxes acknowledging receipt of promotional material were unchecked and that it had no evidence to support the assertion that promotional material had been specifically requested or obtained prior to the service becoming operational. It added that it had been led to believe that the consumer journey started with the Level 2 provider's landing pages and that at the time of launch the method of marketing was still being decided. However, it stated that it had the information it needed prior to launch.

The Level 1 provider stated that it regularly checked recent PhonepayPlus adjudications. Further, the Level 1 provider commented extensively on its views in relation to Payforit and the level of consumer protection it provides.

The Level 1 provider accepted that, with hindsight, it could have obtained promotional material prior to the services becoming operational. In addition the Level 1 provider stated that it had a new system in place as a result of a recent compliance audit and that it had a new affiliate marketing document that it distributes to Level 2 providers.

3. The Tribunal considered the evidence, including the Level 2 provider's oral representations. The Tribunal noted the contents of the Guidance relied upon by the Executive (in particular paragraphs 4.1, 6.1, 6.2, 6.5 7.1 and 8.1). In addition, the Tribunal noted the content of paragraph 7.1 of the Guidance, which states:

> "From time to time, parties may fall outside the PhonepayPlus definitions of regulated parties in the PRS value-chain, yet may be contracted with specific tasks, either in the promotion or operation of a premium rate service. In such instances, the registered party who contracts with such an entity will likely be considered a Level 2 provider, as they will ultimately be responsible for the actions of these affiliates. Network operators and Level 1 providers may wish to confirm whether affiliate companies are being used by their clients, the purpose for which they are being used and what controls are in place to ensure that the PhonepayPlus Code of Practice is not breached."

The Tribunal commented that in order for a Level 1 provider to satisfy its obligation to assess the potential risks posed by a Level 2 provider in relation to the promotion and marketing of a premium rate service, a Level 1 provider must request and obtain details of how the service will be marketed and satisfy itself that the information given to it is accurate and complete. The Tribunal found that no reliable evidence had been put before it to support the assertion that the Level 1 provider had requested promotional material for either service prior to June 2012.

Acordingly, the Tribunal determined that the Level 1 provider had failed to carry out an adequate risk assessment prior to the services coming into operation and concluded that the Level 1 provider had acted in breach of paragraph 3.1.3(b).

In relation to Amazecell Limited, the Tribunal noted that after becoming aware of issues concerning the promotion of the service, the Level 1 provider corresponded with the Level 2 provider on 19 June 2012. The correspondence stated:

> "The figures are quite good regarding the UK this month but the level of complaints has exploded in parallel. I strongly recommend you to supervise with attention your marketing materials and other ways of promotion you are using as it seems that Amazecell is closely watched [*sic*]."

In response, the Level 2 provider stated:

> "Due to the high number of complaints we approached PPP in the beginning of the week to make sure the regulation remained the same and we are following their code of conduct. They replied back mentioning that there was no change in the regulation but they are looking into an issue with Facebook advertising that lead to our page. We looked into it and found that one of the affiliates we were working with used Facebook in order to drive traffic to our approved (by regulation) pages. we immediately asked that affiliate to stop all Facebook marketing and we will be keeping a close eye on those kind of advertising. Needless to say the this was used to drive traffic and didn't affect the page itself [*sic*]."

The Tribunal noted the Level 1 provider's acceptance of the Level 2 provider's account in relation to its concerns regarding the promotion of the service, without further enquiry or follow up. The Tribunal found that this fell short of, "reasonable continuing steps to control those risks", as required by paragraph 3.1.3(b), especially as the Level 1 provider did not seek confirmation that the Level 2 providers requests in relation to affiliate marketers had actually been complied with.

In relation to M.E. Media Market Limited, the Tribunal noted that after becoming aware of issues in relation to affiliate marketing, the Level 1 provider corresponded with the Level 2 provider on 18 July 2012. The correspondence stated that, the Level 1 provider had no indication at all that M.E. Media's service was getting traffic from affiliates using misleading marketing. It went on:

> "But since your service is currently generating a lot of traffic:
> - It will become visible to the regulator
> - It "could be" that some of your affiliates, without you knowing it, are using similar marketing methods.
> It is very IMPORTANT that you double check this and if you have any doubt, please remove those affiliates immediately. Such marketing is breaching the UK code of conduct. It would be very prejudicial if PPP associated your service to such marketing as the consequence would be a big fine as this is a serious breach of the code of conduct. We prefer to have low traffic for some time but be certain that we build long term business."

The Level 2 provider responded:

> "I'm almost sure that we do not get that kind of traffic. However we are currently double checking with our affiliates."

The Tribunal noted that no evidence of a further response from the Level 2 or any follow up by the Level 1 provider was put before the Tribunal. In the judgment of the Tribunal, the Level 1 provider had accepted the Level 2 provider's response without question (or evidence) and failed to respond adequately to indicators of consumer harm (number of contacts, number of un-subscription requests and complaints forwarded to the Level 1 provider by PhonepayPlus). The Tribunal found that the actions of the Level 1 provider fell short of "reasonable continuing steps to control those risks", as required by paragraph 3.1.3(b),

In relation to both Level 2 providers, the Tribunal found that the Level 1 provider did not address its mind to the promotion of the services from the outset. On being alerted to concerns regarding the promotion of the services, the Level 1 provider had correctly raised the issue with the Level 2 provider but had failed to test the Level 2 providers' responses and/ or satisfy itself that any issues had been resolved. As a result, the Level 1 provider had failed to take and maintain all reasonable continuing steps to control the risks identified in relation to the promotion of the services by affiliate marketers.

Accordingly, in relation to both the assessment of and control of risk, the Tribunal upheld a breach of paragraph 3.1.3(b) of the Code.

Decision: UPHELD

SUBMISSIONS AND CONCLUSIONS

SANCTIONS

Initial Overall Assessment

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

Paragraph 3.1.3(b) – Risk assessment and control (promotion, operation and content)

The initial assessment of paragraph 3.1.3(b) of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 1 provider took no steps at the initiation of the underlying services to assess and control the risks associated with their promotion and marketing and thereafter failed to adequately assess or control those risks. This impacted adversely on compliance with and the enforcement of the Code.

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

Final Overall Assessment

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

- The Level 1 provider failed to follow Guidance relating to risk assessment and control.
- The Tribunal noted the significant number of prior adjudications relating to affiliate marketing; approximately 12 prior to February 2012 (the date Amazecell Limited's service became operational). In light of the number of adjudications prior to February 2012 and the publication of the Guidance in 2011, it was clear that affiliate marketing should have been an issue that the Level 1 provider was alive to at the time of contracting with the Level 2 providers (and throughout the period that the services operated).

- On 5 February 2009 (case reference 766451/AB), there was an adjudication against a premium rate service for which the Level 1 provider was the "Service provider". Amongst the issues raised in the adjudication was misleading affiliate marketing. Although that adjudication does not constitute breach history in this case, it demonstrates that from (at least) February 2009, the Level 1 provider was or should have been aware of the risk of providing services to Level 2 providers who engage with affiliate marketers. As a result, the Tribunal did not accept the Level 1 provider's assertion that:

  > "[A]ffiliate marketers were not generally known in the market at the time of the launch of the services in question [Early 2012] and Netsize did not have any prior knowledge or experience of affiliate marketers when these issues arose."

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

- The Level 1 provider stated that it had taken steps to improve its risk assessment and control processes. These include the appointment of a compliance manager responsible for testing of all services, a robust system for measuring system risk and a monitoring procedure whereby services are deemed as low, medium or high risk and monitored bi-annually, quarterly and monthly, as appropriate. It has also introduced a separate affiliate marketing "Agreement/ acknowledgement of responsibilities form" which seeks to draw Level 2 providers' attention to the risks associated with affiliate marketing.
- Following receipt of correspondence from the Executive seeking suspension of the services voluntarily, the Level 1 provider suspended the services.

The Level 1 provider's revenue in relation with this service was in the range of Band 3 (£100,000 - £250,000).

The Tribunal noted that a Level 1 provider's obligations in relation to risk assessment and control are of fundamental importance to the effective operation and regulation of premium rate services. In this case, the nature of the services was such that they were capable of (and in fact did) generate very high levels of revenue in a short amount of time. This, coupled with the use of affiliate marketing, should have given rise to a potentially high risk rating. However, the Level 1 provider failed to obtain any promotional material prior to allowing the Level 2 providers to operate (what were later found to be) non-compliant services on its platform. Further, on being alerted by PhonepayPlus and consumers to potential non-compliance, it failed to take and maintain all reasonable continuing steps to control the risks to which it had been alerted. In all the circumstances of the case and 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; and
- a fine of £100,000.