



Tribunal Sitting Number 140 / Case 2

Case reference: 27976
Level 2 provider: British Telecommunications Public Limited Company
Type of Service: 118500 Directory enquiry
Level 1 provider: N/A
Network operator: British Telecommunications Public Limited Company

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

BACKGROUND

Between 29 May 2013 and 17 September 2013, PhonepayPlus received 27 complaints in relation to a directory enquiries service's pricing, (the "**Service**") operated by British Telecommunications Public Limited Company on the premium rate number 118500. Prior to 27 July 2013, consumers were charged 62 pence per call plus £1.99 per minute. After 27 July 2013, the cost of the Service was 59 pence per call plus £2.39 per minute. The Service commenced operation on 118500 in August 2003 and continues to operate. The maximum cost incurred by a complainant was reported to be £81.00.

The majority of complainants stated that pricing was not stated in the promotional material or that the pricing information was incorrect. In addition, some consumers experienced bill shock. In-house monitoring of the Service revealed concerns regarding the length of the interactive voice response ("**IVR**") provided to some consumers.

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 18 November 2013. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.2.5 – Pricing prominence and proximity
- Rule 2.3.4 – Undue delay

The Level 2 provider responded on 2 December 2013. On 12 December 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 1

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 breached rule 2.2.5 of the Code as some promotions for the Service did not fully and clearly inform consumers of the cost of the Service for the following reasons:



- i) There was no pricing information on the front cover of the Level 2 provider's Phone Book promotions for the Service.
- ii) The pricing information was not proximate and prominent to the call to action on the Service website, which promoted the Service.

The Executive stated that it had contacted the Level 2 provider in May 2010, concerning the absence of pricing information on the Phone Book. In June 2010 an agreement was reached for the front cover to include the wording, "For pricing information and other information, see page 5". The Executive was satisfied that the wording met the requirements of the 11th Edition of the PhonepayPlus Code of Practice. The Level 2 provider's obligations under the Code changed following the implementation of 12th Edition of the Code in September 2011. In June 2011 and March 2012, the Level 2 provider requested guidance in relation to the pricing information on the front cover of the Phone Book from PhonepayPlus. However, PhonepayPlus did not provide a written response.

Guidance

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

Paragraph 2.1

"Pricing information is one of the fundamental pieces of information that promotional material for PRS must display. This is to ensure that consumers are fully and clearly informed of how much the premium rate service is likely to cost them, before they commit to purchase."

Paragraph 2.8

"Pricing information where consumers are unlikely to see it, or where it is hard to find, is unlikely to be judged as 'prominent', or 'proximate', by a PhonepayPlus Code Compliance Panel Tribunal ('PhonepayPlus Tribunal')."

Paragraph 2.9

"'Proximate' is a new term within this edition of the PhonepayPlus Code of Practice, and can be defined as being next to, or very near, the means of consumer access to a service. The most common example of information not being proximate is providing pricing information which is too far from the call to action (i.e. the telephone number, shortcode or other access code or means of payment for the service) within the promotion."

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. We have sometimes seen pricing information in the middle of the terms and conditions of a service, promotion or product, rather than as clear and correct 'standalone' information; the price is sometimes provided separate from the page with the call to action, or lower down on the page in such a way as to make the consumer have to scroll down to see the price. Any of these practices are unlikely to be viewed as compliant with PhonepayPlus' Code of Practice by a PhonepayPlus Tribunal."

Complaints



Generally, the Executive noted the content of the complainants' accounts which stated that the pricing information was not stated on the promotional material or the pricing information they had received was incorrect. In addition, some consumers experienced bill shock.

i) There was no pricing information on the front cover of the Level 2 provider's Phone Book promotions for the Service.

The Executive obtained the front cover of the 2012/2013 edition of the Phone Book for the Worcester area (**Appendix A**) and the 2013/2014 edition of the Phone Book for the Brighton area. The text of the promotion stated:

"Call BT 118500
You can see what it costs to call at bt118500.com"

The Executive noted that both versions of the front cover contained the premium rate number but did not contain any pricing information for the Service. The Executive also noted that inside the Brighton area Phone Book other promotions did not contain pricing information but invited consumers to visit the website for pricing information (**Appendix B**).

The Executive asserted that pricing information for the Service should have been included in the promotion containing the premium rate number (the call to action), as consumers should be clearly informed of the cost of accessing the Service before any purchase is made. The Executive submitted that substituting pricing information with a website does not meet the requirements of the Code.

ii) The pricing information was not proximate and prominent to the call to action on the Service website which promoted the Service.

The Executive noted that the Phone Book promotions invited consumers to visit the websites 118500.com or bt118500.com for pricing information. The Executive visited both websites on 8 November 2013 and noted that the landing pages were identical.

At the centre of the landing page was a promotion for the 118500 number in a large font (**Appendix C**). The pricing information was located at the bottom of the website landing page below the fold (**Appendix D**). The Executive stated that the pricing information was not prominent and proximate to the premium rate number for the following reasons:

- i) The pricing information was below the fold. Therefore, consumers were required to scroll down to view the pricing information. As a result, the pricing information was not proximate to the premium rate number (the call to action).
- ii) The font size of the pricing information was significantly smaller than the call to action and therefore not prominent.

The Executive submitted that the cost of the Service was not provided on the Phone Book front cover and not prominent and proximate to the call to action on the website. Accordingly, the Executive submitted that rule 2.2.5 of the Code had been breached.

2. The Level 2 provider admitted the breach in relation to the lack of pricing information on the Phone Book front cover but denied the breach in relation to the pricing information on the website.



The Level 2 provider accepted that there was no pricing information on the Phone Book front cover as a result of an oversight. The Level 2 provider explained that it had had discussions with PhonepayPlus regarding the wording of the pricing information in 2009/2010 and that it was agreed that the front cover would refer to the preface of the Phone Book for the pricing information. The Level 2 provider stated that it had made plans to implement the agreed wording, however, as a result of an oversight this was not actioned. It only became aware that the issue had not been resolved when it was contacted by PhonepayPlus as a result of complaints in May 2013. The Level 2 provider stated that it was not a deliberate omission but was one that it was embarrassed about. The Level 2 provider explained that it had requested advice regarding the placement of the pricing information from PhonepayPlus in 2011/2012 but had not received a response.

The Level 2 provider highlighted that there is pricing information in the preface to the Phone Book and on the “filler ads” inside the Phone Book. However, it understood that this was not sufficient for the purposes of the Code. It had referred to the website because it was easily updated with price changes.

As a result of the oversight, the Level 2 provider stated that it had now taken remedial action. It planned to amend the Phone Book cover so that the cost of the Service would be placed next to the premium rate number and on the “banner/ filler ads” from January 2014. It had taken steps to agree the wording with PhonepayPlus and the change had been implemented into its print schedules. It stated that there was an unavoidable delay due to the schedule deadlines which could not be shortened.

In addition, the Level 2 provider stated that it had reviewed its processes and put measures in place to prevent similar occurrences. These measures included providing proof copies of future Phone Book promotions to its Phone Book production team and directory enquiries product team for approval before publication.

In relation to the pricing information contained on the Service website, the Level 2 provider denied the breach and stated that it was surprised that the Executive had raised the breach. It stated that it was not aware of any complaints about the visibility of the pricing information on the website. The Level 2 provider explained that the 118500 number is a brand symbol and/or a logo and it was not designed to be a call to action to stimulate calls. Therefore it did not believe the cost of the Service needed to be provided alongside the logo. Further, it stated that directory enquiries are unlike any other premium rate service as it is identified by its telephone number rather than the service or the provider.

In addition, the Level 2 provider stated that the purpose of the website was to give consumers a free number search, therefore it believed that if it put the cost of the Service next to the free search box it would be, “illogical and potentially confusing”, for consumers. It did not want to create the impression that consumers would be charged for a free web search. It maintained that the promotion of the Service and the call to action were in the text at the bottom of the page, which contained the requisite pricing information and was proximate and prominent to the call to action.

Generally in relation to the Executive’s assertion that the pricing information was below the fold the Level 2 provider stated that it would depend on a consumer’s screen size and settings. It had conducted internal testing and the information had appeared above the fold. It supported this by providing a screenshot of the landing page with a 50% resolution (**Appendix E**). The Level 2 provider submitted that the pricing information was clear and although it was in a slightly smaller font this was only marginal. It added that the text was in



italics and separate from the other text in an effort to ensure it stood out from the other wording.

In summary, the Level 2 provider stated that it did not believe the pricing information contained on the website was in breach of rule 2.2.5 of the Code. It had reviewed its competitors' websites and provided examples which, while it stated it did not provide it with a defence, demonstrated that pricing information was often much further down the page and in a small font.

During informal representations, the Level 2 provider expanded upon its written submissions and reiterated its assertion that the premium rate number was a logo and not meant to stimulate calls, like many other directory enquiries services. In light of this, it did not feel that it had much choice in placing the number at the forefront of its website. It acknowledged that under the Code, pricing must be proximate and prominent to the call to action and it agreed that "the principle may be right" but it anticipated that this would create problems for it and other providers of directory enquiry services. The Level 2 provider expanded upon its submissions regarding the website and stated that its primary purpose was as a free information service but it accepted that its secondary purpose was also to provide information including the cost of the Service. It acknowledged that the Phone Book directed consumers to the website.

In relation to the Executive's assertion that the text was below the fold, the Level 2 provider stated that on its screens the text was not below the fold but on other devices it agreed it may be. Prior to the notification from the Executive, it had not occurred to it that it could be a problem. However, it was open to suggestions and willing to consider adapting the webpage.

The Level 2 provider stated that it was aware that the standards for premium rate services applied in the same manner to directory enquiries services as other premium rate services and added that it thought this was the correct approach.

In relation to the Phone Book front cover pricing, it accepted that it had not implemented PhonepayPlus' guidance following discussions in May 2010 and stated that it had seemingly "fallen through a gap" and had not been followed up. It had spent a significant amount of time considering the Code and had involvement during the consultation period but the Code's provisions on pricing prominence and proximity had unfortunately not "clicked".

The Level 2 provider confirmed that the wording on the front cover of the Worcester and Brighton area Phone Books was identical to all other Phone Books. The Level 2 provider stated that it had previously had a successful television advertising campaign which still appeared to generate use of the Service, despite the fact it had ended some time ago. Other than this, the Phone Book was the primary source of promotion.

The Level 2 provider accepted that the Service had been subject to substantial price increases since its introduction and the price was significantly more than its previous service operating on the premium rate number 192. It commented that directory enquiry services had suffered significant market decline. The Level 2 provider asserted that the Service was not designed for long telephone conversations and its purpose was for convenience. The Level 2 provider said that it strived to be the, "people who give you what you come for".



3. The Tribunal considered the evidence, including the Level 2 provider's detailed written and oral representations. The Tribunal commented that the Code requirements and Guidance in relation to the provision of pricing information are clear. The Tribunal noted that the Phone Book contained no pricing information on the front cover, only a reference to a website. The Tribunal found that this was a clear breach of the Code.

The Tribunal noted the Level 2 provider's submissions regarding pricing information contained on the Service website and that the premium rate number was a "logo" and not a call to action. The Tribunal did not accept this assertion and found that, while the premium rate number may be a brand, it was also a call to action and therefore required pricing information. In addition, the Tribunal found that the pricing information contained on the website was not proximate and prominent to the call to action, due to the size of the text on some devices, compared to the premium rate number and the position of the text below the fold. The Tribunal commented that the lack of clear pricing information on both the Phone Book and website made the breach more serious as the Phone Book referred consumers to the website. Accordingly, and for the reasons given by the Executive, the Tribunal concluded that a breach of rule 2.2.5 of the Code had occurred in relation to both the Phone Book and the website promotions.

Decision: UPHELD

ALLEGED BREACH 2

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 had breached rule 2.3.4 of the Code as a recorded message heard by consumers requesting a listed geographic telephone number experienced undue delay during the provision of the Service.

The Executive relied on the content of the 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.

"The following (a-e) is a list of the different ways that services might find themselves operating under undue delay..."

"(b) Problems with pre-recorded services"

Paragraph 1.8

"Some pre-recorded services are also known to include lengthy promotions for other services, before the key service information is heard by the caller."

Paragraph 1.9

"Providers should note that, if there is no valid reason to hold back a consumer from gaining the key service information on a premium rate service, whether intentionally or by design, then any such service is likely to be considered to be operating under undue



delay. Callers should be able to reach the promoted service, or its key service information, simply and without delay, once they have chosen to engage with it.”

During correspondence, the Level 2 provider confirmed that on connection to the Service consumers would hear an introductory message lasting approximately 15 seconds which stated:

“You’re through to BT 118500 directory enquires. If you need more than just a phone number just ask and we’ll look it up for you. We can look up almost any information you might need from the internet. Please note that calls may be monitored or recorded for training purposes.”

After hearing this message consumers were connected to an operator. Consumers who requested that the telephone number was provided, as opposed to onward connection to the number, heard one of two recorded messages prior to the telephone number being provided. Message one lasted approximately 20 seconds and was played on connection to a geographic number. It stated:

“Thank you for calling. You will now hear the number given twice, we can also search the address, postcode, opening times, directions or any other information you need so please stay on the line after the number if you want any more help. The number you requested is...”

Message two lasted approximately three seconds and was played on connection to a non-geographic number. It stated:

“The number, that must be dialled in full, is...”

The Executive conducted monitoring of the Service on 17 May 2013, 15 July 2013 and 18 July 2013. On 17 May 2013, the Executive made a call to the Service after requesting a geographic number message one detailed above was played. The Executive monitored the Service on five occasions requesting onward connection. On one occasion the operator gave incorrect pricing information by stating that the cost of the call would be £1.39 per minute rather than £1.99 per minute (as it was at the time of the call).

The Executive asserted that as a result of message one consumers experienced undue delay. In particular the Executive submitted that the undue delay was caused for the following reasons:

- i) The information contained in message one was more than that required by a consumer accessing the Service and that a significantly shorted message, such as message two, contained sufficient information.
- ii) The information contained in message one was not kept as brief and relevant as possible, as it largely repeated the content of the introductory message, which lasted approximately 15 seconds.
- iii) The provision of the introductory message and message one lasted approximately 35 seconds. For the Service to last no more than one minute consumers would only be able to engage with the operator for a maximum of 25 seconds, which in some situations would not be possible. In these situations, consumers would have incurred an additional charge of £2.39 for using the Service over one minute.



The Executive noted that in accordance with rule 2.3.4 of the Code, a service must not be unduly delayed where a consumer has done what is necessary to connect with a service. The Executive asserted that message one resulted in an undue delay before the provision of the geographic telephone number, which may have resulted in consumers incurring a further minute charge of £2.39.

Consequently, the Executive submitted that undue delay occurred in the provision of listed geographic telephone numbers and for the reasons detailed above the Service was in breach of rule 2.3.4 of the Code.

2. The Level 2 provider denied the breach and stated that the IVR did not cause undue delay and amount to a breach of the Code. The Level 2 provider accepted that the introductory message and message one added up to a total of 35 seconds. It was aware of the guidance on “live services”, which stated that the introductory message should be no longer than 30 seconds but it stated that the examples given in the guidance, of what would not be acceptable, were where the introductory message was several minutes long, and not just above the “threshold”. In light of this, the Level 2 provider stated that it believed the guidance was open to interpretation and it was its view that message one had not caused any undue delay.

The Level 2 provider asserted that the messages were part of a range of changes it had made to improve its “advisor engagement” and to maximise the customer experience. Since introducing the changes it noted that it had improved the rate that customers get the number they wanted from a 94% to 98% success rate.

The Level 2 provider also stated that message one was only played when consumers requested a geographic number and even then, it was not played in all calls. It stated that the message was given in 41% of calls. In the situations where consumers had been unhappy with the Service, and particularly about the length of the message, the Level 2 provider’s policy was to give a refund. It provided details of the number and amount of refunds given to complainants.

The Level 2 provider commented that while it did not believe the message amounted to undue delay it appreciated the reasons detailed by the Executive and wanted to ensure that it continued to co-operate with PhonepayPlus. In light of this, it had decided to change the length of message one to:

“Thank you for calling. The number you requested is...”

During informal representations, the Level 2 provider reiterated its written submissions. It added that the operator referring to the wrong pricing was unfortunate but that the Service was open to human error. The Level 2 provider stated that its own data which came from 5000 call samples showed that the wrong pricing information was only given in 0.07% of calls. It stated that it could not account for the PhonepayPlus monitoring that found one in five calls gave incorrect pricing, other than to state that it may be less representative because it was a smaller sample. It added that at one time the price was £1.39 per minute which may account for the confusion, although it conceded there had been price increases since the £1.39 price point. The Level 2 provider confirmed that the average length of the call to the Service was one and half minutes.

3. The Tribunal considered the submissions made by the Executive and the Level 2 provider and the evidence before it. The Tribunal noted that content of “message one” related to the



Service but found that it was largely unnecessary as it repeated the information in the introductory message. As the Service was charged on a per minute basis, the Tribunal commented that the potential effect of the repeated information was for consumers to incur a further minute charge and thereby inflated revenue. The Tribunal found that “message one” caused undue delay after a consumer had connected to the Service and, accordingly and for the reasons outlined by the Executive, undue delay occurred in breach of rule 2.3.4 of the Code.

Decision: UPHELD

SANCTIONS

Initial overall assessment

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

Rule 2.2.5 – Pricing prominence and proximity

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

- Very serious cases have a clear and highly detrimental impact or potential impact, directly or indirectly, on consumers.
- The nature of the breach is likely to severely damage consumer confidence in premium rate services.

Rule 2.3.4 – Undue delay

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

- The nature of the breach is likely to have caused, or have the potential to cause, a drop in consumer confidence in premium rate services.
- The cost incurred is likely to be material to consumers, with the breach likely to generate considerably inflated revenues for the service. The Service itself is still capable of providing some value to consumers.

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

Final overall assessment

In determining the final overall assessment for the case, the Tribunal found no aggravating factors but the Tribunal took into account the following mitigating factor:

- Once the Level 2 provider had become aware of the breaches of the Code it made efforts to remedy the breaches by shortening the IVR message for geographic numbers and implementing new processes to ensure alterations to promotional material were approved and implemented in a timely manner.

The Tribunal noted:

- i. The length of time the Service had been in breach of the Code 12 requirements and that during that time there had been two new versions of the Phone Book.



- ii. The cost of the Service had risen substantially over the period of operation. Given the relatively low cost of the Service initially, and as demonstrated by the complaints, some consumers appeared not to have been aware of the price changes.
- iii. The Level 2 provider was a trusted name and the Service was a trusted brand, therefore the breaches were particularly significant.
- iv. The Level 2 provider had requested compliance advice regarding pricing information on the Phone Book front cover from the Executive. The Tribunal was disappointed that the Executive appeared not to have responded to the request but commented that the apparent lack of response was not material as the Code requirements in relation to pricing are clear.
- v. The Level 2 provider recognised that directory enquiry services are required to meet the same standards as other premium rate services.
- vi. The Level 2 provider's level of co-operation including the provision of useful information, such as staff training manuals, to assist the investigation.

The Tribunal noted that the Level 2 provider stated that a new version of the Phone Book would be introduced from January 2014 but commented that it hoped that the Level 2 provider would take action to ensure that consumers who had existing versions of the Phone Book would be made fully aware of the cost of calls to the Service as required by the Code.

The Level 2 provider's revenue in relation to this service was in the range of Band 1 (£500,000+). Having taken into account the mitigating factor and the combined effect of both of the breaches of the Code, the Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

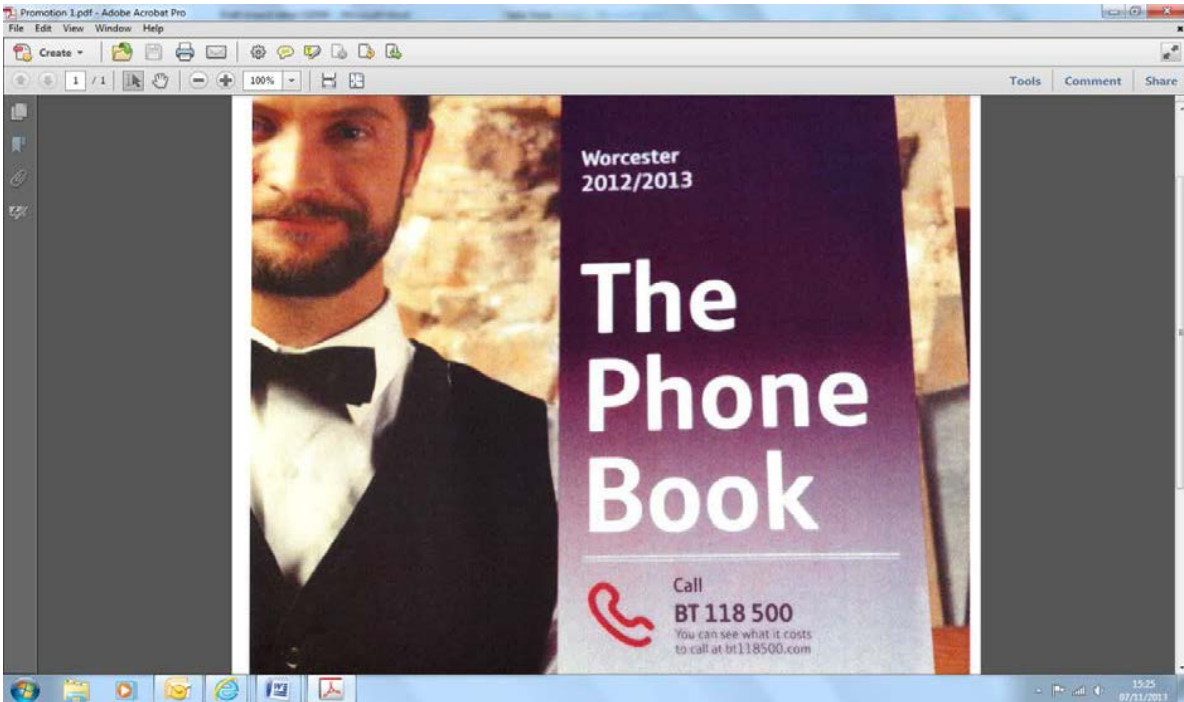
Sanctions Imposed

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

- a formal reprimand;
- a fine of £225,000; 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

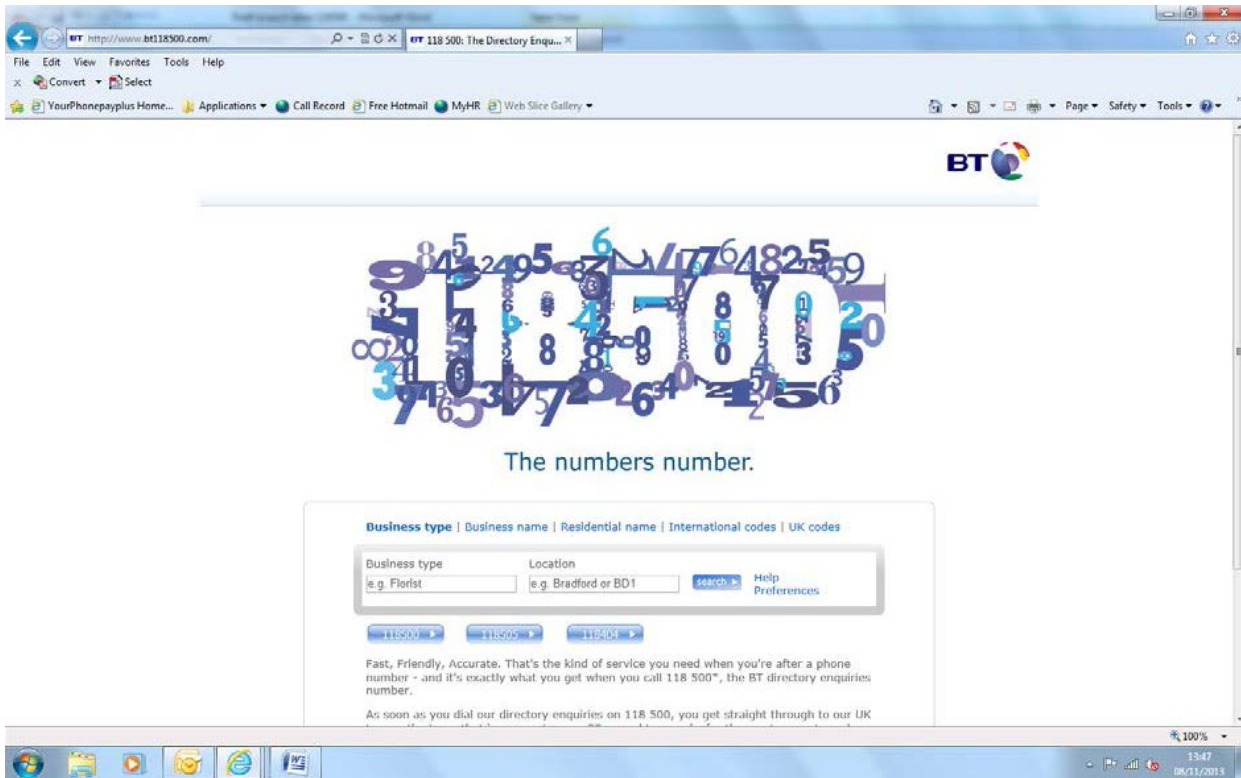
Appendix A: A copy of the front cover of the 2012/2013 Phone Book for Worcester:



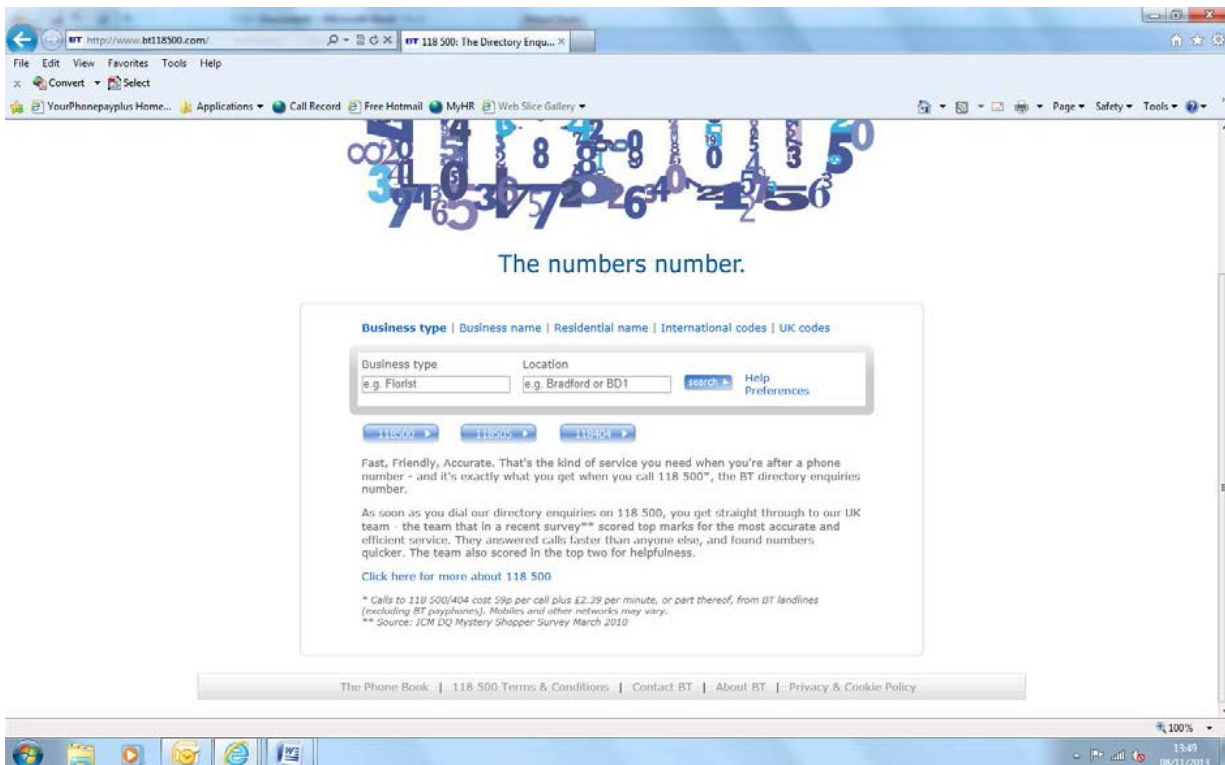
Appendix B: A copy of a promotion for the Service within the 2013/2014 Phone Book for Brighton:



Appendix C: A screenshot of the bt118500.com website landing page:



Appendix D: A scrolled down screenshot of the bt118500.com website landing page:





Appendix E: Screenshot of the Service landing page with a 50% resolution screen:

