



### Tribunal Meeting Number 141 / Case 2

**Case Reference:** 18987  
**Level 2 provider:** Gresham Mobile Ltd (Hampshire, UK)  
**Type of Service:** Competition – non-scratchcard  
**Level 1 provider:** Zamano Solutions Ltd (Dublin, Ireland)  
**Network operator:** All Mobile Network operators

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

### BACKGROUND

Between 12 October 2012 and 6 September 2013, PhonepayPlus received 209 complaints from consumers in relation to a competition subscription service (the “**Service**”) operated by the Level 2 provider Gresham Mobile Ltd, under the brand name “TextPlayWin”. The Service operated on the premium rate shortcode 88770 and cost £4.50 per week. The Level 1 provider was Zamano Solutions Ltd. The Service operated between 5 December 2012 and 13 June 2013 when it was voluntarily suspended by the Level 1 provider. The Service was promoted online using affiliate marketing.

Consumers subscribed to the Service (using a key word SMS or an online PIN code opt-in) and were entered into a weekly draw to win prizes such as iPhones, iPads or £50.

Complainants either stated that they had received unsolicited, reverse-billed text messages and that they had not engaged with the Service, or acknowledged engaging with the Service but stated that they believed it was free. PhonepayPlus monitoring revealed concerns about affiliate marketing promotions for the Service.

### The Investigation

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

The Executive sent a breach letter to the Level 2 provider on 4 December 2013. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.1 – Fair and equitable treatment
- Rule 2.3.2 – Misleading

The Level 2 provider responded on 19 December 2013. On 9 January 2014, after hearing informal representations made on the Level 2 provider’s behalf by the Level 1 provider, the Tribunal reached a decision on the breaches raised by the Executive.

### Monitoring

Monitoring of the Service was conducted by the PhonepayPlus Research and Market Intelligence Team (the “**RMIT**”). On 4 April 2013, the RMIT monitored the Service after advertising-supported software (“**Adware**”) identified as “Yontoo” was inadvertently downloaded on to its computer.

The RMIT searched for “Wikepedia” (which was deliberately misspelt) on the Google search engine and clicked on the first search result link, which was the official Wikipedia website (**Appendix A**). Upon clicking the link, two tabs opened in the RMIT’s web browser. The first tab



contained the official Wikipedia homepage and the second tab contained an unofficial webpage not associated with Wikipedia but containing a headline which reflected the initial spelling error (**Appendix B**). The RMIT noted that on clicking the link to the official Wikipedia website from the Google search engine (**Appendix A**), it was immediately directed to the second tab. The RMIT noted that the first tab containing the official Wikipedia page was overlaid by the second tab. The second tab contained a third party affiliate marketing survey that purported to be the "2013 Annual Visitor Survey" for "Wikepedia". The RMIT noted that the survey appeared to use the same search term that had been entered into Google ("Wikepedia"). The RMIT answered three survey questions and then selected "Next". The following screen stated:

"Survey complete, thank you for your participation!  
You may be able to win a brand new Apple ® iPhone 5 or iPad2, please hold...  
Checking gift offer inventory"

The RMIT was directed to a new webpage which invited the RMIT to select a prize (**Appendix C**). The RMIT selected the iPad prize and was directed to the Service landing page, (**Appendix D**). Upon answering a trivia quiz question displayed on the landing page the RMIT was led to a webpage containing a blank field for a MSISDN to be entered and a Mobile Network operator to be selected. The Service terms and conditions appeared to be obscured by advertisements caused by the Adware (**Appendix E**).

### Complaints

The Executive noted the content of all the complaints received, examples of which include:

"This was a so called IQ test on Facebook which if you got the correct answer you were offered the chance to win an iPad. Following this through there was no clear indication that this was in fact a Premium rate weekly charged number £4.50 per week."

"I was using a ledgitimate web sit (Microsoft Technet). Clicked on the getting started guide and could get past a "win an ipad" window. I gave up and entered details that against my better judgement I shouldnt have including my mobile phone no. I then recieved a text with a pin to enter on the website I was looking at. I then received a text informing me I was to be entered into a weekly competition at a cost of £4:50 per week... [sic]"

"..my complaint is that people are being hoodwinked into thinking that they are entering a 'free' prize draw for completing an innocent looking internet survey, and are actually unwittingly joining a subscription service charging at least £4.50 per week/text - I have browsed the internet and have been horrified to see that many people are being hoodwinked in a similar fashion - and some have received several texts from the same number in one day - so the company behind this is making and will continue to make a great deal of money from this 'SCAM' until they are stopped - which hopefully you can help with."

"I filled in an on-line survey only to discover that I had signed up to a free competition. The competition may be free but you are sent premium rate texts informing you about the competitions. Before I discovered this my mobile phone account was charged £15. Looking at the web I am not the only person to have been caught by this scam."

### SUBMISSIONS AND CONCLUSIONS

#### ALLEGED BREACH 1 Rule 2.3.1



“Consumers of premium rate services must be treated fairly and equitably.”

1. The Executive submitted that the Level 2 provider was responsible for a breach of rule 2.3.1 of the Code as consumers were not treated fairly and equitably as a result of Adware, which automatically diverted consumers to affiliate marketing promotions for the Service without their knowledge.

The Executive relied on the monitoring of the Service conducted by the RMIT. The Executive also relied on data taken from [www.alexacom](http://www.alexacom), (a website information company which provides free website analytics). The data revealed the URLs for websites that consumers visited immediately before arriving on the Service landing page. The RMIT was directed to the Service landing page from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website (the second tab). According to the Alexa data 10.64% of the traffic to the Service landing page was from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website. Consequently, the Executive submitted that a significant percentage of the Service’s traffic came from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website and a significant number of consumers were likely to have experienced a similar consumer journey to that experienced in the monitoring.

The Executive asserted that consumers were not treated fairly as they were unknowingly diverted to a promotion for the Service after they had selected a link for the official Wikipedia website. The Executive accordingly submitted that for the reasons outlined above rule 2.3.1 of the Code had been breached.

2. The Level 2 provider accepted that a breach of the Code had occurred but stated that it had occurred without its knowledge and consent. It accepted that some affiliate marketing promotions for the Service had utilised a trusted brand and were potentially unfair to consumers.

The Level 2 provider confirmed that the Service was promoted online using affiliate marketing promotions but stated that it did not condone the methods encountered by the Executive during the monitoring session.

The Level 2 provider explained that only a small number of subscribers, “were acquired by affiliates using re-direct traffic”. The Level 2 provider added that the majority of consumers were treated fairly, as the pricing and the terms and conditions of the Service were clearly displayed on the Service’s webpages.

The Level 2 provider asserted that it had conducted an analysis of its subscriber database which had revealed that the maximum number of consumers that could have been affected by the non-compliant affiliate marketing promotions was 143 (0.33% of the total number of consumers that had subscribed to the Service between December 2012 and June 2013). The Level 2 provider produced a graph from its internal reporting systems that it stated demonstrated that there was a low number of “clicks” generated from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website compared to the Service as a whole.

The Level 2 provider stated that since April 2013 Service complaint levels had dramatically decreased and that this had been recognised by PhonepayPlus in a presentation at an AIME Regulatory Roundtable meeting in November 2013. The Level 2 provider stated that this was as a result of increased affiliate marketing monitoring and the application of more stringent marketing rules.



The Level 2 provider confirmed that the non-compliant promotional activity was linked to the [worldsocialsurvey.com](http://worldsocialsurvey.com) website. The Level 2 provider had obtained data from Alexa which revealed that the website was only live between mid-March 2013 and mid-May 2013. The Level 2 provider stated that not all traffic from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website was non-compliant. It had obtained unique identifiers for each transaction, which had enabled the Level 2 provider to identify the marketing partner and the source that had generated the traffic. The Level 2 provider confirmed that the identifier associated with the Executive's monitoring, and generated by the Yontoo toolbar, accounted for 21% of the traffic from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website. It confirmed that the other identifiers from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website were associated with pop unders and display banners as opposed to overlay advertisements.

The Level 2 provider stated that "pop" traffic is typically high volume and low conversion. The high volumes of traffic do not necessarily translate into a proportionate level of subscriptions and this was the case with the traffic from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website.

The Level 2 provider summarised a number of controls in place to manage the risks associated with affiliate marketing which include:

- Pre-approval of the affiliate marketing "lead in" webpages.
- Marketing partners are required to provide the full URL referrer for all "clicks" to the Service. Referrers are checked on a daily basis to ensure that they meet compliance standards.
- "Wild monitoring", which involves searching the web looking for the Service promotions to identify concerns.
- Blacklisting publishers who have breached the prohibited practices (evidenced by correspondence addressing previous issues that had been identified by the Level 2 provider).
- Notification of the Level 2 provider's prohibited practices to the affiliate networks.
- Affiliate marketers are required to agree to stringent terms and conditions containing prohibitions.

The Level 2 provider stated that on this occasion the controls that the Level 1 provider had in place, on behalf of the Level 2 provider, did not capture the non-compliant promotions for the following reasons:

- i) The volume of traffic generated from the [worldsocialsurvey.com](http://worldsocialsurvey.com) website was relatively small and consequently there were no peaks in traffic.
- ii) The webpage submitted for approval did not contain the names of any trusted brand names. Survey style landing pages had previously been submitted to PhonepayPlus and they were not deemed inappropriate. Since July 2013, survey style pages have now been added to its list of non-permissible marketing practices.
- iii) When the marketing partner gave the Level 2 provider the URL referrer it hid an element that detailed names of the sites and brands that would be seen by the consumer. The Level 2 provider reviewed the referrers but only saw "Visitor Survey" in the header and not that of a trusted brand name.
- iv) Search term re-direction was not commonly known about by premium rate service providers. There had not been any industry notification or PhonepayPlus adjudications relating to the use of Adware. The Level 2 provider's monitoring focused on movie downloads and streaming sites.



The Level 2 provider stated that the Service landing pages had clear pricing information which was prominently displayed in the middle of the page and was proximate to the means of access to the Service. However, the Level 2 provider asserted that the Executive had not always displayed the Service landing page during the monitoring in a representative manner. The Level 2 provider stated that some screenshots taken by the RMIT displayed banner advertisements on some of the Service webpages. The Level 2 provider asserted that the banner advertisements had no connection to it and had been injected as a result of Adware installed by consumers on to their computers. It highlighted that the banner advertisements on its webpages are detrimental to its business model, as they distract the consumer during the subscription process and could lead to potential consumers moving away from its webpages. The Level 2 provider asserted that the Adware banners did not push the terms and conditions below the fold as the Adware banner floated at the bottom of the page and could be shut down.

Finally, the Level 2 provider explained that Adware is normally bundled with free software downloads from the internet, which is inadvertently downloaded on to the user's computer. The advertising generated from the software is sold to advertising networks, who sell it to affiliate marketers and direct media buyers.

During informal representations, the Level 1 provider made representations on behalf of the Level 2 provider. The Level 1 provider stated that the Service was a white label product provided by the Level 1 provider. It included the billing platform and assisted with the content management, subscriptions, prize fulfilment, customer service and marketing best practice. However it confirmed that the Level 2 provider was responsible for the marketing of the Service although the Level 1 provider had controls in place to assist with monitoring the Service.

The Level 1 provider expanded upon the Level 2 provider's written submissions and confirmed that it accepted that a breach of rule 2.3.1 of the Code had occurred and that it was responsible for the actions of its affiliate marketers. However, it believed that there was substantial mitigation. By way of background, the Level 1 provider explained the nature of the Service and the flow on the Service's promotional webpages. The Level 1 provider asserted that a consumer would have been fully aware of the nature and the pricing of the Service.

In relation to the Executive's evidence from Alexa, the Level 1 provider stated that the analytics showed the traffic to the Service's website but that was not able to show the number of consumers who had subscribed to the Service. Further, the data did not provide information about the period of time over which it had been collated. The Level 1 provider highlighted that the data from Alexa showed all the traffic from the worldsocialsurvey.com website. However, it believed that only a small percentage of traffic would have come from the Yontoo toolbar, as there would have been other methods of promotion. The Level 1 provider stated that the Alexa data was collated from users who have the Alexa toolbar installed and therefore the figures are only indicative.

The Level 1 provider stated that it had conducted monitoring of the Service in Ireland by using a proxy that mimicked a UK IP address. It accepted that this was not as effective as monitoring in the UK as the Adware may be able to detect that it was a proxy.

The Level 1 provider gave a detailed explanation of the way in which the Level 2 provider could identify the source of traffic to its Service. The Level 1 provider drew the Tribunal's attention to the length of time it had taken the Executive to investigate the breaches and



stated that it had not been able to operate and/or promote the Service which had had a considerable effect on its revenue.

3. The Tribunal considered the evidence and submissions before it, including the Level 1 and Level 2 provider's written and oral submissions. In particular, the Tribunal noted that the Level 2 provider admitted the breach of the Code. The Tribunal accepted the Level 2 provider's assertion that 143 consumers had entered the Service via the [worldsocialsurvey.com](http://worldsocialsurvey.com) website but noted that 143 was still a high number of consumers who could have potentially been affected by the Adware (which promoted the Service). Further, the Tribunal noted the large number of consistent complainant accounts which reported similar concerns over an extended period of time (outside the period when the [worldsocialsurvey.com](http://worldsocialsurvey.com) website was believed to have been operating). The Tribunal found that, in light of the monitoring evidence, it was likely that a significant number of consumers had been diverted to a website of which they had no knowledge and had no connection to the consumers' initial search. The Tribunal found that these consumers were inadvertently led to a premium rate service. Consequently, and for the reasons given by the Executive, the Tribunal found that consumers had not been treated fairly and equitably. Accordingly, the Tribunal upheld a breach of rule 2.3.1 of the Code.

### **Decision: UPHELD**

### **ALLEGED BREACH 2**

#### **Rule 2.3.2**

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

1. The Executive submitted that the Level 2 provider had breached rule 2.3.2 of the Code as consumers were misled into using the Service for the following reasons:
  - i) Consumers were misled into believing that they were completing a survey for a trusted brand (or that the survey was affiliated to a trusted brand); and
  - ii) Consumers were misled into believing that if they completed the survey they would have a chance of winning a prize, when in fact they were required to enter a premium rate subscription service at a cost of £4.50 per week to have the opportunity to win a prize.

### **Guidance**

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

#### **Misleading promotions**

##### **Paragraph 3.1**

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

#### **Controlling risk when using affiliate marketers**



### Paragraph 6.2

“In these circumstances, PhonepayPlus recognises that the Level 2 provider, while retaining responsibility for the promotion under the PhonepayPlus Code of Practice, may not have immediate, day-to-day control of each individual action that an affiliate takes. However, the use of affiliates to market PRS products on a provider's behalf does carry a greater risk than marketing which is under the direct, day-to-day control of the provider.”

The Executive relied on the monitoring conducted on 4 April 2013 by the RMIT and the content of the complainants' accounts outlined in the “Background” section.

### **Reason one: Consumers were misled into believing that they were completing a survey for a trusted brand (or that the survey was affiliated to a trusted brand)**

The Executive noted the content of the affiliate marketing promotions that the RMIT was directed to during its monitoring session (**Appendix B**). The Executive asserted that the promotions appeared to have been deliberately designed to look like a “visitor survey” for Wikipedia, a well-known and trusted brand.

The Executive noted the content of the complainant accounts, which predominantly referred to complainants entering the Service through pop-ups that appeared when they were using trusted websites. One particular complainant provided screenshots of a pop-up that appeared whilst s/he was using a website and directed the complainant to a survey style promotion.

The Executive asserted that consumers were misled by affiliate marketing promotions, which utilised Adware, as consumers were led to the Service landing page in the mistaken belief that they were participating in a survey which was affiliated with a trusted brand.

### **Reason two: Consumers were misled into believing that if they completed the survey they would have a chance of winning a prize, when in fact they were required to enter a premium rate subscription service at a cost of £4.50 per week in order to have the opportunity to win a prize.**

The Executive asserted that the affiliate marketing promotion (**Appendix C**) was likely to have misled consumers into believing that once they had selected their chosen prize they would then be entered into a prize draw. The webpage contained no indication that a consumer was required to subscribe to the Service (and incur charges) to have a chance of winning a prize.

Consequently, the Executive submitted that in light of the affiliate marketing promotions for the Service, the Service misled or was likely to have misled consumers into believing that they were completing a survey for a trusted brand and that completion of the survey would automatically enter them into a prize draw. Accordingly, the Executive submitted that for the reasons outlined above rule 2.3.2 of the Code had been breached.

2. The Level 2 provider accepted that some consumers may have been misled due to the use of a trusted brand name however, it strongly refuted that consumers had been misled into believing that if they completed a survey they would have a chance of winning a prize.



Specifically in relation to reason one outlined by the Executive above, the Level 2 provider stated that it was able to see how a consumer may potentially view the affiliate marketing promotions as misleading. However, it clarified that the vast majority of consumers were not misled into engaging with the Service for the following reasons:

- i) The maximum number of consumers that could have been affected by the misleading affiliate marketing promotions was 143 (0.33% of the total number of consumers for the duration of the Service).
- ii) A small percentage of the complainants referred to a survey for a trusted brand accordingly, only a small percentage of consumers were affected by the issue.
- iii) The worldsocialsurvey.com website was only live and generating traffic between mid-March and the mid-May 2013.

The Level 2 provider stated that it did not knowingly allow its Service to be marketed using Adware as it did not know of its existence and usage in the promotion of premium rate service. There had been no prior industry notifications or adjudications relating to the use of Adware and the industry, as a whole, were unaware of the issue. This was evident from an affiliate marketing workshop held by Vodafone on 20 June 2013.

The Level 2 provider reiterated the measures and controls it had in place to manage the risks posed by affiliate marketing as detailed above in its submissions regarding the breach of rule 2.3.1 of the Code.

In relation to the second reason advanced by the Executive, the Level 2 provider stated that throughout the entire consumer journey, consumers were informed that they only had a “chance” to win. The language used is always conditional, “you will have an opportunity to win a prize,” “you may be able to win” and, “you could win (1) prize from the list below”.

The Level 2 provider stated that it was a cumulative process and by the time the consumers had reached the Service webpages they had all the key information about the Service and it was made clear that it was a premium rate service. The Level 2 provider asserted that the conditional language was continued on the Service landing page. The terms and conditions and pricing information were on the Service webpages closer to the call to action. In addition, the pricing information was presented prominently and proximately on the “pin entry” webpage (**Appendix F**).

During informal representations, the Level 1 provider on the Level 2 provider’s behalf clarified its written submissions and stated that it accepted there had been a breach of rule 2.3.2 but it had only been a small part of the whole customer base that had been affected. In relation to the second reason for the breach, the Level 1 provider strongly refuted that a breach had occurred as it stated that it was always made clear to consumers that they only had a “chance” to win a prize. The Level 1 provider stated that it had not aware of the use of Adware to divert consumers to promotions of premium rate services but it accepted that it was aware of pop-up advertisements.

3. The Tribunal considered the evidence and submissions before it. In particular, the Tribunal noted that the Level 2 provider accepted that some consumers may have been misled into believing that they were completing a survey for a trusted brand. The Tribunal noted that the survey was entitled “2013 Annual Visitor Survey Wikipedia” and found that as consumers were diverted to the Service promotion when searching for “Wikipedia”, the nature of the promotion would have reinforced the mistaken impression that the survey was





connected to a trusted brand. The Tribunal noted the language used on the survey and found that phrases such as, “You’ve been selected to take part in this year’s Annual Survey...and to say thank you will have the opportunity to win the new Apple iPhone5 of iPad2”, were likely to create the impression that if a consumer completed the survey they would have a chance of winning a prize (when in reality they had to subscribe to its Service and pay a £4.50 per weekly subscription). The Tribunal noted that the Level 2 provider had stated that its own landing pages were clear about the requirement to subscribe to the Service in order to have a chance to win, and that therefore corrected any false impression given. However, the Tribunal did not accept this and found that the overall effect of the consumer journey was misleading. The Tribunal also noted that there had recently been a PhonepayPlus Track 1 procedure in relation to the display of pricing information on the Service’s webpages. Overall, the Tribunal concluded that consumers were or were likely to have been misled into believing that they were completing a survey for a trusted brand and consumers were or were likely to have been misled into believing that if they completed the survey they would have a chance of winning a prize rather than being required to enter a premium rate service to have the opportunity to win a prize. Further, the Tribunal noted that the Level 2 provider was responsible for the content of the promotions by its affiliate marketers. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

### Decision: UPHELD

### SANCTIONS

#### Initial overall assessment

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

#### Rule 2.3.1 - Fairness

The initial assessment of rule 2.3.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- Serious cases have a clear detrimental impact, directly or indirectly, on consumers and the breach had a clear and damaging impact or potential impact on consumers.

#### Rule 2.3.2 - Misleading

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

- Serious cases have a clear detrimental impact, directly or indirectly, on consumers and the breach had a clear and damaging impact or potential impact on consumers.

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

#### Final overall assessment

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

- At the time of the monitoring there have been a number (approximately nine) of prior adjudications concerning affiliate marketing.



In determining the final overall assessment for the case, the Tribunal did not find any mitigating factors. However, the Tribunal noted that the Level 1 provider, on behalf of the Level 2 provider, had the following measures in place to identify and mitigate against the risks associated with affiliate marketing:

- Pre-approval of the affiliate marketing “lead in” webpages.
- Marketing partners are required to provide the full URL referrer for all “clicks” to the Service. The referrers were checked on a daily basis to ensure that they meet compliance standards.
- “Wild monitoring”, which involves searching the web looking for the Service promotions to identify concerns.
- Blacklisting publishers who have breached the prohibited practices (evidenced by correspondence addressing previous issues that had been identified by the Level 2 provider).
- Notification of the Level 2 provider’s prohibited practices to the affiliate networks.
- Affiliate marketers are required to agree to stringent terms and conditions containing prohibitions.

The Tribunal also noted that on being notified of the Adware affiliate marketing, the Level 1 provider had taken the following action on the Level 2 provider’s behalf:

- Voluntarily suspended the Service.
- Blacklisted the relevant publisher.
- Outsourced UK monitoring to an independent third party.
- Increased its monitoring (which was conducted by a dedicated team within the Level 1 provider).
- Imposed traffic restrictions that only permit affiliate marketers to use display and pop-under promotions.
- Made efforts to encourage knowledge sharing amongst Level 1 and 2 providers, including the implementations of an AIME/ GVI “Data room” which acts an early warning sign to providers about non-compliant marketing practices.
- Encouraged Level 2 providers to work with affiliate publishers directly, rather than the affiliate networks, in order to exercise greater control of the promotions for services.

The Tribunal noted that the Level 2 provider stated it has a “no quibble” refund policy but that it had not provided evidence to demonstrate that refunds had been administered to the complainants.

The Tribunal noted that the investigation had taken a considerable period of time and that the Service had not been operational for approximately seven months. Accordingly, the Tribunal noted the potential extent of lost revenue during that period.

The Level 2 provider’s revenue in relation to this service was in the range of Band 2 (£250,000 - £500,000). Having taken into account the aggravating factor, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

### Sanctions imposed

Having regard to all the circumstances of the case including the Level 2 provider’s loss of revenue, the Tribunal decided to impose the following sanctions:

- a formal reprimand;
- a fine of £20,000; and



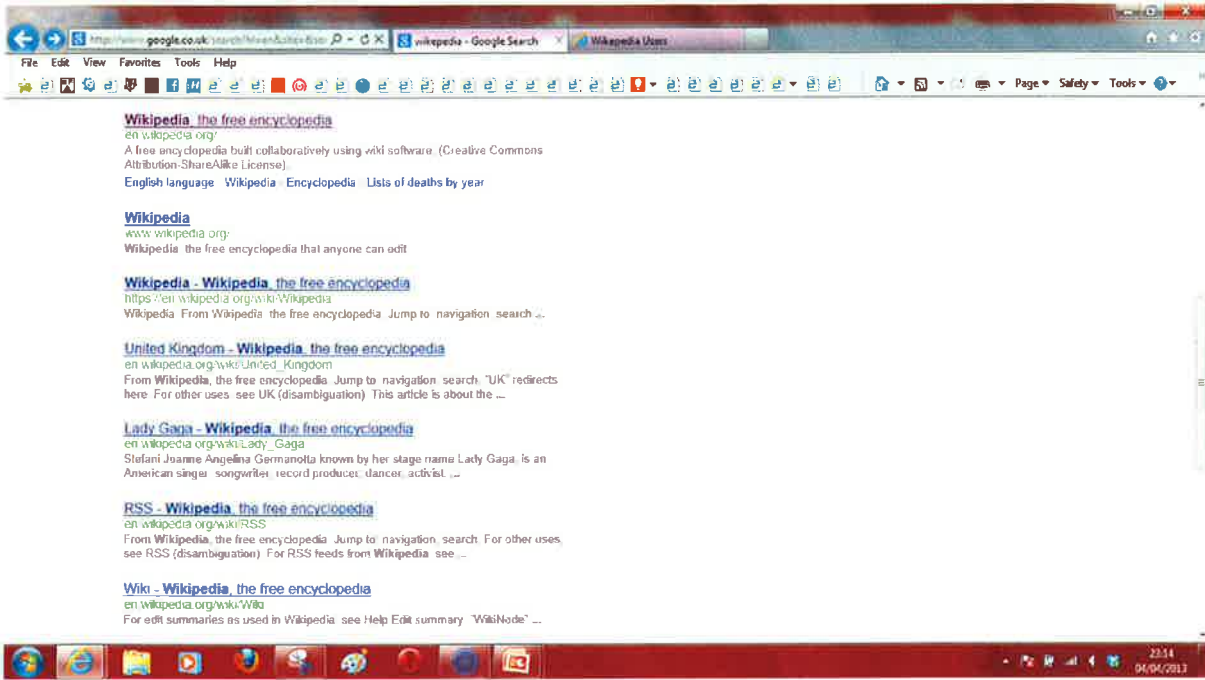
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have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

The Tribunal noted that 143 consumers, identified by the Level 2 provider as being affected by the misleading consumer journey, and stated that it hoped the Level 2 provider would contact and administer refunds to each of the consumers concerned.

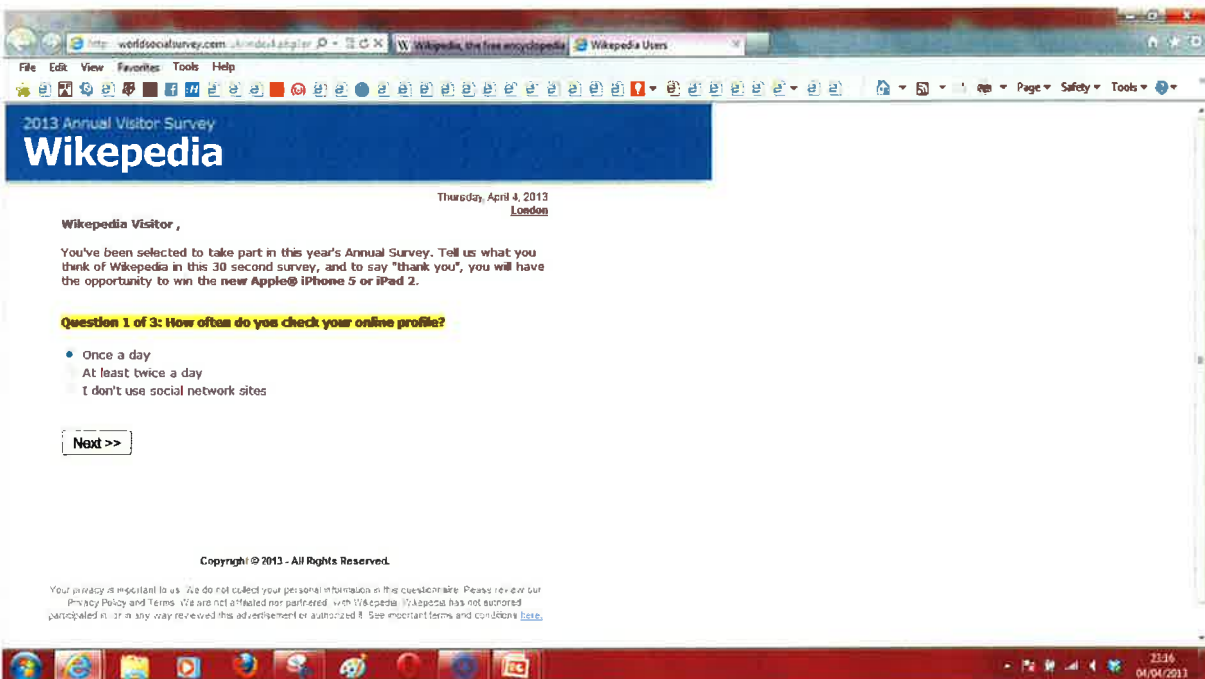


Appendices

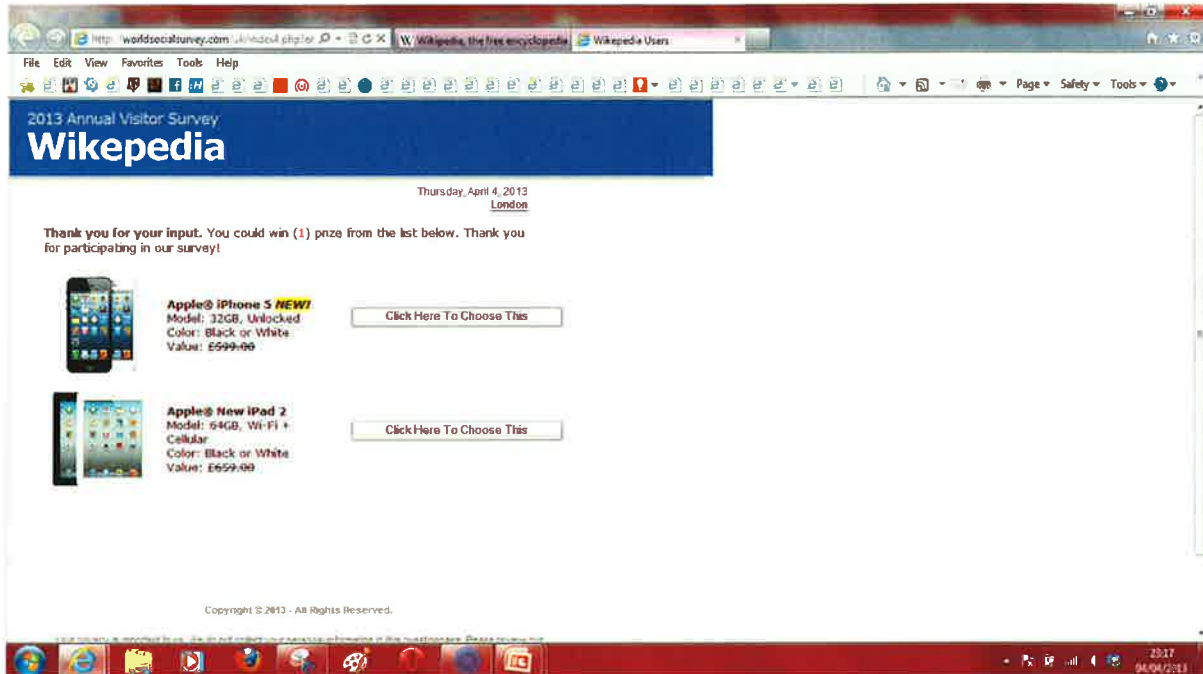
**Appendix A: A screenshot of the Google search results showing a link to the official Wikipedia website:**



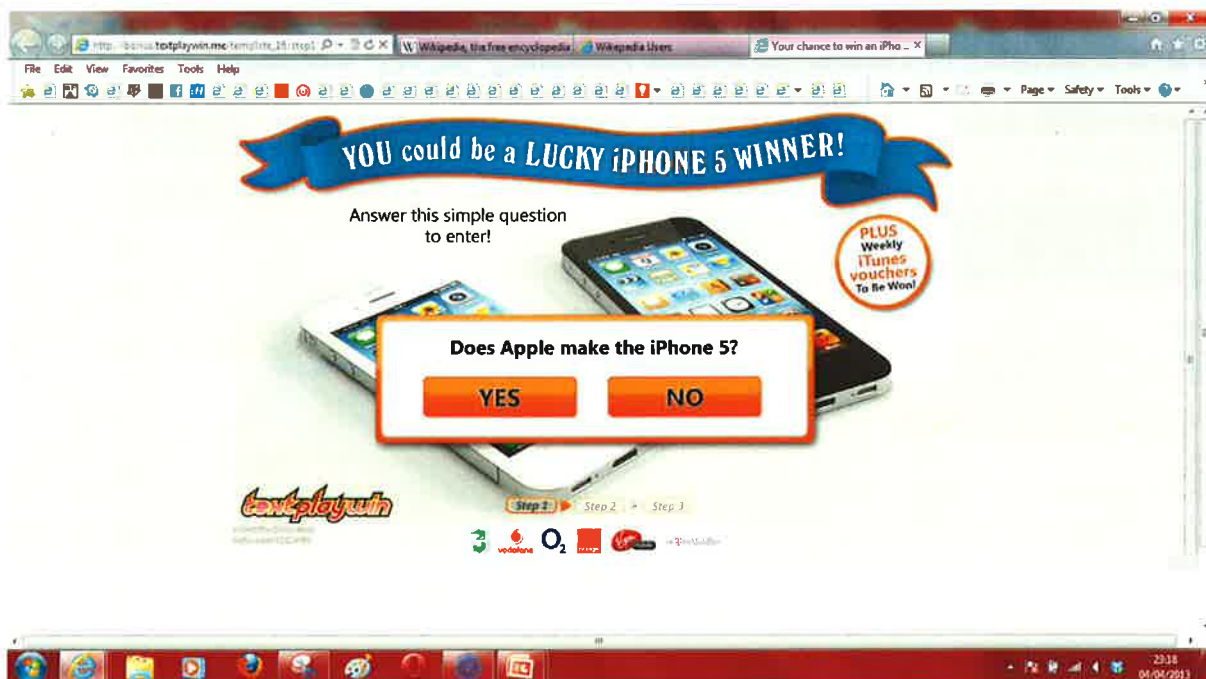
**Appendix B: A screenshot of the overlaid affiliate marketing “survey” webpage:**



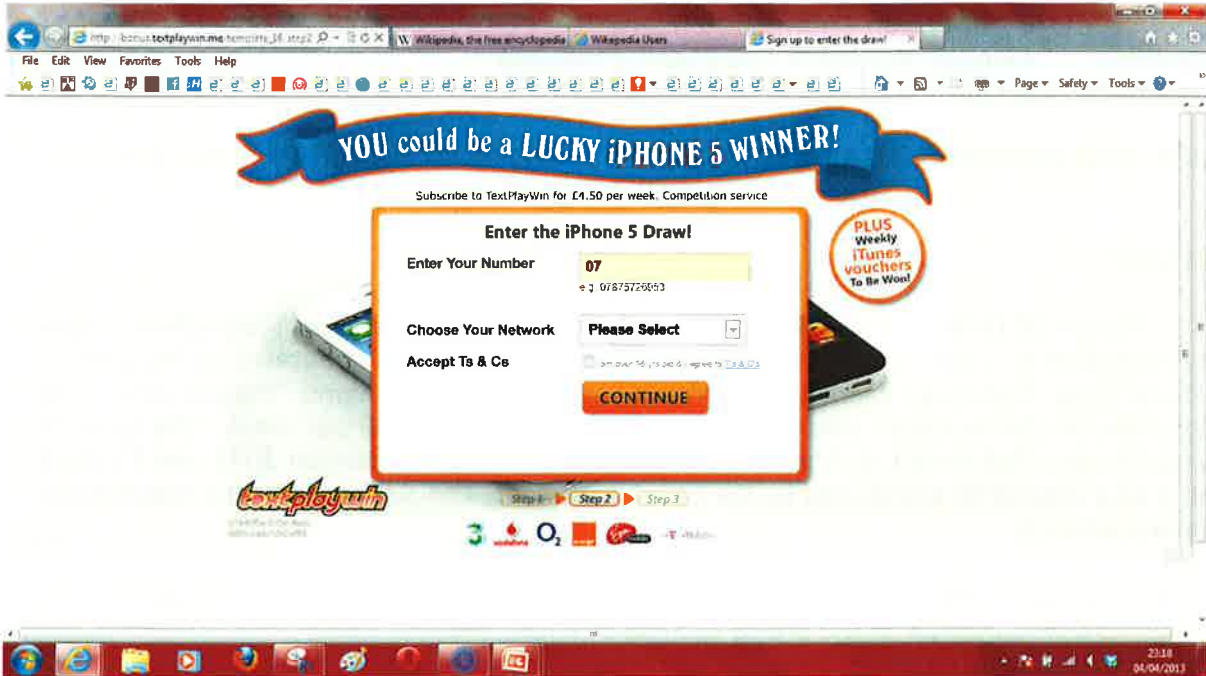
Appendix C: A screenshot of an affiliate marketing webpage promotion for the Service:



Appendix D: A screenshot of the Level 2 provider's landing page:



Appendix E: A screenshot of a Service webpage:



Appendix F: A screenshot provided by the Level 2 provider of the Service “means of access” webpage:

