

MATTERS DECIDED BY THE TRIBUNAL

Tribunal Sitting, Case Number and Date	Case Ref	Network Operator	Level 1 Provider	Level 2 Provider	Service Title and Type	Case Type	Procedure
No. 122 Case 1 21/03/13	13468	Numbers Plus Ltd	N/A	Oyster Solutions Limited	"UK-Phone"-Information, connection and signposting service	Level 2 Provider	Track 2 Procedure
<p>Between 19 October 2012 and 18 January 2013, PhonepayPlus received 12 complaints from members of the public in relation to an information, connection and signposting service ("the Service") operating on a range of 0913 fixed-line premium rate numbers. Calls to the Service cost £1.53. The Service was promoted online via Google AdWords.</p> <p>Generally, complainants reported that they used the Service inadvertently and that they found the Service's number as a result of conducting a Google search for a customer service helpline number for unrelated organisations such as the AA, Virgin Mobile, Vodafone and the Child Support Agency. Some complainants stated that they were misled into calling the 0913 numbers as they thought they had obtained the official customer service numbers for the organisations they were trying to contact.</p> <p>Following some monitoring of the service by the Executive it decided to raise the following potential breach of the PhonepayPlus Code of Practice (12th Edition) (the "Code").</p> <p style="text-align: center;">Rule 2.3.2 – Misleading</p> <p>The Tribunal upheld one breach of the Code. The Level 2 provider's revenue in relation to the Service was within the range of Band 1 (£500,000+). The Tribunal considered the case to be significant and imposed a formal reprimand, a fine of £50,000 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.</p>							
Administrative Charge Awarded							50%

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

**Thursday 21 March 2013
TRIBUNAL SITTING No. 122/ CASE 1
CASE REFERENCE: 13468**

Level 2 provider: Oyster Solutions Limited
Type of service: Information, connection and signposting service
Network operator: Numbers Plus Ltd

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

BACKGROUND

Between 19 October 2012 and 18 January 2013, PhonepayPlus received 12 complaints from members of the public in relation to an information, connection and signposting service (“**the Service**”) operating on a range of 0913 fixed-line premium rate numbers. Calls to the Service cost £1.53. The Service was promoted online via Google AdWords.

Generally, complainants reported that they used the Service inadvertently and that they found the Service’s number as a result of conducting a Google search for a customer service helpline number for unrelated organisations such as the AA, Virgin Mobile, Vodafone and the Child Support Agency. Some complainants stated that they were misled into calling the 0913 numbers as they thought they had obtained the official customer service numbers for the organisations they were trying to contact.

In October 2012, the Service was the subject of a Track 1 investigation. As a result, the Level 2 provider amended promotional material to include a non-premium rate customer service number and ensured all of its numbers were registered with PhonepayPlus. However, following the receipt of a complaint, a Track 2 investigation was commenced.

The Investigation

The Executive conducted this matter as a Track 2 procedure 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 28 February 2013. Upon further consideration of the evidence the Executive raised the following potential breach of the Code:

- Rule 2.3.2 – Misleading

The Level 2 provider responded to the breach raised on 14 March 2013. On 21 March 2013, and after hearing informal representations made on the Level 2 provider’s behalf, the Tribunal reached a decision on the breaches raised by the Executive.

SUBMISSIONS AND CONCLUSIONS

**ALLEGED BREACH ONE
Rule 2.3.2**

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

1. The Executive asserted that the Level 2 provider acted in breach of rule 2.3.2 of the Code for the following reasons:

Reason 1: Use of sponsored links

On 9 November 2012 PhonepayPlus collected example screenshots of the consumer journey for end users who searched for the customer service number of Vodafone. After inserting the term ‘vodafone helpline’ into Google, the search results included sponsored advertisements/ links for the Service (**Appendix A**). The wording contained in the sponsored links included, vodafone.uk-phone.com.

The Executive asserted that, as a result of the prominent inclusion of the word “vodafone” in the URL itself, consumers were likely to have mistaken the URL for the actual website address of Vodafone, vodafone.co.uk. The Executive accordingly asserted that consumers were therefore highly likely to have been misled into believing that the URL was the actual website address for Vodafone.

Reason 2: Consumers misled into believing they called the required organisation directly

Once consumers clicked on the link vodafone.uk-phone.com they were presented with a webpage, which contained the headline title, “Vodafone UK Customer Services Phone Number” (**Appendix B**). The webpage did not contain the branding for Vodafone and there was a relatively prominent disclaimer beneath the call to action stating:

“Calls cost £1.53 per call plus network extras. This is a directory service, once dialled you will hear a short recorded message containing the number for Vodafone UK Customer Service, this number is also sent via SMS to mobile phones (to easily use the number again). You can also find the number without charge here. Directory open 24 hours. UK-Phone is not affiliated with Vodafone UK...Callers must be aged over 18 and have the bill payers [sic] permission. UK-Phone has no connection with any of the companies listed on this site”.

However, the page also contained a Google map which featured a ‘bubble’ with Vodafone’s correct address but the Level 2 provider’s own 0913 number (using a technique called i-framing). The Executive asserted that this gave consumers the impression that the 0913 number was in fact the official customer service number for Vodafone.

The full statement within the ‘bubble’ on the Google map stated:

“**Vodafone UK Customer Services** Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN Tel: 0913 128 0073.”

The Executive asserted that the disclaimer statement was overshadowed by the more prominent Google map and that consumers were more likely to have been drawn to the map and not the disclaimer.

The Executive noted that the use of an i-framed Google map containing a superimposed 0913 number appeared throughout the Level 2 provider’s promotions (**Appendices C, D, E, F and G**)

The Executive further noted that it considered i-framing to be a highly unacceptable practice within the promotion of premium rate services as genuine information (such

as the real Google map 'bubble' for Vodafone's head office) is purposefully obscured and substitute information is superimposed. Accordingly, the use of i-framing within the highly prominent Google map of Vodafone's official address was highly likely to mislead users into believing that this 0913 number was Vodafone's official customer service number.

Reason 3- Contrary to the impression given in promotional material, the Service did not provide the direct telephone number for the organisations sought

The Executive asserted that, even for those consumers who read the disclaimer and were fully aware that they were interacting with a third party service, which, "...has no connection with any of the companies listed on this site," the promotional wording on the website gave consumers the impression that the numbers they would obtain when using the Service would be the official numbers of the organisation they were trying to contact.

This was demonstrated throughout monitoring for the Vodafone customer services number which was carried out on 9 November 2012:

- The wording on the sponsored link which appeared within the results of a Google search stated, "Need the Vodafone UK phone number?" [Emphasis added by the Executive].
- The Service landing page stated in bold font, "Get the Vodafone UK Customer Service Phone Number...Get the Vodafone UK phone number now...Vodafone UK phone number available 24 hours...Call Vodafone UK customer services now".
- The "About UK-Phone" section of the Level 2 provider's web page stated: "**What does our service offer?** UK-Phone.com is the quick and easy way for members of the public to locate those hard to find telephone numbers. Our team have compiled the best customer service and helpline numbers for all those organisation [sic] and businesses that you can never seem to find no matter how hard you search...**How do we do it?** Our comprehensive directory is under constant monitoring to make sure we have the latest numbers and our database is growing every day as we widen the range of companies and organisations we feature". [Emphasis added by the Executive]."

On 26 February 2013 the Executive monitored four 0913 numbers that had been used by complainants.

Monitoring Exercise 1 – National Rail Enquiries – 0913 128 3337 (Appendix C)

The Executive dialled 0913 128 3337 and listened to a short, recorded message which stated:

"The number you require is 0844 5671297."

The Executive dialled the 0844 number and heard a dialling tone. The call was not answered. The Executive then visited the official website for of National Rail Enquiries and noted that none of the contact numbers displayed on the official website matched the above 0844 number (Annex 2, page 13) The Executive contacted National Rail Enquiries and received confirmation that the 0844 number did not belong to National Rail Enquiries.

Monitoring Exercise 2 – Virgin Mobile – 0913 128 3412 (Appendix D)

The Executive dialled 0913 128 3412 and, similarly to the first monitoring exercise, listened to a short, recorded message which stated:

“The number you require is 0844 318 0593.”

The Executive dialled the 0844 number and heard a dialling tone. There was again no answer to the call. The Executive visited the official website of Virgin Mobile and noted again that none of the contact numbers displayed on the official website matched the 0844 number. The Executive contacted Virgin Mobile who confirmed that, the 0844 number did not belong to Virgin Mobile.

Monitoring Exercise 3 – The AA – 0913 128 3443 (Appendix E)

The Executive dialled the above number, 0913 128 3443 and listened to a short, recorded message which stated:

“The number you require is 0844 318 0658.”

The Executive dialled the 0844 number provided and was connected to the AA.

Monitoring Exercise 4 – Vodafone – 0913 128 0073 (Appendix B)

The Executive dialled 0913 128 0073 and listened to a short, recorded message which stated:

“The number you require is 0844 318 0487.”

The Executive dialled the 0844 number provided and was connected to Vodafone.

The Executive noted that, having completed all four of the monitoring exercises, three of the four 0844 numbers obtained during monitoring were very similar, only the last four digits of each number differed. All three numbers belonged to the same number range:

- 0844 318 0593 – Supposedly the number for Virgin Mobile;
- 0844 318 0658 – Supposedly the number for the AA; and
- 0844 318 0487 – Supposedly the number for Vodafone.

The Executive checked its internal database and determined that the above number range belonged to the Network operator, Telecom World Plc. The Executive contacted Telecom World Plc who confirmed that the above three numbers, together with the number 0844 5671297, which was given as the contact number for National Rail Enquiries, were assigned to the Level 2 provider.

The Executive accordingly asserted that the statements made throughout the Level 2 provider’s website misled consumers into believing that the 0844 numbers they obtain are the official customer service numbers for the organisations they are trying to reach and are not numbers belonging to the Level 2 provider.

For the three reasons detailed above the Executive asserted that a breach of rule 2.3.2 of the Code had occurred.

2. The Level 2 provider disputed that it had acted in breach of rule 2.3.2 of the Code.

The Level 2 provider stated that it had not set out to mislead consumers and did not believe the Service was misleading. The Level 2 provider asserted that when compared to its competitors, the Service was provided at a reasonable price point

and offered value for money. The Level 2 provider submitted that the Service offered value as it assisted consumers to be connected to numbers that were hard to find. In addition, mobile consumers received a text message containing a connection number.

Reason 1 – URL

The Level 2 provider stated that it used the company name within the URL as it felt that it was the most logical way to show that the site was relevant to the company in question. It added that this was widely used marketing technique. The Level 2 provider detailed three reasons to explain this.

1. The URL was used to improve marketing prominence

The Level 2 provider stated that the use of the company name within the subdomain of the URL was used mainly as a way to improve the quality score of the advert within the Google Adwords platform. It stated that Google increases prominence to advertisers that score high in terms of relevant adverts and that using the company name prominently within the subdomain of the URL was merely for this marginal benefit of improved marketing prominence.

2. Misleading URLs typically include the full domain name

The Level 2 provider stated that if the aim was purely to mislead customers it would have made more sense to include the full URL within the subdomain i.e. `vodafone.co.uk.uk-phone.com`. The Level 2 provider added that it did not aim to mislead anyone by only using the keyword within the subdomain i.e. `vodafone.uk-phone.com`.

3. Google has approved the URLs and doesn't find them misleading

The Level 2 provider stated that Google has a policy of manually approving adverts when they contain company names that are also trademark terms. It asserted that it had had extensive contact with Google and did not believe that Google would approve any of the thousands of adverts it had used if that put them at risk. Whilst the Executive had monitored these adverts for some time, the only action Google had taken was to approve these adverts.

In addition, the Level 2 provider stated that:

- i. The URLs assisted the user to find the Service website.
- ii. Using the keyword in the subdomain is a technique used in many sectors.
- iii. PhonepayPlus was aware of the URLs since 19 October 2012.

Remedies taken

The Level 2 provider stated that all the URLs were amended within two working days of the Track 2 notification to feature the company name after the domain name e.g. `uk-phone.com/Vodafone`.

Reason 2 – Premium rate number in Google map

The Level 2 provider stated that it did not agree that the phone number within the Google map is a breach of the Code. However, it noted that an adjudication last year suggested otherwise. Despite this, the Level 2 provider stated that it felt it was important to point out the three reasons why it did not agree:

1. Font size of the premium rate number is the same font size as the terms

The Level 2 provider stated that the close proximity of the premium rate number to the terms and identical font size demonstrated that this was not an attempt to divert attention away from the terms.

2. The premium rate number that obscures the map information is more useful than the map

The Level 2 provider asserted that it believed the map information was not what its users were looking for. It therefore believed that the premium rate number was helpful.

3. Main text on the left is much more prominent than the Google map

The Level 2 provider submitted that it had no concerns over removing the premium rate number from the map as it believed it was not the focus of the page and removing it would not be detrimental to its sales conversion.

In addition, the Level 2 provider stated that:

- i. The Google map was used by other websites. The i-framing term could be misunderstood as a technical term to mislead. The definition of i-Frame is, "An IFrame (Inline Frame) is an HTML document embedded inside another HTML document on a website. The Frame HTML element is often used to insert content from another source, such as an advertisement, into a Web page". The Level 2 provider stated that it believed that i-frames are commonly found on all websites and are a perfectly normal way of presenting information in a logical manner.
- ii. It added value to the map rather than obscuring information.
- iii. PhonepayPlus was aware of the map since 19 October 2012.

Remedies taken

Following the Executive's concern, the premium rate number was removed from the Google map within 24 hours of the Track 2 investigation.

Reason 3 – Number Ownership

The Level 2 provider stated that it did not see this as a breach of the Code as the numbers still connect directly to the organisations requested. There are five reasons why it believed this:

1. 0844 numbers were introduced for some organisations to track caller usage

The direct number was given out in some cases and 0844 numbers are used in other cases. The Level 2 provider stated that it tracked how many calls were made for its own marketing purposes. Further, it stated that tracking allowed the Level 2 provider to monitor that each customer had received and dialled the correct number. It said that without the 0844 tracking numbers it would not have been possible for the Level 2 provider to determine if the user was actually able to dial the number. The Level 2 provider stated further that it would be irresponsible for a service of its size and volume of calls to not to have some method of validating that the end user was actually dialling the

correct number. In addition, the Level 2 provider stated that, services that do not operate tracking numbers are more likely to mislead the end user, tracking numbers allowed the Level 2 provider to maintain working numbers and PhonepayPlus was connected to the correct organisation during monitoring calls.

2. The 0844 numbers were in many cases cheaper to call than the company owned numbers

The Level 2 provider asserted that, on a per-minute basis, the consumer was better off calling an 0844 number (5 pence per minute) than an “expensive” 0871 number (10 pence per minute) provided by many of the companies. Of the 323 companies advertised, more than half were 0871/0870/0845/0844/0843 numbers which cost either the same or more than the 0844 tracking numbers it introduced. The other half were either 0800 or 01/02/03 numbers.

The Level 2 provider provided an extensive table, which contained the details of all the companies that it asserted it provided a “cheaper” connection to. The companies included, National Express, Oyster card, P and O Ferries, Vue Cinemas, Bristol Airport, Virgin Mobile and Virgin Trains. The Level 2 provider noted that 0845 and 0870 numbers incur local charges (which can be included in minute bundles) from a landline. However, it also noted that 08 numbers from a mobile are generally all charged at 15-20p therefore stated that this seemed to be most comparable for mobile users.

3. Competitors provide £1.53 per minute premium rate number

The Level 2 provider stated that its competitors charged call connection services at £1.53 per minute, which it asserted is far more likely to lead to consumer harm than 0844 (5 pence per minute). It added that its pricing policy of £1.53 per **call** is significantly greater value than £1.53 per **minute**. It stated that it believed that this was a responsible pricing strategy for continuing to minimise complaints and provide good value for money for the end user.

4. The Level 2 provider cannot be held responsible for calls that are not answered by companies

The Level 2 provider asserted that it was not responsible if calls were not answered by the companies in question as there is little it can do to influence opening times. The Level 2 provider suggested that the dialling tone was an indication of a working phone number that could not be answered.

5. The use of 0844 tracking numbers simplified the process of managing the numbers

The Level 2 provider stated that ensuring that the correct numbers were given out was its main responsibility. It asserted that having 0844 numbers made it easier for it to maintain a correct and up-to-date list of numbers.

The Level 2 provider stated that, in its view, it seemed as though a lengthy investigation was conducted when the Executive could have simply raised a Track 1 investigation. The Level 2 provider stated that it had previously “collaborated on” a Track 1 investigation. The Level 2 provider stated that the Track 1s that were raised did not address these issues, as PhonepayPlus merely requested copies of promotional material and an overview of the

Service. The Level 2 provider asserted that, despite the Executive being fully aware of their concern for many months, no opportunity was given to discuss or remedy them.

Remedies taken

As a result of the Executive's concern, all 0844 tracking numbers have been removed from the website and replaced with the regular numbers owned by the respective company, whether they cost more or less.

Additional factors

The Level 2 provider raised the following additional factors.

Volume of complaints has proved inaccurate – was 19, then 12, now 8

Initially the number of complaints referred to during the Track 1 investigation was 19, but when it was suggested that some of the complaints were either not relevant or duplicates the complaints dropped to 12. Within the annex to the breach letter submitted to the Level 2 provider on 28 February 2013 there were only eight complaints.

The Executive subsequently confirmed to the Level 2 provider that there were 12 complaints that were relevant to the case, although only eight had granted permission for their identities to be disclosed. On 20 March 2013 the Level 2 provider was provided with a revised list of eight complaints. This list replaced the original complaints that had been provided within the annex to the breach letter.

No complaints received directly

The only complaints that did exist were only sent directly to PhonepayPlus; the Level 2 provider stated that it did not receive the details of the complaints until the Track 2 investigation. The Level 2 provider stated that it therefore could not investigate or resolve them.

The eight remaining complaints are all questionable

The Level 2 provider made the following assertions (including those made in correspondence received soon after the Tribunal sitting) in relation to the eight complaints that had been provided by the Executive on 20 March 2013:

Complaint 1: This complainant did call the number for BHS customer services, but not Microsoft (as alleged by the complainant). The complainant also referred to reverse charging but the Level 2 provider confirmed that this was not possible. The Level 2 provider asserted that the customer was confused but could easily be set straight.

Complaint 2: The Level 2 provider asserted that there was no evidence of the unusual charges that were being suggested by this complainant. The complainant had stated that he was being charged 35p per minute for a call to an 0844 number but this suggested that he or she was using a premium method of making that phone call (mobile phone or international call perhaps). The Level 2 provider stated that, without the bill it was difficult to speculate. The Level 2 provider confirmed that 0844 numbers are charged at 5p per minute for calls made from a BT landline. The complainant had also questioned the morality of the pricing. The Level 2 provider stated that the debate on the morality of £1.53 per call did not seem logical when competitors were charging £1.53 per minute. The Level 2 provider wished to handle

this complaint by obtaining a copy of the bill in order to process a full refund of all call charges as a gesture of good will.

Complaint 3: The Level 2 provider commented that the complainant's assertion that there is a need to call multiple times in order to get through was not how the Service worked. The Level 2 provider confirmed that consumers call once and hear a recording which reads out the phone number. The Level 2 provider asserted that the customer had probably called a competitor's phone line.

Complaint 4: The Level 2 provider confirmed that it did not understand why the complainant was suggesting Telecom 2 Limited is the company appearing on the bill and asserted that more investigation was required.

Complaint 5: The Level 2 provider asserted that it had not received any calls from the complainant's MSISDN since January 2012. The Level 2 provider asserted that the number allegedly called was for Facebook Customer Services, but the complaint was regarding the Child Protection Agency. The Level 2 provider believed that this complaint was invalid.

Complaint 6: The Level 2 provider asserted that it had not received any calls from the complainant's MSISDN since January 2012, and accordingly believed that this complaint was invalid.

Complaint 7: As for complainant 5, the Level 2 provider asserted that it had not received any calls from the complainant's MSISDN since January 2012. The Level 2 provider asserted that the number allegedly called was for Facebook Customer Services, but the complaint was regarding the Child Protection Agency. The Level 2 provider believed that this complaint was invalid.

Complaint 8: This complainant referred to the "Debenhams contact number" but the Level 2 provider asserted that this was not a phrase that was used on the website or the Google advert. The Level 2 provider further confirmed that the 0913 premium rate number provided by the complainant was for Yodel customer services and not Debenhams. The Level 2 provider asserted that further investigation was required.

In summary the Level 2 provider asserted that three of the complainants did not even call the service as there had been no calls on the premium rate numbers from the MSISDN's provided within the list of complainants. The Level 2 provider accordingly believed that these complaints were invalid. The Level 2 provider further asserted that four of the complainants were discussing services relating to different companies than those they actually called. The Level 2 provider accordingly believed that this suggested that these complaints were not in fact valid either. Having looked at the complaints that were left to investigate further, the Level 2 provider further asserted that none of them seemed to apply to the three specific misleading allegations that had been raised by the Executive.

The Level 2 provider therefore firmly believed that there were no relevant valid complaints to backup the Executive's concern, and that these complaints should not be considered by the Tribunal when reaching a decision.

Call volume high, but complaints volume low

The Level 2 provider stated that it had received a total of 394,539 calls in a four month period but only heard of the above listed 8 complaints (maximum) or 0.002% of calls.

Victim of consumer confusion and high prominence

The Level 2 provider stated that it seemed that two of the complainants mentioned the Service URL but with significant contradicting pricing within their complaints. It stated that this led it to believe that the consumers had called a competitor's phone line. It stated that the Executive had noted that its search engine prominence was high ("first link clicked"). It therefore believed that these two complainants suffered "bill-shock" and attempted to re-trace their steps incorrectly. The net result being that the Level 2 provider had become the victim of consumer confusion due to high prominence within the search engines. It stated that the main reasons to justify this were:

- It did not receive any complaints directly;
- The complainants' version of events seem dubious;
- There were no call statistics, names, email addresses or any way to verify the complaints; and,
- The call volume was high and complaints were low.

The Level 2 provider stated that had it been given the opportunity to refund these consumers, it would have checked the consumers' phone bill to establish the actual phone number dialled.

No feedback received from Fast Track procedure

The Level 2 provider stated that the Fast Track process is defined in PhonepayPlus' "Investigations & Sanctions Procedure" Section 2:

"Where there are isolated complaints relating to a service and the evidence suggests any potential breach is likely to be considered minor, the case may be referred to PhonepayPlus' Complaint Resolution Team and PhonepayPlus' 'Fast-track process' may be used to gather relevant information, **identify any potential minor breaches and agree an immediate remedy** with the Network operator or premium rate service provider within the context of their role in the value-chain."

The Level 2 provider asserted that the Fast Track procedure was used to gather relevant information, such as promotional material and how long the number had been running. It asserted that it had provided this information promptly but then received no feedback (except the occasional "thank you" email). This led it to believe that the Service was compliant and the Complaints Resolution team were happy with the Service. The Level 2 provider asserted that it was now clear that the Executive believed that there were some minor outstanding issues but they were not raised. The concerns were withheld until the Track 2 stage, leaving it with no opportunity to remedy the issues and giving the false idea that the Service was deemed to be compliant.

Track 1 remedies could not be agreed

The Level 2 provider noted that the Track 1 process is defined in the "Investigations & Sanctions Procedure" Section 2:

"Where there are apparent compliance issues identified relating to a service, or services, operated by one premium rate provider, but the actual or potential consumer harm is considered minor (see paragraph 54 below), the Executive may consider referring the case to the Complaint Resolution Team to use the 'Track 1 procedure' and develop an agreed action plan to remedy potential breaches."

The Level 2 provider asserted that its response to the Track 1 clearly contained an action plan of suggested changes and the suggestion that it would have liked to resolve the issues informally. The suggested action plan was not replied to. This meant the action plan could not be agreed. The Executive did promise to respond once the response had been reviewed, but for some reason no response was received. The issue was then escalated to the Track 2 procedure.

Evidence supplied by the Level 2 provider

The Level 2 provider provided an extensive amount of additional evidence. This included:

- i. Invoices showing SMS sent and costs, proving that the Level 2 provider “cares about customers receiving the number”.
- ii. Call statements showing call volume proving that complaints are relatively low.
- iii. An email from the Level 1 provider proving complaints do not relate to the Service.
- iv. Screenshots from competitors proving they are charging much more, up to £1.53 per minute
- v. Screenshots from competitors proving they also advertise the same public services and therefore believe them to be non-vulnerable
- vi. Screenshots from Google showing many competitors using the company name at the start of the url. This proves that these companies also believe they are not misleading the customer.
- vii. Emails between the Level 2 provider and the Executive which were not replied to proving the Level 2 provider’s desire to cooperate and that it was not possible to agree a remedy.

3. The Tribunal considered the evidence, including the Level 2 provider’s detailed written and oral submissions. The Tribunal took into account the Level 2 provider’s assertion that the Service was aimed at the ‘mass market’ and concluded this would mean it was aimed at consumers with differing levels of technical ability. In relation to reason 1, the Tribunal found that the use of URLs containing the name of the organisation which the consumer was seeking, in combination with the headline (for example, “Vodafone Customer Service”) and the call to action (for example, “Need the Vodafone UK phone number?”), indicated that a consumer would obtain the official customer service number for the organisation. As consumers did not receive the official number in many cases, the Tribunal concluded that consumers were likely to be misled by the way the Service was promoted. In relation to reason 2, the Tribunal accepted that the Service’s landing pages did not mimic the webpages of the organisations it promoted connection services for. However, the Tribunal found that consumers were likely to be misled into the belief they would be given the official customer service number for the organisation they sought as a result of:

- i. The Google map which contained a Google copyright mark (suggesting that the information was ‘from Google’) and displayed the premium rate number in such a way as to suggest that it was physically related to the address shown.
- ii. The prominent heading, for example, “Vodafone UK Customer Services Phone Number”.
- iii. The use of the wording, “To get connected to [for example] Vodafone UK Customer Services”.

In relation to reason 3, the Tribunal noted that by the Level 2 provider’s own admission, approximately half of the organisations it provided a connection service to had official customer service numbers that were either 0800 numbers or geographical numbers (and therefore cheaper than the Level 2 provider’s 084 and 085 numbers). Therefore, consumers in a significant number of cases were likely to have been misled into incurring higher charges than if they had called the organisation directly.

The Tribunal therefore upheld a breach of rule 2.3.2 of the Code for all three reasons put forward by the Executive. For the avoidance of doubt, the Tribunal confirmed that its decision to uphold a breach of rule 2.3.2 of the Code was not reliant on the validity of the complaints referred to by the Executive, but was on the basis of the Tribunal's own assessment of the evidence gathered during the Executive's monitoring of the Service and the information provided by the Level 2 provider in response.

Decision: UPHELD

SANCTIONS

Initial Overall Assessment

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

Rule 2.3.2 – Misleading

The initial assessment of rule 2.3.2 of the Code was at the top end of **significant**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Service was recklessly promoted in such a way as to impair the consumer's ability to make a free and informed transactional decision.

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

Final Overall Assessment

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

- The Level 2 provider took the following steps to end the breach:
 - i. Reordered the wording of the URLs;
 - ii. Ceased providing 084/ 085 tracking numbers;
 - iii. Removal of the premium rate number from the Google map; and,
 - iv. Edited the recorded message to repeat the customer services number sought three times.
- The Level 2 provider stated that it would have provided refunds had the complainants' details been disclosed to it.

The Tribunal recognised the difficulties that the Level 2 provider had experienced following the earlier Track 1 procedure. However, it was satisfied this was not material to the outcome and the Level 2 provider was given an extended opportunity to put submissions before the Tribunal orally and in writing following the informal representations. As a result, the Level 2 provider had not been materially disadvantaged.

The Level 2 provider's revenue was in the range of **Band 1 (£500,000+)**.

Having taken into account all the circumstances of the case, the Tribunal concluded that the seriousness of the case should be regarded overall as **significant**.

Sanctions Imposed

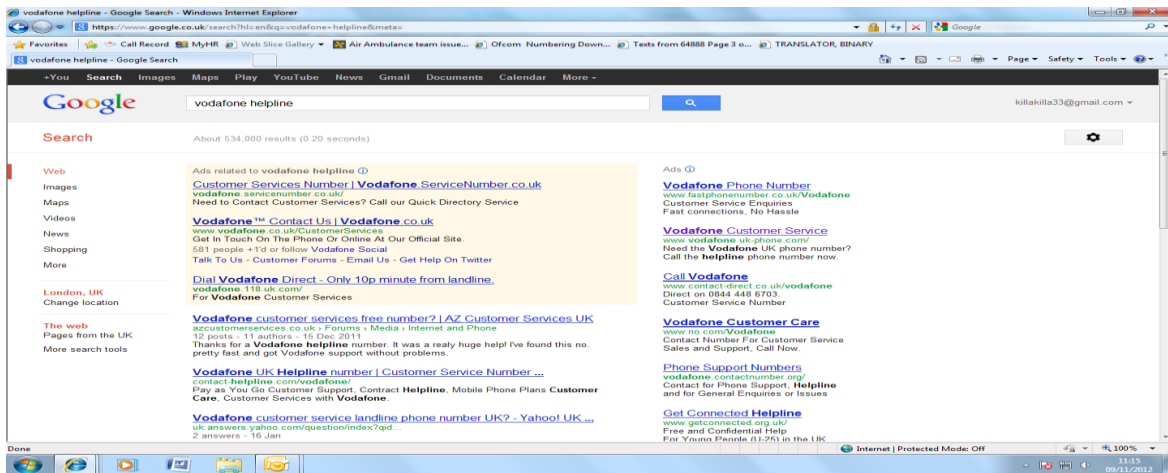
Having regard to all the circumstances of the case, including, the scale of the Service and the potential number of consumers who were likely to have been misled, the Tribunal decided to impose the following sanctions:

- A formal reprimand;

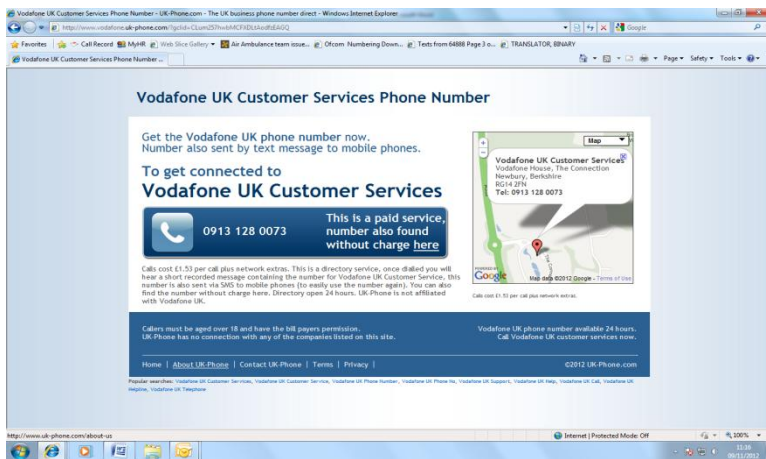
- A fine of £50,000; and
- A requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

Appendices

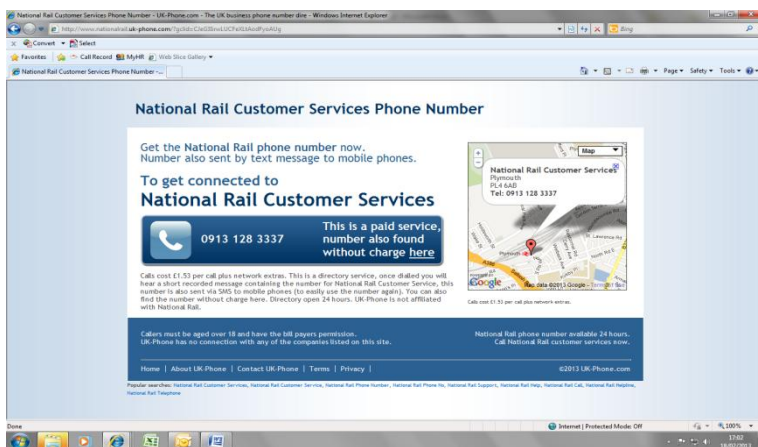
Appendix A: Screenshot of an example of Google AdWord promotion for the Service:



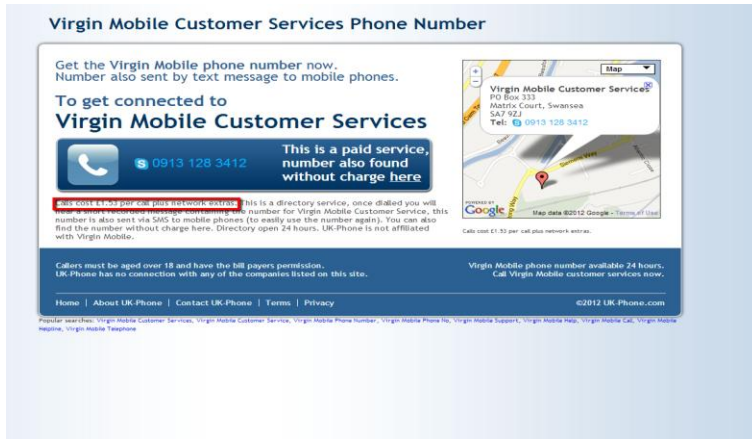
Appendix B: Screenshot of a page from the Service website:



Appendix C: Screenshot of a page from the Service website:



Appendix D: Screenshot of a page from the Service website:



Appendix E: Screenshot of a page from the Service website:

