Tribunal meeting number 151 / Case 1

Case reference: **30309**
Level 2 provider: **Wye Valley Promotions Ltd (UK)**
Type of Service: **Prize draws (various names)**
Level 1 provider: **IMImobile Europe Limited (UK)**
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 November 2012 and 21 March 2014, PhonepayPlus received 36 complaints from consumers in relation to a prize draw service, (the "**Service**") operated by the Level 2 provider Wye Valley Promotions Ltd (formerly Macintyre and Dodd Marketing Limited) (the "**Level 2 provider**") on the premium rate shortcodes 84228, 88222 and 88810 and various premium rate 09 numbers. The Service operates by sending promotional letters containing an ID number for the Service to consumers. The letters invite consumers to send a keyword to a shortcode (six messages at a cost of £1.50 per message), call a premium rate number (£1.53 per minute from a BT landline (with a minimum five minutes and 35 seconds charge)) or write to the Level 2 provider to ascertain if they have a winning ID number. The Service commenced operation on 11 June 2003 and continues to operate.

Generally, complainants stated that they had received unsolicited charges. Those who acknowledged interacting with the Service stated that it was misleading and/or the cost was not clear. In addition, a significant number of complaints were made on behalf of older people or otherwise vulnerable 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 28 April 2014. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.2 – Misleading
- Rule 2.2.5 – Pricing prominence
- Rule 2.4.1 – Privacy
- Rule 2.1.1 – Legality

The Level 2 provider responded on 21 May 2014. On 29 May 2014, and after hearing informal representations made by the Level 2 provider and his legal representative, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- Promotional letters submitted by the Level 2 provider (approximately 200 pages);
- The complainants' accounts;

- Correspondence with the Level 2 provider (including requests for information and the Level 2 provider's responses);
- The Court of Justice of the European Union's (the "**CJEU**") judgment of 18 October 2012;
- The Court of Appeal's judgment of 19 March 2013;
- PhonepayPlus Guidance on "Promotions and promotional material";
- PhonepayPlus Guidance on "Competitions and other games with prizes";
- PhonepayPlus Guidance on "Privacy and consent to charge";
- Information Commissioner Office's (the "**ICO**") guidance on "Direct marketing";
- The breach letter of 28 April 2014; and
- The Level 2 provider's response to the breach letter dated 21 May 2014 and associated annexures including the High Court of Justice's judgment of 2 February 2011.

SUBMISSIONS AND CONCLUSIONS
ALLEGED BREACH 1
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 acted in breach of rule 2.3.2 of the Code as consumers were likely to have been misled as to the nature of the Service by promotions and thereby incurred premium rate charges.

   The Executive asserted that the cumulative effect of features of the promotional letters materially distorted the economic behaviour of consumers (**Appendix A**). This was on the basis that the marketing devices used impaired the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that s/he would not have otherwise taken.

   Specifically, the Executive asserted that consumers had been and/or were likely to have been misled into believing that they had won a prize and/or their chance of winning was higher than it actually was. This resulted in consumers being enticed into using the Service and incurring premium rate charges. The Executive accepted that the marketing techniques used in the promotional material may have been legitimate and/or common practice in some contexts. However, the Executive submitted that cumulatively the following elements of the promotional letters misled or were likely to have misled consumers. The Executive submitted that the factors outlined below were a non-exhaustive list of factors that together contributed to the overall non-compliance with the letter and spirit of rule 2.3.2 of the Code:

   i) The Service names
   ii) The language used
   iii) The personalised nature of the promotions
   iv) The "official" appearance of the promotions
   v) The inclusion of a claim form

   Guidance

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

   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."

In addition the Executive relied on the PhonepayPlus Guidance on "Competitions and other games with prizes" which states:

> Paragraph 2
> "Promotional material should not mislead consumers.
>
> "2.1 Any promotional material in relation to competitions services must not:
> - Imply that items that can be claimed by all, or a substantial majority, of participants are prizes;
> - Exaggerate the chances of winning;
> - Suggest that winning is a certainty; or
> - Suggest or imply that consumers can only use a premium rate service in order to participate, where a free, or significantly cheaper, alternative entry route is available."

Complainants

The Executive stated that the complaints broadly fell into three categories; those who stated that they had received unsolicited charges, those who acknowledged engaging with the Service but stated that it was misleading and/or the cost was not clear and those making complaints on behalf of older people or otherwise vulnerable consumers. The Executive relied on the content of all the complainants' accounts. Some of the complainants stated:

> "Consumer received a letter from a company claiming he has won a prize that he hadn't claimed and he should call a premium rate number or text a premium rate shortcode if he wanted the prize if not he should tick a box on the letter and send it back to them so they can reallocate his prize to someone else."

> "I received a letter stating that I had won a prize and to text the given number in the letter to the number. I did this and I was then sent 3 premium rate text costing me £9 there was no prize to be claimed..."

> "I received a letter in the post, stating that I had one a free trip for myself and my family. I was given the code for the prize, and told to send a text message, to receive the free code. What resulted was that I never received the prize [sic]."

> "These promise huge cash prizes which do not materialise and lure the elderly and vulnerable into using premium rate services which cost an exorbitant amount, and which many of said "victims" neither realise nor understand."

i) Service names

The Executive obtained a selection of promotional letters for the Service from the Level 2 provider and complainants. The letters contained references to a number of different services and/or brand names, including:

- Allocations UK: National Claims Processing Unit, Administration and Distribution
- Confirmed Awards
- Unclaimed Prize Rollout
- Unclaimed Prize Release
- Cash Prize Delivery
- The Prize Winners Exchange
- The Prize Allocations: The Unclaimed Prizes UK
- The Unclaimed Prizes Distribution Centre: Unclaimed Prizes Distribution
- Unlocked Prize Fund
- Unclaimed Cash Prizes
- Cashprize Contact: Connecting people with prizes
- Prizematcher
- Cashmatcher: UK postcode promotions

The Executive asserted that these Service names were likely to mislead consumers to varying extents by creating the impression that the letter was for a prize distribution service (and give the impression, notwithstanding the content the letter, that the consumers had won a prize and/or that their chance of obtaining a prize was higher than it was) rather than a prize draw service which offers consumers a chance to win prizes by entering a premium rate service. The Executive asserted that this was particularly the case in relation to, "Allocation UK: National Claims Processing Unit, Administration and Distribution", "Cashprize Contact: Connecting people with prizes" and "The Unclaimed Prizes Distribution Centre: Unclaimed Prizes Distribution".

ii) Language used

The Executive asserted that the promotional letters had been deliberately worded to give the overall impression that consumers had already won a prize and/or that their chance of obtaining a prize was higher than it actually was.

The following are examples of extracts from various promotions submitted by the Level 2 provider:

"I cannot send any prize you are entitled to unless you make a valid claim before the closing date. There are no exceptions. So if you do not want your item, please tick the "NO" box on your claim form overleaf and return the form, so that we can release the package to someone else."

"A cheque for £20,000 or one of the other prizes listed below is pending delivery to you if you follow our claims instructions correctly and return a winning personal ID number." [emphasis added]

"We are in receipt of your entry to our previous promotion. I can confirm that it has been filled in correctly and is fully valid. As a result you have won a valuable prize if your unique ID matches any one of over 5,000 winning ID numbers." [emphasis added]

"Do you recall <xxxxxxxxxxxxxxxxxxxxxx>. The promoter selected your name for us and as a result you have won a valuable prize if your unique ID matches any one of over 10,000 winning ID numbers." [emphasis added]

"You have definitely won a prize <customername> of <postcode> if your unique ID number <UPCxx> matches any one of the winning ID numbers." [emphasis added]

"We would like to arrange with your local newspapers to capture the moment we hand you your cheque for £20,000, if you are the top prize winner, but we need your permission. If you have won and prefer to remain anonymous, we will respect your privacy. Simply let us know by ticking the relevant box overleaf on your claim form."

The Executive noted that the extracts set out above all include statements that suggest to consumers that they have won a prize (albeit that they are often followed by a qualifying comment). Separate to these statements, consumers are told that winning a prize is conditional upon the consumer obtaining a claim code by calling a premium rate number, sending a text to a shortcode, or by post. However, the Executive asserted that consumers were likely to be misled into engaging with the premium rate service by the statements suggesting that they had won a prize irrespective of the subtle conditions or qualifications provided before or after the statement.

The Executive asserted that the choice of wording, the word order and the inclusion of information only relevant to consumers who have won a prize was deliberately misleading.

iii) The personalised nature of the promotions

The Executive noted that the promotions were highly personalised which gave the impression that consumers had been specially selected in some way rather than it being a generic promotion issued to, in some instances, hundreds of thousands of individuals.

The Executive submitted that the highly personalised nature of the letters was self-evident, however examples of personalisation included:

- The letter format (as opposed to a leaflet or an advert in a publication).
- The inclusion of a hand written signature from a named individual.
- The conversational style of many of the promotions. For example, "I was amazed to see that four of our top prizes, £20,000 and three £1,000 prizes, were not claimed".
- Use of customers' names and addresses in the body of the promotion.
- Multiple uses of the pronouns "you", "your" and "we're".
- References to the number of "winners in your postcode area".
- References to the inclusion of a "personalised claim form".

The Executive asserted that consumers were likely to be misled into believing that they personally had been specially selected to win a prize or that their chance of winning a prize was higher than it actually was.

iv) The "official" appearance of the promotional letters

The Executive asserted that the promotional letters had been designed to look like official correspondence rather than a promotion for a premium rate prize draw service and

therefore operated to mislead consumers regarding the actual nature of the service. The following elements of the promotion gave it the appearance of an official letter:

- A number of promotions included a "File Copy" stamp. The Executive noted that the promotion was not a "File Copy" as it had been sent to a consumer. Therefore it appeared to be a "Recipient copy" (if a stamp were even necessary).
- The official business style letterhead contained in every letter.
- Letters were "signed" by a "Prize Controller", "Customer Manager", "Distribution Manager" or "Award Controller" which gave the impression that the promotions were personal communications from this particular individual.
- Consumers were also issued "final reminder" letters which referred to their failure to respond to the first promotional letter which further added to the impression that the letters were formal correspondence.
- A number of promotions referred to a "legal obligation" to dispatch winnings to consumers which appeared to add legitimacy to the promotion as it suggested that the letter was part of a legal claims process as opposed to a prize draw.

v) Inclusion of a claim form

The Executive noted that all promotional letters included a separate document entitled "claim form" (**Appendix B**). In reality the "claim form" was a further promotion for the Service. Only consumers who had an entitlement to a prize (discovered by prior contact with the Level 2 provider) were required to return the document.

The Executive asserted that providing a claim form at this stage was misleading, as it suggested that a consumer was entitled to make a claim and/or that this was likely to mislead consumers into thinking that they had won a prize and/or that their chance of winning was higher than it was. The Executive accepted that there may be circumstances when it may be efficient to provide a "claim form". However in the context of these promotions and the other marketing methods used, the Executive asserted that the claim form acted to compound the misleading nature of the promotion.

The Executive submitted that, although the individual marketing methods detailed above could be used legitimately alone and/or in a different context, the cumulative effect misled (as demonstrated by the complaints) or was likely to have misled consumers as to the nature of the Service and/or that they were entitled to claim a prize and/or that their chances of winning was higher than the reality. The Executive submitted that generally the different promotions for the Service shared the misleading marketing methods and that the promotions had been deliberately designed to give consumers a misleading impression of the Service, which impaired or was likely to have impaired their ability to make an informed transactional decision.

Further, the Executive submitted there was a heightened risk of consumers who were a member of a vulnerable group (for example, people who were much older or people with mental health problems) and those who may be vulnerable because of their circumstances (for example those with low financial means) being misled as to the nature of the Service and in relation to the potential costs. The Executive noted that this was supported by the 14 complaints which had been made on behalf of older people or otherwise vulnerable consumers.

The Executive accordingly submitted that, for the reasons described above, the Service operated in breach of rule 2.3.2 of the Code.

2. The Level 2 provider denied that a breach of rule 2.3.2 of the Code had occurred and it referred extensively to a High Court judgment between the Office of Fair Trading (the "**OFT**") and nine defendants (who are/were providers of premium rate services and included the Level 2 provider) dated 2 February 2011. Generally, the Level 2 provider stated that the High Court had considered similar promotions and found that a number of aspects of the promotions were not misleading.

By way of background, the Level 2 provider explained that it had traded since June 2003 and operated various prize draws through direct mail promotions. Throughout this period it stated that it had worked with PhonepayPlus and sought to co-operate fully by responding to any queries raised in a timely manner. Further, despite the large number of consumers that used the Service, the Level 2 provider stated that it had been subject to relatively few investigations by PhonepayPlus or any other regulators.

The Level 2 provider explained the history of its dealings with the OFT and stated that in 2005 the OFT had launched a sector-wide investigation which targeted ten separate providers who operated premium rate prize draw services via promotional scratchcards or letters. The Level 2 provider stated that it welcomed the investigation as it was of the view that certain providers were operating services unfairly and in a way which gave the sector a bad name. Its business was operated in a different way to others in the sector but nonetheless it co-operated fully with the OFT's investigation. As a result of the OFT's concerns about certain promotions, in October 2007 the Level 2 provider and the other providers gave assurances to the OFT regarding the way it would present its promotions.

The Level 2 provider stated that the Consumer Protection from Unfair Trading Regulations (the "**CPRs**") came into force in 2008 which gave effect to the 2005 European Parliament Directive in relation to Unfair Commercial Practices. It stated that this was novel legislation and there was considerable uncertainty regarding its interpretation. The OFT asserted that as a result of the CPRs, the Level 2 provider was required to make substantial changes to its promotions. Correspondence highlighted that it was unlikely that an agreement could be reached with the OFT and as such it resulted in High Court proceedings.

The Level 2 provider stated that it welcomed the proceedings as it hoped that the judgment would provide clarification for its business. It explained that the High Court judgment found that there were aspects of the Level 2 provider's promotions that were in breach of the CPRs, but a sizeable portion of the allegations were determined in the Level 2 provider's favour. In light of this, it presumed that the matters had been settled and there was no need to seek further clarification. As a result of the judgment, the Level 2 provider stated that it took immediate steps to address aspects of its promotions that were found to be in breach of the CPRs. The Level 2 provider stated that an appeal and cross-appeal was lodged but only in relation to whether there was a breach of the CPRs if any cost was incurred in claiming a prize. The appeal was referred to the Court of Appeal and to the CJEU. In the CJEU's judgment it was found that if any cost is incurred by a consumer in claiming a prize, however small that cost may be, there would be a breach of the CPRs.

The Level 2 provider asserted that the issues determined by the High Court but not looked at by the CJEU should have a significant bearing on the breaches raised by the Executive.

It was extremely surprised that it had received notification from the Executive that stated it was instigating an investigation. It highlighted that PhonepayPlus has regulated the Level 2 provider's business for over ten years and in doing so PhonepayPlus had frequently made requests for information and it had always provided a prompt response and, if required, offered a no-quibble refund to complainants. The Level 2 provider stated that it was concerned that the Executive had not raised its concerns earlier and it believed that it had had ample opportunity to raise them but had chosen not to do so.

In addition, the Level 2 provider stated that it had made considerable efforts to ascertain the nature of the issues being investigated by the Executive so that it was in a position to address the concerns. Yet, no information was forthcoming, which it stated was indicative of an intention to put forward a case in the strongest possible terms rather than to address any genuine concerns. The Level 2 provider referred to the following contact with the Executive:

- A telephone conversation on 11 April 2014, when information about the concerns was sought by the Level 2 provider but was not provided.
- Despite a number of requests, the Level 2 provider was not provided with contact details for some complainants. It stated that it was of particular concern that the details were not provided for a complainant who had incurred charges of £201.29 by dialing the premium rate number repeatedly.

The Level 2 provider stated that despite not receiving assistance from PhonepayPlus it had made strenuous efforts to obtain the complainants' contacts details and pay them a refund.

The Level 2 provider made some general points about the Executive's investigation and stated:

- The Executive's allegations were of a highly technical and legal nature and it was unlikely that the breaches were drafted without substantial legal input and a brief to the instructed lawyers to find arguments that could be deployed against the Level 2 provider.
- The Service's postal entry was not a "subsidiary" entry route, as suggested by the Executive, as it accounted for 22.7% of all the entrants to the Service.
- It was inaccurate to suggest that the postal entry route takes 28 days. The promotions state "allow 28 days", which is the date that delivery can be guaranteed but generally the claim code was dispatched within five working days.
- The date of registration with PhonepayPlus of 26 May 2011 did not provide the full picture as PhonepayPlus had been regulating the Service since it started operating in June 2003.
- The period that complaints were received by PhonepayPlus was October 2011 to March 2014.
- The total number of complaints was 36 rather than 40 (which is the number of complaints initially stated by the Executive), as four complaints had been incorrectly allocated to the Level 2 provider.

Complaints

The Level 2 provider specifically addressed the complaints that had been made to PhonepayPlus and stated that there was very little connection between the number, the

type of complaints and the Executive's case. It noted that the Executive had stated that it did not seek to rely on the complaints. Accordingly, it suggested that the complaints were at odds with the alleged breaches of the Code and were therefore largely irrelevant.

The Level 2 provider referred to a research document entitled "Understanding Consumer Journeys" commissioned and published by PhonepayPlus on 10 February 2014. The Level 2 provider noted that the research document stated that 1.07% of all premium rate service users complain to PhonepayPlus. It also noted that between October 2011 and March 2014, consumers accessed the Service on 716,799 occasions. Therefore by applying the statistics to the Service, it stated that PhonepayPlus would expect to receive 7,670 complaints for the Service for the relevant period. The Level 2 provider highlighted that PhonepayPlus had only received 36 complaints and consequently the percentage of consumers who contacted PhonepayPlus having engaged with the Service was only 0.005%. The Service had one complaint per 19,911 consumers.

The Level 2 provider stated that the figures were highly significant and demonstrated that the volume was considerably lower than would have been expected by a fair minded regulator, which in light of this should be using its resources elsewhere.

Generally, the Level 2 provider stated that the investigation concentrated on what it had allegedly done wrong rather than concentrating its efforts on resolving the consumer complaints. Despite this, the Level 2 provider stated that it had managed to make refunds to 29 of the 36 complaints.

In relation to the content of the complaints, the Level 2 provider stated that the Executive's description of the complaint categories was not accurate. The Level 2 provider provided a summary of the complaints which it stated demonstrated that, upon a generous categorisation, only seven of the complaints fell within any of the three categories outlined by the Executive. The Level 2 provider raised the following points regarding the content of the complaints:

- The largest category detailed by the Executive was consumers who believed that they had not interacted with the Service. The Level 2 provider adamantly disputed that it had levied unsolicited charges and did not understand the Executive's allegation. Therefore it stated that the category of complaints should be dismissed as irrelevant.
- It noted that no complaints fell into the "privacy" or "legality" category and therefore it stated that it was clear that these issues were being pursued by the Executive without any concern for consumers' views.
- It invited the Tribunal to disregard the complaints within the miscellaneous category which it stated were not valid or relevant to the issues before the Tribunal.
- It stated that seven complaints, on the face of it, fell within the category that was under investigation by the Executive. However, it highlighted that this was out of a total of 716,799 consumer interactions with the Service.
- Complaints in the "misleading" category were not always relevant to an alleged breach of rule 2.3.2 of the Code. For example, one complaint related to someone who did not call the Service and another complaint was in very general terms.
- Only two complaints related to pricing information and one stated no more than the "consumer does not remember seeing pricing information". Further, it was clear

from other complaints that other complainants were fully aware of the cost of the Service.

- Having carefully reviewed all the complaints, the Level 2 provider believed that only four of 11 complaints could genuinely have been categorised as vulnerable consumers.

The Level 2 provider adamantly denied that there was a heightened risk of vulnerable consumers being misled regarding the nature of the Service and the potential costs. It stated that there had been no targeting of vulnerable consumers and referred to comments made in the High Court judgment, where it was stated that the promotion in question was not targeted at any particular social or economic group. It asserted that had there been any real concern that it was seeking to take advantage of a vulnerable group or any vulnerability caused by consumers' personal circumstances, the Executive should have alleged a breach under rule 2.3.10 of the Code. In light of this, the Level 2 provider suggested that the Executive fully accepted that there was no targeting of vulnerable individuals.

The Level 2 provider drew the Tribunal's attention to its "no quibble" money-back policy and stated that in response to any received complaint, particularly on behalf of vulnerable consumers, its practice was to refund any cost incurred and remove that consumers' name from its database.

In summary, the Level 2 provider stated that the volume of complaints should have been viewed in relation to the number of promotional letters that had been distributed as a whole and that overall the level of complaints was very low.

Alleged breach of rule 2.3.2

The Level 2 provider stated that the general format of the promotional letters had not changed since it had started trading in June 2003. Further, the Executive had been aware of the format of the promotions throughout that period and had not previously made the objections that were now being made. The Level 2 provider stated that it had provided the Executive with copies of promotions on 32 occasions during the relevant period. Further, it stated that if there were genuine concerns they should have been mentioned years ago.

Specifically in relation to the "cumulative effect" argument that had been advanced by the Executive, the Level 2 provider stated that this was conspicuously absence from the Guidance. It noted that the Guidance only gives specific examples of what might be deemed misleading and the Level 2 provider did not consider that it was in breach of any of the examples listed. It stated that the consumer complaints did not make any mention that cumulatively the promotional letter was misleading and therefore the concern did not arise from consumers. The Level 2 provider took issue with the Executive's argument that individual elements are not misleading but taken together they are misleading. It stated that the argument appeared to be inconsistent, as the Executive had continued to suggest throughout its case report that each component was in itself misleading.

The Level 2 provider commented that the aim of any promotional material was to make consumers act in a particular way and therefore promotional material should only be in breach of the Code if a provider sends out misleading material which contains an untruth, half-truth or significant omission. The Level 2 provider asserted that providers would be in

an extremely uncertain position if a breach can be upheld where a consumers' possible response to promotional material is all that is required.

The Level 2 provider referred extensively to the High Court judgment and stated that the High Court considered promotional letters which were similar to those relied upon by the Executive. It stated that whether the promotions were misleading was a major consideration of the High Court and the Tribunal should exercise caution in ignoring the determination, which was subject to careful scrutiny. In addition, the Level 2 provider asserted that it should be entitled to rely on the findings of a High Court judge in determining what is and is not permitted.

The Level 2 provider summarised the OFT's position at the High Court and stated that the OFT's had stated that the promotions were misleading as they contained false information and their overall presentation deceived or was likely to deceive the average consumer:

a) in relation to the nature of the product;
b) into believing they had been particularly fortunate, compared with others, to have been selected to have won a prize of a high value; and
c) into believing their chances of winning a major prize was higher than the reality;

as they caused or were likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

In addition, the OFT argued that individual features such as the Service name, "unclaimed prize register" and the language used in the promotional letter were misleading.

The Level 2 provider stated that the OFT's allegations were strikingly similar to the allegations made by the Executive in relation to an alleged breach of rule 2.3.2 of the Code. The Level 2 provider made detailed reference to the wording of the CPRs and stated that the wording of the Executive's case seems to have been closely based on it. In these circumstances, it stated that it was instructive to review the judgment and have regard to the comments made by the High Court.

The Level 2 provider stated that the High Court had considered the combined effect of all the misleading acts and omissions and whether taken in aggregate this would cause the average consumer to take a transactional decision he would not otherwise have taken. The Level 2 provider stated that the High Court had found the following:

a) That it did not consider that the promotional letter gave a misleading impression regarding the average consumer's chance of having won a high value prize.
b) It concluded that the "particularly fortunate" part of the allegation was not made out in relation to the company's promotion and stated that;
   "the promotional letter states that the consumer has been selected as the result of having made a valid entry in a previous promotion. It is not accepted that this was itself untrue and the fact (which is admitted) that just under 1.5 million consumers received the same mailing does not seem to me to render anything in the specifics or even the overall get-up of promotional letter misleading".
c) In relation to the allegation that consumers had been deceived into believing that they had been selected as a result of their entry into a competition and/or to receive an "unclaimed prize" and/or that they had been allocated a unique personal prize number and/or that they were required to respond quickly to the promotion. It

concluded that nothing in that allegation was "made good". It stated that the promotional letter informed consumers they had been selected as a result of an entry into a prize promotion, but it was not suggested that this was untrue.

d) It considered that it was "just about arguable" that the name "Unclaimed Prize Register" which formed part of the trading logo at the top of the letter might suggest to some consumers that the listed prizes were all unclaimed. However, it stated that it would not do so for the average consumer.

e) In relation to the question of a quick response, the judgment was that the consumer was encouraged rather than required to respond quickly and therefore no misleading impression was given.

The Level 2 provider accepted that the High Court did not find in its favour on all matters and where it had not it had made changes. However, a substantial number of matters were found in the Level 2 provider's favour and in those areas it submitted that the allegations should be brought to an end.

The Level 2 provider urged the Tribunal to have regard to the characteristics of an average consumer, who is reasonably informed, reasonably observant and circumspect. It stated that the large majority of consumers were previous participants in prize promotions and it would be wrong to assume that the average consumer approaches receipt of promotional mailings with anything other than a great deal of skepticism.

The Level 2 provider addressed the five individual allegations raised by the Executive and stated:

Service names

The Level 2 provider referred to the High Court judgment and stated that in light of the decision the Executive's case should be brought to an end. However, for completeness it addressed other matters that it considered to be relevant and stated that the Executive should have concentrated on specific consumer complaints rather than theoretical arguments.

The Level 2 provider stated that no issues had been raised by any other regulator and it highlighted that there are regulations in place which ban the use of specific names and those regulations had not been breached.

The Level 2 provider commented on each Service name referred to by the Executive. Generally, the Level 2 provider stated that the promotional letter should be viewed as a whole and consumers were not likely to view the Service name in isolation. It drew comparisons with other large companies who used similar headings and stated that it is a common tool used to grab the consumer's attention and encourage use of the service.

Language used

The Level 2 provider denied that the promotional letters had been deliberately worded to give the overall impression that consumers had already won a prize and/or their chance of obtaining a prize was higher than it actually was. It supplied a detailed response to each of the examples referred to by the Executive.

The Level 2 provider reiterated its submission that the issue had been fully explored in the High Court proceedings, which found that the language was not misleading. Without an indication to the contrary, the Level 2 provider stated that it was entitled to assume that it may continue to use the wording.

The Level 2 provider supplied decisions from other regulators which it stated was instructive, as it highlighted the evolution of regulatory advice, guidance and decisions regarding the use of qualifying statements. It provided an analysis of the decisions and submitted that the statements in the decisions were far more likely to give the impression that the consumer had won rather than anything done by the Level 2 provider.

The personalised nature of promotions

The Level 2 provider recognised that the OFT did not specifically raise this argument in the High Court proceedings but the OFT argued that the overall presentation of the promotional letter was misleading and this was considered by the High Court. The Level 2 provider stated that the High Court had found that the fact that just under 1.5 million consumers had received the particular mailing did not render anything in the specifics or even in the promotional letter as a whole misleading.

Separate to the High Court's findings, the Level 2 provider asserted that it was a matter of common sense that for a promotional letter to receive consideration by the recipient it should be courteously addressed and personalised. It stated that the vast majority of marketing related to communications that were personally addressed but that this did not make them in any way misleading or invalid.

The Level 2 provider stated that it believed that signing a letter with a name was a polite way to communicate and it supplied promotional material which, it stated, demonstrated that this was a common marketing practice. It disagreed that the conversational style of the promotions was misleading and stated that it was perfectly legitimate for a business to write in a relaxed conversational style. Further, that placing a consumer's name and address on a letter was not unusual.

The Level 2 provider asserted that the use of a consumer's name and address in the body of the promotion could not be objectionable and this was not an unusual marketing practice. In addition, it stated that the multiple use of pronouns was a straightforward and relaxed way of communicating in a way that was easy to understand. It commented that the reference to "winners in your postcode area" had only been used once and had been sent to 5,000 individuals. However, it disputed that this was misleading as it stated that it only provided the consumer with information about the number of winners within a postcode area.

Finally, in relation to the inclusion of a "personalised claim form", the Level 2 provider stated that it did not understand why the inclusion of the customer's name and address on a claim form was misleading. The claims forms were only included on reminder mailings to make it easier for those who had not previously replied to the promotion.

The "official" appearance of the promotional letters

Generally, the Level 2 provider stated that this allegation appeared to be contrary to the previous allegation in which the highly personalised conversational style of many of the promotions was criticised. The Level 2 provider stated that the promotions were not designed to be "official" in appearance and this was not the effect. In addition, the claim form had been seen by PhonepayPlus and another regulator on a number of occasions but the issue had not been raised.

In relation to the promotions that included a "File Copy" stamp, the Level 2 provider stated that it sends a reminder letter to consumers who have not responded to the initial promotional letter and for the consumer's ease of reference a copy of that earlier letter was sent. Given that it is not the original and represents a copy, it was correctly and sensibly named "File Copy".

The Level 2 provider stated that the official business style letterhead contained in every letter was the same complaint as the issue with the Service name and accordingly that the same submissions applied. The letterhead was, as appears to be recognised generally, designed to show that it comes from a business as opposed to a public sector official body.

The Level 2 provider stated that it was only right that letters were sent from a named individual with a title, in an effort to ensure that consumers had a person to contact should they feel the need to do so. It stated that this reason was very similar to the Executive's preceding point and in that respect the submissions were the same.

Inclusion of a claim form

The Level 2 provider highlighted that the promotion before the High Court included a claim form but the OFT did not specifically claim that this was misleading. The Level 2 provider stated that including a claim form within the initial promotional material was common practice for promotions with prizes where winning is not a certainty and it provided examples of companies that have used this practice.

Conclusion

The Level 2 provider urged the Tribunal to use their experience and consider the core values of openness, fairness, even-handness and impartiality in accordance with the PhonepayPlus mission statement.

The Level 2 provider stated that as part of its routine cleansing process it maintained a bespoke suppression list, comprising of terms featured in address data that could potentially increase the risk of mailing vulnerable consumers. It explained that the checklist of terms against which all mailing lists were screened and routinely suppressed was extensive and was regularly reviewed. In summary, the Level 2 provider stated that it went to great lengths to ensure that vulnerable consumers' complaints were resolved and money refunded. It stated that the Executive had hindered its efforts to resolve complaints by not proving information.

During lengthy and detailed informal representations, the Level 2 provider reiterated its written submissions. By way of background, the Level 2 provider stated that it was one of three large premium rate service providers operating under one parent company and it was proud of its impressive regulatory record. It stated that it had thousands of interactions with

consumers and the business model was reliant on retaining consumers as such they need to enjoy the experience. Similarly, it stated that it needed to have an excellent compliance record. If there were any issues with regulation, it took immediate action, as regulation was paramount. The Level 2 provider commented that the cost of the Service had largely remained the same since the Service commenced operation apart from a small increase in VAT and that consumers who interacted with the Service were used to the cost.

The Level 2 provider submitted that complaints were dealt with seriously and during busy periods, it was not unusual for managers to answer the phones to ensure complaints were dealt with properly. It had an excellent no-quibble refund policy and if consumers requested not to be contacted, this would be actioned within 24 hours.

In addition, it provided a table which compared the issues raised by the OFT in the High Court proceedings, the findings of the High Court and the Executive's allegations.

The Level 2 provider accepted that the promotions were different and had evolved since the High Court judgment but it stressed that the individual elements were very similar. It asserted that there were aspects of the promotion that had to change as a result of the CJEU decision which it had accepted. However the aspects of the case, that mirrored the allegations brought by the Executive, did not require a change. The Level 2 provider accepted that at the time of the judgments all consumers would receive a prize whether small or large but that as a result of the judgment, this element had to be changed. The Level 2 provider accepted that the Service was now slightly different to when the High Court considered the Service.

The Level 2 provider added that the findings of the High Court in relation to the misleading allegations were not challenged and appealed by the OFT. As such these issues were not tested by the Court of Appeal or the CJEU.

In relation to named individuals on the promotional letters, the Level 2 provider stated that they were not real employees. Fictitious names had been used on the promotional letters to prevent employees receiving abusive phone calls and this practice had been approved by a professional body.

The Level 2 provider asserted that it had felt resistance from the Executive when it had been actively helping vulnerable consumers. It expressly referred to one particular complainant. It stated that it had repeatedly requested the complainant's details from the Executive so that they could pay a refund. However, it did not receive a response from the Executive so it made extensive enquiries by searching its database. It was eventually able to make contact with the complainant and resolve the matter. Further, the Level 2 provider outlined the procedures it had in place to identify vulnerable consumers.

The Level 2 provider commented that its business model relied on repeat business. It explained that there is a new promotion on month one, in month two consumers are sent a reminder (if they have not interacted with the Service) and in month three the consumers would be sent a new promotion. It stated that approximately 4-5% of consumers who receive a promotional letter interact with the Service, 4-5 % of consumers who have been allocated a prize claim a prize and a consumer has an approximate 1-3% chance of winning a prize. The Level 2 provider accepted that the Service business model relied on consumers not responding to the promotional letter and claiming a prize and it explained

that it made its revenue from the premium rate element of the Service; without this it would not operate. The Level 2 provider stated that the reviews of the Service were genuine, despite the fact they did not relate to consumers who had won a large amount – this was not deliberate as the Service had had big winners. It commented that there were a large number of Service names because it had found that consumers liked that format, as it was fresh and interesting. The Service names were chosen so that they immediately conveyed to the consumer that they had an opportunity to win a prize.

3. The Tribunal considered all the evidence before it, including the detailed written and oral submissions regarding both law and fact from the Level 2 provider.

The Level 2 provider's extensive submissions regarding procedural unfairness and undue influence were considered by the Tribunal. However, the Tribunal commented that the Executive had followed the procedures set out in the Code and that there was no evidence of undue influence from other regulators.

The Tribunal considered the Level 2 provider's arguments regarding prior legal proceedings that it had been party to in full. Specifically, the Tribunal considered the judgment of the High Court in detail. The Tribunal found that the basis on which the High Court had made its determinations was significantly different to the facts of the case before it; in particular, though not exclusively, the High Court case relied on the fact that, ***all*** entrants were entitled to a prize and the High Court had only considered a limited number of promotions. Further, the Tribunal noted that the Executive was seeking to enforce rule 2.3.2 of the Code and not the CPRs. In addition, the Level 2 provider had stated that its business model was designed towards only 1-3% of consumers winning a prize and the bulk of its revenues came from premium rate numbers/shortcodes. There was evidence from complainants and particularly of consumers who not unaware of why they incurred charges. The Tribunal commented that it was performing a regulatory function with the Code and its strictures in mind. It found that it had to approach the current case by applying the Code and make an assessment of the promotions in question, with the facts and the history of complaints about the nature of the promotions. Consequently, whilst the Tribunal had regard to the High Court judgment and the discussions therein, the Tribunal respectfully commented that the court decision, which it noted did not involve the Code, was of limited application to the Tribunal. The overarching consideration with which the Tribunal (applying the Code and Guidance) was concerned with was consumer trust and confidence in using premium rate services.

In making its determinations, the Tribunal considered all the evidence before it including the content of the promotions provided by the Level 2 provider and consumers and, the content of the complainant accounts (which although not always comprehensive, frequently indicated that consumers were not aware of why they had incurred charges). The Tribunal noted that although there were a limited number of complaints, it was clear from several of the complaints that consumers had in fact been misled by promotions for the Service. The Tribunal reminded the Level 2 provider that complaints are one of a number of factors that a Tribunal considers and therefore it did not accept the Level 2 provider's invitation to disregard them.

In relation to the reasons advanced by the Executive, the Tribunal made the following determinations:

i. The Tribunal found that many of Service names used by the Level 2 provider appeared to give and gave the impression that the Service was something akin to a prize allocation and/or unclaimed award service rather than a prize draw notwithstanding the qualifications contained in the promotional letters. The Tribunal commented that the use of the words, "unclaimed", "The Prize Winners Exchange" and "National Claims Processing Unit", were particularly misleading. Therefore, the Service names were likely to have misled consumers.

ii. The Tribunal found that the language used in the promotions was clearly misleading, for example, "This letter confirms that you are amongst the group of selected consumers and have been allocated a unique ID XXXXX – this is worth up to £20,000 to you." Despite the caveats that often followed the promotional statements, the Tribunal found that many of the promotions provided by the Level 2 provider contained inaccurate statements that appeared to have been designed to give the consumer the impression that a prize had been won or their chance of winning was higher than it actually was. The Tribunal noted the Level 2 provider's oral submission that in reality consumers have a 1-3% chance of winning a prize. As a result, the Tribunal concluded that consumers were likely and/or had been misled into interacting with the Service by the language used in the promotions. In addition, the Tribunal noted that the Level 2 provider accepted that the success of its business model to some extent depended on a large percentage of consumers who received promotional letters not interacting with the Service (and therefore claiming a prize). Therefore statements contained in promotional material stating that the Level 2 provider was, "amazed to see our top three prizes, £20,000 and two £5,000 prizes, were not claimed", were factually incorrect and therefore highly misleading.

iii. The Tribunal noted that the promotional letters were personalised with references to the recipient's geographic location and a tailored claim form. The Tribunal found that these factors, when considered cumulatively with the other factors raised by the Executive, were likely to have misled consumers.

iv. The Tribunal considered the use of stamp like images stating for example, "File Copy" and "final reminder" together with Service names. The Tribunal found that it was likely that consumers would have been misled into interacting with the Service in the mistaken belief that the Service was a claims handling service rather than a premium rate prize draw service.

In conclusion, the Tribunal found that cumulatively, and for the reasons detailed above and as evidenced by the complainants' confusion as to why they had incurred premium rate charges, the promotions for the Service were likely to have and/or did misled consumers in relation to the nature of the Service and/ or into incurring premium rate charges in breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH 2
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 pricing information for the Service was not prominent or proximate to the means of access to the Service on the promotional letter.

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

Paragraph 2.2
"As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion)."

Paragraph 2.8
"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 2.11
"Lack of prominence, or proximity, also takes place in print, where, as online, the price is provided in small print elsewhere on the page from the call to action. As with online advertising described in the paragraph directly above, 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. As before, in such cases, a PhonepayPlus Tribunal is likely to uphold a breach of PhonepayPlus' Code of Practice for lack of pricing prominence."

Paragraph 2.13
"Pricing information should be presented in a horizontal format and be easily legible in context with the media used. It should be presented in a font size that would not require close examination by a reader with average eyesight. In this context, 'close examination' will differ for the medium, whether on a static webpage, a fleeting TV promotion, in a publication, or on a billboard where you may be at a distance or travelling past at speed."

Complaints

Specifically, and in addition to the complaints detailed above as part of the Executive's case for the breach of rule 2.3.2 of the Code, the Executive noted the following complaints from consumers:

"The consumers wife then received a letter from 'Prize Directory' instructing her to call an 09 number to retrieve a 4 digit reference number to see if she has won a prize. The consumers wife has called 3 times so far but has been on the line for such a long period of time she has hung up before getting through to the end of the call. The consumer said there is no pricing information in the letter and he is going to send it into us." [emphasis added]

"I received a letter in the post, stating that I had one a free trip for myself and my family. I was given the code for the prize, and told to send a text message, to receive the free code. What resulted was that I never received the prize. Instead I got flooded with text messages, which I did not realize I would be charged for receiving."

The Executive submitted that it was clear from the consumers' accounts that the pricing information on promotions was not sufficiently prominent for some complaints to see (**Appendix C**).

The Executive acknowledged that pricing information was provided at the bottom of all prize claim letters, however it submitted that the pricing information was not sufficiently prominent in comparison to the premium rate number/shortcode as it was contained in a block of text in a small font size along with the terms and conditions. The Executive noted that the font size was considerably smaller than that used to display the premium rate number and shortcode, and, contrary to the explicit Guidance, which states that such information should not require "close examination" to read.

Further, the Executive asserted that it was not clear from the main body of the promotion that the Service had a premium rate element and therefore there was a greater need for prominent pricing information to ensure consumers were fully informed of the cost implications before engaging with the Service.

The Executive asserted that, in order for the pricing information to be sufficiently prominent on the promotions, the information should be standalone (separate to any other terms and conditions), in a similarly sized font to the premium rate number and shortcode, which does not require close examination by the reader.

In light of the above, the Executive submitted that a breach of rule 2.2.5 of the Code had occurred as pricing information was not sufficiently prominent, which resulted in consumers not realising that they would incur premium rate charges.

2. The Level 2 provider denied that a breach of the Code had occurred and stated that it believed that it had achieved clarity. It expanded upon its general submissions outlined above under paragraph 2 of the breach of rule 2.3.2 of the Code.

The Level 2 provider acknowledged the importance of achieving clarity concerning the pricing information, along with other important information. The Level 2 provider stated that it was disappointed that the Executive had an issue with the pricing information and further that it had not contacted it to discuss the issue for a speedy resolution. The Level 2 provider stated that there had been five occasions since May 2006 when it had promptly agreed to make amendments requested by the Executive and matters had been resolved informally. In addition, during the 11 years that the Service had been in operation, PhonepayPlus and other regulators have seen the promotions on a number of occasions and this issue had not previously been raised.

The Level 2 provider indicated that the extract in the Executive's case report was in itself misleading as it was blurred and in smaller print than is the case in the promotional letter. Despite this, it referred the Executive to a clearer version of the pricing information.

The Level 2 provider highlighted that pricing information was placed immediately below the method of entry to the Service and displayed in font size eight, which it had understood to be sufficient. It stated that in the past PhonepayPlus had approved font size seven. It also ensured that the information was black text on a white background or occasionally a light

pastel shade such that it stood out. The first words that were used were "calls cost £1.53 per minute" and the wording was prominently placed in the letter.

The Level 2 provider referred to the Guidance on "Promotions and promotional material" and provided a detailed analysis of the requirements. In summary, the Level 2 provider submitted that it had not acted contrary to the Guidance.

Further to the analysis of complaints above, the Level 2 provider reviewed the two relevant complaints in detail and stated that both complainants had been offered a refund of the costs they had incurred. In relation to the second complainant, the Level 2 provider stated that the complaint did not relate to the Service. The Level 2 provider stated that many complainants complain about the level of the charges which it stated appeared to indicate that that they were aware of the cost of the Service.

Consequently, the Level 2 provider stated that it appeared to have been singled out and the Executive were applying a standard that was in excess of the Code and the Guidance.

The Level 2 provider gave detailed informal representations and reiterated its written submissions by stating that its view was that the cost of the Service was clear, easy to read and close to the method of entry therefore fulfilling the Code and Guidance requirements.

3. The Tribunal considered all the evidence before it, including the Level 2 provider's written submissions and the oral clarification provided during informal representations. The Tribunal stated that determinations regarding whether pricing information was compliant with the Code could only be assessed on a case by case basis and therefore compliance advice relating to a different promotion may not necessarily be applicable. The Tribunal commented that the premium rate nature of the Service was not clear from the content of the promotions. As a result, compliance with obligations concerning the presentation of pricing information was particularly crucial. The Tribunal found that although pricing information was directly underneath the premium rate numbers and shortcodes, the information was presented in a small font size in a block of text containing other terms and conditions, albeit on the first line, and therefore required close examination. Accordingly, the Tribunal concluded that pricing information was not sufficiently prominent in breach of rule 2.2.5 of the Code.

Decision: UPHELD

ALLEGED BREACH 3
Rule 2.4.1
"Level 2 providers must ensure that premium rate services do not cause the unreasonable invasion of consumers' privacy."

1. The Executive submitted that the Level 2 provider had acted in breach of rule 2.4.1 of the Code for the following reasons:

   i) The Level 2 provider contacted consumers whose details were obtained from a third party. However, the third party had not obtained informed consent to pass the details to the Level 2 provider. Accordingly, the Level 2 provider had contacted consumers without their consent and therefore the Service unreasonably invaded consumers' privacy.

ii) The Level 2 provider collected consumers' details with the intention of sharing them with third parties (and had shared the information with third parties who offered unconnected products). However, the statement that purportedly indicated consumers' consent was not sufficiently prominent or specific enough to enable consumers to give informed consent for their details to be passed on to the third parties. Accordingly, the Service unreasonably invaded consumers' privacy.

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

Paragraph 4.1
"Mobile phones can provide a personal connection to an individual (rather than to a household) – a connection that many individuals strongly feel should be protected from unwanted communications. Yet, it has never been easier to reach a high number of individuals with a simple database and a connection to a communications network. PhonepayPlus receives regular complaints from consumers about PRS marketing which they have not opted in to receive and, as such, feel intrudes upon their right to privacy."

Paragraph 4.2
"Consumers have a fundamental right to privacy – enshrined in law, through the Privacy and Electronic Communications Regulations 2003 ('PECR'). In the UK, the Information Commissioner's Office ('ICO') is the body charged directly with enforcing PECR. We work closely with the ICO in order to define what constitutes acceptable and auditable consent to marketing. We may refer cases to the ICO, when appropriate, but will also treat invasions of consumers' privacy through paragraph 2.4 of the PhonepayPlus Code of Practice."

The Executive noted that the application of the Privacy and Electronic Communications Regulations 2003 ("**PECR**") is limited to electronic communications. However, the ICO is also charged with enforcing the Data Protection Act 1998 (the "**DPA**"). The DPA applies to all personal information. There is significant overlap between the principles and rules prescribed by PECR and the DPA (which are concerned with safeguarding privacy). The definition of consent under both PECR and the DPA has been set out in detail by the ICO. In the absence of a definition of consent within the Code the Executive adopted the ICO's guidance on the meaning of consent for the purposes of the Code rules relating to privacy.

In summary, the Executive noted that a person's personal data could not be passed to a third party without specific and informed consent. Accordingly, any statement purporting to qualify as consent must be sufficiently specific about the purpose for which data is to be shared and who the data will be shared with. Any such statement should be brought to a consumer's attention, consequently it must be prominent and not buried with other terms and conditions. Where consumer data is passed to a third party without the provision of specific and informed consent it is highly likely that there will have been an unreasonable invasion of privacy.

Consent

The Executive noted that to be valid, consent must be knowingly given, clear and specific. Whether consent is valid will depend on all the circumstances and can only be determined

on a case by case basis. Consent is defined in European Directive 95/46/EC (the data protection directive on which the DPA is based) as:

> "[A]ny freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed".

The "processing" of data includes obtaining, recording and holding data. For consent to be valid, it must be:

i. Freely given
ii. Specific
iii. Informed
iv. An indication signifying agreement

The Executive noted that the following guidance is taken in part and/or paraphrased from the ICO's guidance on digital marketing:

> "The crucial consideration is that the individual must fully understand that their action will be taken as consent, and must fully understand exactly what they are consenting to. There must be a clear and prominent statement explaining that the action indicates consent to receive marketing messages. Text hidden in a dense privacy policy or in small print which is easy to miss is not sufficient. Organisations should also provide a simple method of refusing consent to ensure that the consent is freely given.
>
> "It is extremely unlikely that a consumer would intend to consent to unlimited future marketing from anyone, anywhere. Organisations should consider whether consumers are likely to reasonably expect them to use their personal data to offer them the particular products that the third party promotes. A list with general consent to third party marketing may be enough for mail marketing subject to an organisation being able to demonstrate that consent was knowingly given, clear and specific. If the nature of the promotion is quite different from the context in which consent was originally obtained, consent is unlikely to be valid even if it was superficially expressed to cover third parties. If the consent is generic consent to marketing from any third party, it will be difficult to show specific enough consent for calls, texts or emails. At the very least, any promotion (for example by mail) must be consistent with the context in which consent was given – for example, aimed at a similar market.
>
> "Organisations must act fairly and lawfully when selling a marketing list. If an organisation obtained details from individuals with the intention of selling them on, it must have made it clear that their details would be passed on to third parties for marketing purposes and obtained their consent for this. It is good practice to specifically name (or at least give a clear description of) the third parties to whom details may be sold."

i) The Level 2 provider contacted consumers whose details were obtained from a third party. However, the third party had not obtained informed consent to pass the details to the Level 2 provider. Accordingly, the Level 2 provider contacted consumers without their consent and therefore the Service unreasonably invaded consumers' privacy.

The Executive noted that in response to a direction for information, the Level 2 provider stated that, "most of our new marketing contacts are consumers who have previously responded to a scratchcard promotion". The Level 2 provider later confirmed that the "scratchcard promotion" related to premium rate services provided by a third party provider. It had standardised terms and conditions which are displayed on all its scratch card promotions.

The Executive noted that at the end of the terms and conditions on the reverse side of the scratchcard, it stated, "if you don't wish to receive info/offers from other reputable companies write to…" The Executive noted that the terms and conditions were in a small font size which required close examination to read. Further, the statement lacked sufficient specificity regarding the third parties and/or their goods or services. Consequently, and contrary to the ICO's guidance, the statement was not sufficiently prominent and/or specific to signify consumers' informed consent. In addition, the Executive noted that the method of opt-out was cumbersome and may dissuade consumers from exercising their right to opt-out of third party marketing.

Consequently, the Executive asserted that the third party Level 2 provider did not obtain informed consent to pass personal details onto the Level 2 provider. Therefore, any contact made by the Level 2 provider unreasonably invaded consumers' privacy in breach of rule 2.4.1 of the Code.

ii) The Level 2 provider collected consumers' details with the intention of sharing them with third parties (and shared the information with third parties who offered unconnected products). However, the statement that purportedly indicated consumers' consent was not sufficiently prominent or specific enough to enable consumers to give informed consent for their details to be passed on to the third parties. Accordingly, the Service unreasonably invaded consumers' privacy.

The Executive noted that at the bottom of the claim form attached to the Level 2 provider's promotional letters it stated, "If you don't wish to receive further offers from us or other reputable companies write to…" (**Appendix D**). The Executive submitted that the statement was not prominent as it was in a small font size and contained within other terms and conditions. In addition, the Executive noted that the method of opt-out was cumbersome and may dissuade consumers from exercising their right to opt-out of third party marketing.

The Level 2 provider collected consumers' details with the intention of sharing them with third parties. In response to a direction for information from the Executive, the Level 2 provider stated that it shared consumer contact information with third parties for marketing purposes and it named the third parties. When later asked by the Executive to, "clarify what services the aforementioned companies offer," the Level 2 provider named an insurance service, a lottery service, several charities and a competition information newsletter.

The Executive noted that none of the third parties provide premium rate services. The Executive submitted that, contrary to the ICO guidance, the statement that purportedly allowed the Level 2 provider to pass on consumers' details to the third parties was not sufficiently specific, as it did not contain the name of the third party and/or the type of services offered.

Consequently, in the circumstances of this case, the Executive asserted that the consumers did not provide their informed consent as the statement purporting to provide consent was not sufficiently specific and/or prominent. Therefore, the Level 2 provider did not obtain and consequently did not have consumers' informed consent to pass their details to third parties. As a result consumers' privacy was unreasonably invaded in breach of rule 2.4.1 of the Code.

As the Guidance states, "Consumers have a fundamental right to privacy – enshrined in law," and any contact without consent intrudes on this fundamental right. Accordingly, for the two reasons set out above, the Executive asserted that the Service operated in breach of rule 2.4.1 of the Code.

2. The Level 2 provider denied that a breach of rule 2.4.2 of the Code had occurred and stated that it had made substantial efforts to ensure that there was no unreasonable invasion of consumers' privacy. It stated that neither the Level 2 provider nor the third party provider had processed electronic personal data for marketing purposes or any reason other than to fulfil consumers' requests.

The Level 2 provider's efforts included screening potential recipients of mailings against the Mail Preference Service ("MPS") the day before sending the mail, screening against the Bereavement Register and against an internal stop list (this contains details of consumers who have indicated that they do not wish to receive communication from the Level 2 provider).

The Level 2 provider asserted that its handling processes have at all times been transparent and open to scrutiny by a number of regulators and other bodies and companies. It stated that the approach has not before attracted criticism, including from those that specialise in the field of data protection.

An overriding point made by the Level 2 provider was that the Guidance clearly does not apply to communications by mail and accordingly it stated that the Executive's allegations were therefore misconceived. It stated that the Executive's assertions that the rules under the Data Protection Act were the same whatever the medium used, were not correct. Further, the ICO's "Direct marketing" guidance states:

> "The rules on calls, texts and emails are stricter than those on mail marketing and consent must be more specific."

The Level 2 provider urged the Tribunal not to take a "one size fits all approach", as electronic forms of communication are clearly more invasive. It stated that the Code and Guidance were clearly drafted to apply to this more invasive method of marketing but different standards should apply to marketing by mail. In addition, it stated that the ICO's guidance (relied on by the Executive) is also focused on electronic communication. It quoted the guidance which states:

> "Although there is a well-established trade in third party opt in lists for traditional forms of marketing, organisations need to be aware that indirect consent might not be enough for texts, emails or automated calls. This is because the rules on electronic marketing are stricter, to reflect the more intrusive nature of electronic messages".

The Level 2 provider asserted that, given that the Executive wrongly relied on rules relating to electronic communication for the far less intrusive field of mail communication and that the evidence it quoted clearly demarcated the different types of communication, this should have been the end of the alleged breach.

However, the Level 2 provider stated that should further information be required, the third party provider could provide additional reassurance regarding its conduct. It drew to the attention of the Tribunal that, up until 2006, it had obtained significant volumes of data from a third party provider but this was no longer the case. It stated that the position was not fully appreciated by the Level 2 provider when answering correspondence from the Executive. A typical example included a promotion launched on 10 September 2013 where only 2,501 out of a total of 198,531 consumer names were provided by the third party provider.

The Level 2 provider stated that mail communications do not require a specific opt-out in the same way that communications by electronic means do. Further, there would be an issue with providing all this information on the promotional material as there was insufficient space; only so many items can be distinguished from the main terms and conditions or placed at the top of the body of the text.

In relation to the first reason advanced by the Executive, the Level 2 provider stated that, it maintained that the privacy statement used by the third party provided was lawful. Further, the privacy statement obtained by the Executive was not the only statement used by the third party provider and it further communicated with consumers who had taken part in any of its promotions.

In relation to the second reason advanced by the Executive, the Level 2 provider stated that it had passed information to seven companies, none of which provide premium rate services. The marketing methods used by these companies were neither invasive nor aggressive and it had been extremely careful in the selection of companies with whom it shared data.

The Level 2 provider submitted there was absolutely no basis for any finding that a breach of rule 2.4.1 of the Code had occurred and if the Tribunal had any concern about whether or not the Data Protection Act had been breached it should refer the matter to the ICO.

The Level 2 provider made detailed informal representations in which it reiterated its written submissions and stated that the Executive should not think that one position suits all forms of marketing, as the rules on electronic communication are stricter. In addition, it commented that the wording of the Code requires that there is no unreasonable invasion of consumers' privacy and accordingly, it urged the Tribunal to consider whether this was a case which could be described as "unreasonable".

3. The Tribunal fully considered all of the evidence before it including the Level 2 provider's written and oral submissions. The Tribunal noted that PhonepayPlus Guidance appeared to centre on privacy requirements under PECR which, as accepted by both parties, did not have any application in this case. However, the Tribunal accepted the Executive's submission that the Level 2 provider was obliged to comply with the requirements of the DPA in relation to handling consumers' personal data. The Tribunal did not accept that rule 2.4.1 of the Code had no application to data privacy as a result of the ICO's existence.

The Tribunal accepted the Executive's submission that for consent to be valid, it must be:

i. Freely given
ii. Specific
iii. Informed
iv. An indication signifying agreement

The Tribunal noted that the Level 2 provider had contacted approximately 2,500 consumers using personal data obtained from a third party provider. However, the Level 2 provider had failed to provide evidence of the consumers providing informed consent which allowed the third party to transfer the data to the Level 2 provider in the manner it did. Therefore, the Level 2 provider had unreasonably invaded the consumers' privacy as it contacted them without their consent in breach of rule 2.4.1 of the Code.

In addition, for the reasons given by the Executive, the Tribunal found that the Level 2 provider collected consumers' details with the intention of sharing them with third parties (and shared the information with third parties who offered unconnected products). However, the statement that purportedly indicated consumers' consent was not sufficiently prominent or specific enough to enable consumers to give informed consent for their details to be passed on to the third parties. Accordingly, the Service unreasonably invaded consumers' privacy in breach of rule 2.4.1 of the Code.

Decision: UPHELD

ALLEGED BREACH 4
Rule 2.1.1
"Premium rate services must comply with the law."

1. The Executive submitted that, from March 2013, the Level 2 provider acted in breach of rule 2.1.1 of the Code as in order to claim their prize consumers with a winning ID were required to incur postage costs contrary to the requirements of the CPRs that consumers must not incur any costs whatsoever (irrespective of them being de minimis) when claiming a prize. Further, it is not sufficient that such costs were later refunded.

The Executive noted that the CPRs came into force on 26 May 2008. The CPRs introduced a general duty not to trade unfairly and seek to ensure that traders act honestly and fairly towards their customers. They apply primarily to business to consumer practices.

Schedule 1 of the CPRs outlines a series of practices which are deemed "unfair" and prohibited pursuant to Article 3(1) of the CPRs. Paragraph 31 of Schedule 1 of the Regulations states:

> "Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either—
> (a)there is no prize or other equivalent benefit, or,
> (b)taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost." [Emphasis added]

It was accepted by the Executive that some ambiguity surrounded the interpretation of paragraph 31 prior to March 2013. However, in a preliminary question asked by the Court of

Appeal in a case involving the then OFT and a number of premium rate service providers (including the Level 2 provider), the CJEU made the following ruling regarding the correct interpretation of paragraph 31:

> "– paragraph 31, second indent, of Annex I to the Directive on Unfair Commercial Practices Directive must be interpreted as prohibiting aggressive practices by which traders give the false impression that the consumer has already won a prize, while the taking of any action in relation to claiming that prize, be it requesting information concerning the nature of that prize or taking possession of it, is subject to an obligation on the consumer to pay money or to incur any cost whatsoever;
>
> "– it is irrelevant that the cost imposed on the consumer, such as the cost of a stamp, is de minimis compared with the value of the prize or that it does not procure the trader any benefit."

The Executive asserted that following the CJEU's ruling the meaning of paragraph 31 was clear. In a Court of Appeal undertaking (Penal notice, order & undertakings (the "**Undertaking**")) dated 19 March 2013, the parties, including the Level 2 provider, undertook the following:

> "Each Appellant/ Respondent will not…. Continue or repeat the conduct described in paragraph 4-8 below;
> …4. Create the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact taking any action recommended by the Appellant/Respondent in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring any cost whatsoever. Prohibited costs include costs relating to any of the following relevant benefits: requesting information concerning the nature of that prize or equivalent benefit or taking possession of it whether or not:
> a) the cost is de minimis compared to the value of the prize or equivalent benefit;
> b) the cost passes to the Appellant/Respondent or to any other person;
> c) the Appellant/Respondent also offers the consumer any other route to obtain the relevant benefit which is free."

As a result of the above, the Executive submitted that, when a consumer follows action recommended by the provider there is an absolute prohibition on consumers incurring costs to claim a prize.

It is of note that a specific paragraph of the Undertaking in relation to a specified promotion operated by a different Level 2 provider (and where the specified provider could prove that the promotion was distributed prior to October 2012, the Court of Appeal allowed a limited concession to the above absolute prohibition in that it permitted the promotion to continue on the basis that all costs incurred by consumers to claim the prize would be refunded. However, the Executive noted that this concession was to allow retrospective refunds in relation to a different provider and therefore has no application to the Level 2 provider.

The Executive relied on PhonepayPlus Guidance on "Competition and other games with prizes", which was amended following the clarification to the meaning of paragraph 31 detailed above and states:

Paragraph 4.5
"Consumers should not be subject to any costs in order to claim prizes once draws have been made. For example, those services which require consumers to pay telephone or postal costs to claim prizes are likely to contravene the law. This remains the case whether or not the consumer has made an earlier separate payment to enter the competition. An example would be where consumers are required to pay to enter a prize draw, promoted as a competition service offering a chance to win, and are subsequently required to call a non-free telephone number or send a stamped addressed envelope to claim the prize they are said to have won."

Paragraph 4.6
"The Unfair Commercial Practices Directive (as transposed into UK national law through the Consumer Protection against Unfair Trading Regulations 2008) provides that where promotional material creates a "false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact … taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost", this constitutes a banned practice. The The Court of Justice of the European Union has now confirmed that traders cannot require consumers to bear any cost in order to claim a prize, including where the cost is de minimis compared with the value of the prize or where such cost does not financially benefit the provider, such as a stamp. Consequently, we would strongly suggest that providers seek legal advice before running PRS prize claim competitions."

Paragraph 4.7
"Where it appears to PhonepayPlus that the law has been contravened in relation to PRS services and promotional material it will consider whether this issue can be appropriately dealt with as part of the enforcement of its Code of Practice, or should be referred to the Office of Fair Trading (or successor body). If PhonepayPlus decides to enforce its Code of Practice in respect of this issue, it is likely that it will conduct a Track 2 procedure investigation and raise a breach of the Outcome of Legality (paragraph 2.1) in addition to other potential breaches of the Code."

The Executive noted that where consumers have a winning unique ID, in order to claim their prize, consumers are required to post their completed claim form to a UK non-freepost address and enclose, "2 loose (unattached) 1st class stamps". Currently, the cost of a second class stamp is 53 pence and a first class stamp costs 62 pence. Therefore in order to validly claim a prize a consumer must incur costs of either £1.77 or £1.86. It is of note that the terms and conditions state, "Recommended claim costs will be refunded to all winning claimants".

The Executive submitted that it was illegal for consumers to incur any charges as a result of following any action recommended by the Level 2 provider (even if they are de minimis) when claiming a prize. Further, there was no provision to remedy the illegality with the provision of a refund. Accordingly, the Executive submitted that requiring consumers to incur the cost of postage and two additional first class stamps to claim their prize was contrary to the law. Therefore, the Executive asserted that a breach of rule 2.1.1 of the Code occurred from 19 March 2012.

2. The Level 2 provider accepted that the CJEU had ruled on the issue of consumers incurring costs when claiming a prize but it stated that it had followed the spirit of the judgment but

following it to the letter was practically impossible, as claiming a prize required consumers to incur a cost of some sort. The Level 2 provider relied on the general submissions outlined above under paragraph 2 of the alleged breach of rule 2.3.2 of the Code.

.

The Level 2 provider stated that the argument did not in any way serve the public interest and would appear to show inconsistent and therefore unfair treatment of the Level 2 provider and the Service. It was aware through a Freedom of Information Act request that the OFT had not contacted or pursued any other provider on this issue, despite many continuing to operate contrary to the CJEU ruling.

The Level 2 provider referred to the High Court judgment in which he stated that there could be no breach of the law if the claim costs were minimal in relation to the value of the prize to be claimed. It stated that the High Court was rightly concerned about an interpretation of the law which lent itself to absurd results serving no identifiable purpose in terms of avoiding misleading or aggressive commercial practices or even in terms of providing a high level of consumer protection. He also regarded it as objectionable in principle that the law should be interpreted in such a harsh way that would lead to absurd results on the basis of trusting a regulator to use its discretion when pursuing breaches.

It stated that the decision of the CJEU that no cost including de minimis cost could be incurred in the claiming of a prize was somewhat surprising, the Level 2 provider stated, "especially after at the oral hearing the Judges had savaged the European Commission Representative and scoffed at the idea that no cost whatsoever could be incurred in claiming a prize [sic]." The reality, as the CJEU appeared to accept at the oral hearing, was that it is impossible to claim any prize without incurring a cost of some sort. By way of example, the Level 2 provider stated that even using a computer to claim a prize by email involves some expenditure in terms of electricity and if one walks to claim a prize this involves the use of shoe leather. The Level 2 provider asserted that the extremity of the decision in determining that even incurring a de minimis cost amounted to a breach of the CPRs meant that if the law was to be enforced, no business, charity or lottery could run a promotion to win prizes and this it asserted was clearly a nonsense.

The Level 2 provider gave an overview of how the CPRs had been interpreted in other EU countries and stated that it was in direct conflict with the CJEU decision. In addition, the Level 2 provider referred to another large company offering prizes, which required a consumer to incur a cost in almost all cases and no refunds of the costs incurred in making a claim are offered. The Level 2 provider stated that another company providing a similar service sought to address the effect of the CJEU ruling by introducing a policy whereby it automatically refunded the cost of claiming a prize. In doing so, it believed it was upholding the spirit and the purpose of the CJEU ruling. The Level 2 provider stated that the OFT had criticised the Level 2 provider for its actions and that most regrettably this case and the assertions of the Executive appeared to have followed the same path as the OFT.

The Level 2 provider stated that it was ensuring that consumers did not permanently incur costs as a result of claiming a prize by paying refunds. In light of its efforts, it believed that the Executive should not be pursuing the allegation, as its actions were inconsistent considering that many providers did not refund consumers and had not been subject to an adjudication. Instead of criticising the Level 2 provider, it believed that it efforts should be recognised.

The Level 2 provider asserted that the Executive had departed from the PhonepayPlus Mission Statement which it stated is concerned with openness, fairness, even handedness and impartiality and also consistency.

In light of the overriding objective of the CPRs, the Level 2 provider asserted that the only sensible interpretation of paragraph 31 of Schedule 1 of the CPRs is that consumers' interests are not harmed by a provider informing a consumer they have won a prize but in reality requiring the consumer to pay for it or make a significant contribution towards claiming a prize. Consequently, it stated that is does not make sense that where there is small cost involved in claiming a prize, which is later refunded, there is a breach of the regulations. Further, at the time of claiming the prize the consumer already have the benefit of the Level 2 provider's promise. The Level 2 provider urged the Tribunal to recognise that it had sought to apply the meaning and spirit of the decision

The Level 2 provider explained that since the CJEU ruling on 18 October 2012, it had not instructed consumers to send two loose first class stamps when returning their claim form. The first fully compliant CJEU mailing was sent on 8 November 2012. Consumers entitled to prizes were asked to send a valid claim form by second class post. Once the winning claim form was received the prize and recommended claim costs including the value of a second class stamp and envelope were sent out within 48 hours. It stated that it wished to remind the Tribunal that the CJEU ruling applied to the cost incurred in relation to claiming a prize and it did not apply to any costs incurred in finding out whether a consumer is entitled to a prize in the first place.

The Level 2 provider gave lengthy and detailed informal representations which reiterated its written submissions and stated that it had worked hard to ensure that it complied with the CJEU ruling and in many respects it was now more advanced than many other providers. The Level 2 provider also relied upon its submissions outlined above under paragraph 2 of the alleged breach of rule 2.3.2 of the Code. In respect of the CJEU judgment, the Level 2 provider stated that it accepted the judgment and it did not in any way seek to minimise the decision.

3. The Tribunal considered all the evidence before it, including the Level 2 provider's extensive written and oral submissions. The Tribunal commented that as the breach related to illegality and the meaning of the CPRs; the Tribunal was bound to follow the judgment of the CJEU in relation to the interpretation of paragraph 31 of the CPRs. The Tribunal noted that the CJEU had expressly ruled that paragraph 31 means that consumers must not incur any costs whatsoever, irrespective of them being de minimis, when claiming a prize. As a result of this, it is not sufficient to refund costs at a later date. The Tribunal noted that the costs incurred by consumers to claim their prize in this instance was limited to the cost of a stamp and therefore the breach of rule 2.1.1 and the consumer harm was limited. However, the Tribunal was constrained to apply the decision of the CJEU and found that the Level 2 provider had acted in breach of rule 2.1.1 of the Code.

Decision: UPHELD

SANCTIONS

Initial overall assessment

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

Rule 2.3.2 – Misleading

The initial assessment of rule 2.3.2 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. Given the large number of promotional letters that were distributed, the potential impact on consumers was extensive.
- The nature of the breach, including the Level 2 provider's business model, was likely to severely damage consumers' confidence in premium rate services.

Rule 2.2.5 – Pricing prominence

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

- The Service was purposefully promoted in such a way so as to impair the consumer's ability to make a free and informed transactional decision.
- The Service failed to supply prominent pricing information and had no prominent reference to the fact that it was a premium rate service. Therefore the legitimacy of the Service as a whole was put in doubt as many consumers were likely to have accessed it without being aware of its premium rate nature.

Rule 2.4.1 - Privacy

The initial assessment of rule 2.4.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- Non-compliance with data privacy obligations is fundamental as any breach is likely to significantly damages consumers' confidence in premium rate services.
- The Level 2 provider obtained consumers' details and shared them without have due regard to consumer's privacy and proper systems to obtain and record consent.

Rule 2.1.1 – Legality

The initial assessment of rule 2.1.1 of the Code was **minor**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The cost incurred by consumers was minimal and the breach had the potential to generate limited revenue streams.

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

Final overall assessment

In determining the final overall assessment for the case, the Tribunal noted the Level 2 provider's detailed submissions regarding the absence of aggravating factors and presence of mitigating

factors. However, the Tribunal determined that it was appropriate to take into account the following aggravating factor:

- The Level 2 provider failed to take note of prior adjudications that had been published concerning misleading promotions and pricing prominence issues.

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

- The Level 2 provider stated that it had proactively refunded consumers in an effort to relieve any purported consumer harm.

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

Having taken into account the aggravating and mitigating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

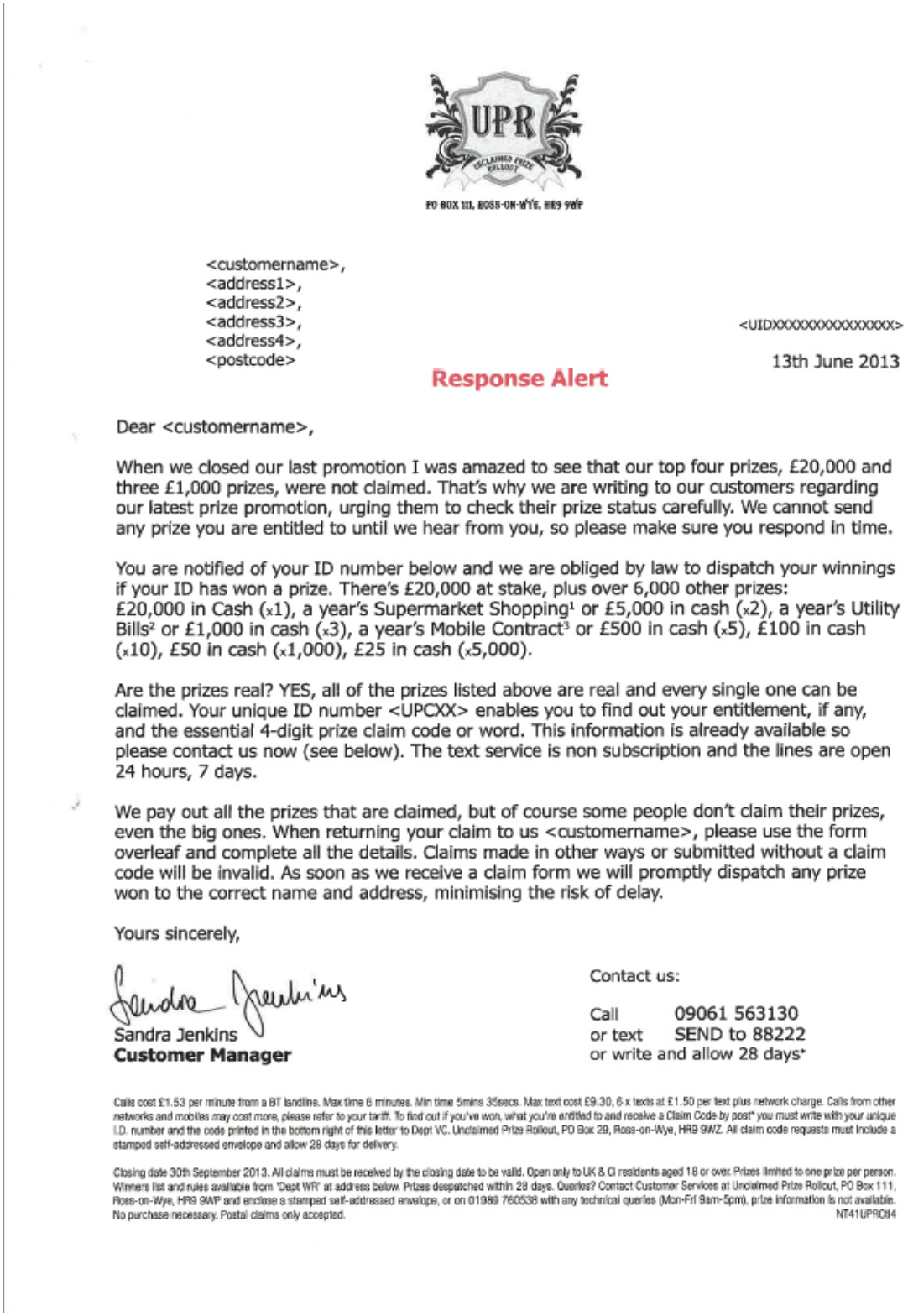
Sanctions imposed

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

- a formal reprimand;
- a fine of £120,000; and
- a requirement that the Level 2 provider must refund all complainants 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 - An example of a promotional letter for the Service (not the actual size):



UPR

UNCLAIMED PRIZE ROLLOUT

PO BOX 111, ROSS-ON-WYE, HR9 9WP

<customername>,
<address1>,
<address2>,
<address3>,
<address4>,
<postcode>

<UIDXXXXXXXXXXXXXXXX>

13th June 2013

Response Alert

Dear <customername>,

When we closed our last promotion I was amazed to see that our top four prizes, £20,000 and three £1,000 prizes, were not claimed. That's why we are writing to our customers regarding our latest prize promotion, urging them to check their prize status carefully. We cannot send any prize you are entitled to until we hear from you, so please make sure you respond in time.

You are notified of your ID number below and we are obliged by law to dispatch your winnings if your ID has won a prize. There's £20,000 at stake, plus over 6,000 other prizes: £20,000 in Cash (x1), a year's Supermarket Shopping[1] or £5,000 in cash (x2), a year's Utility Bills[2] or £1,000 in cash (x3), a year's Mobile Contract[3] or £500 in cash (x5), £100 in cash (x10), £50 in cash (x1,000), £25 in cash (x5,000).

Are the prizes real? YES, all of the prizes listed above are real and every single one can be claimed. Your unique ID number <UPCXX> enables you to find out your entitlement, if any, and the essential 4-digit prize claim code or word. This information is already available so please contact us now (see below). The text service is non subscription and the lines are open 24 hours, 7 days.

We pay out all the prizes that are claimed, but of course some people don't claim their prizes, even the big ones. When returning your claim to us <customername>, please use the form overleaf and complete all the details. Claims made in other ways or submitted without a claim code will be invalid. As soon as we receive a claim form we will promptly dispatch any prize won to the correct name and address, minimising the risk of delay.

Yours sincerely,

Sandra Jenkins
Customer Manager

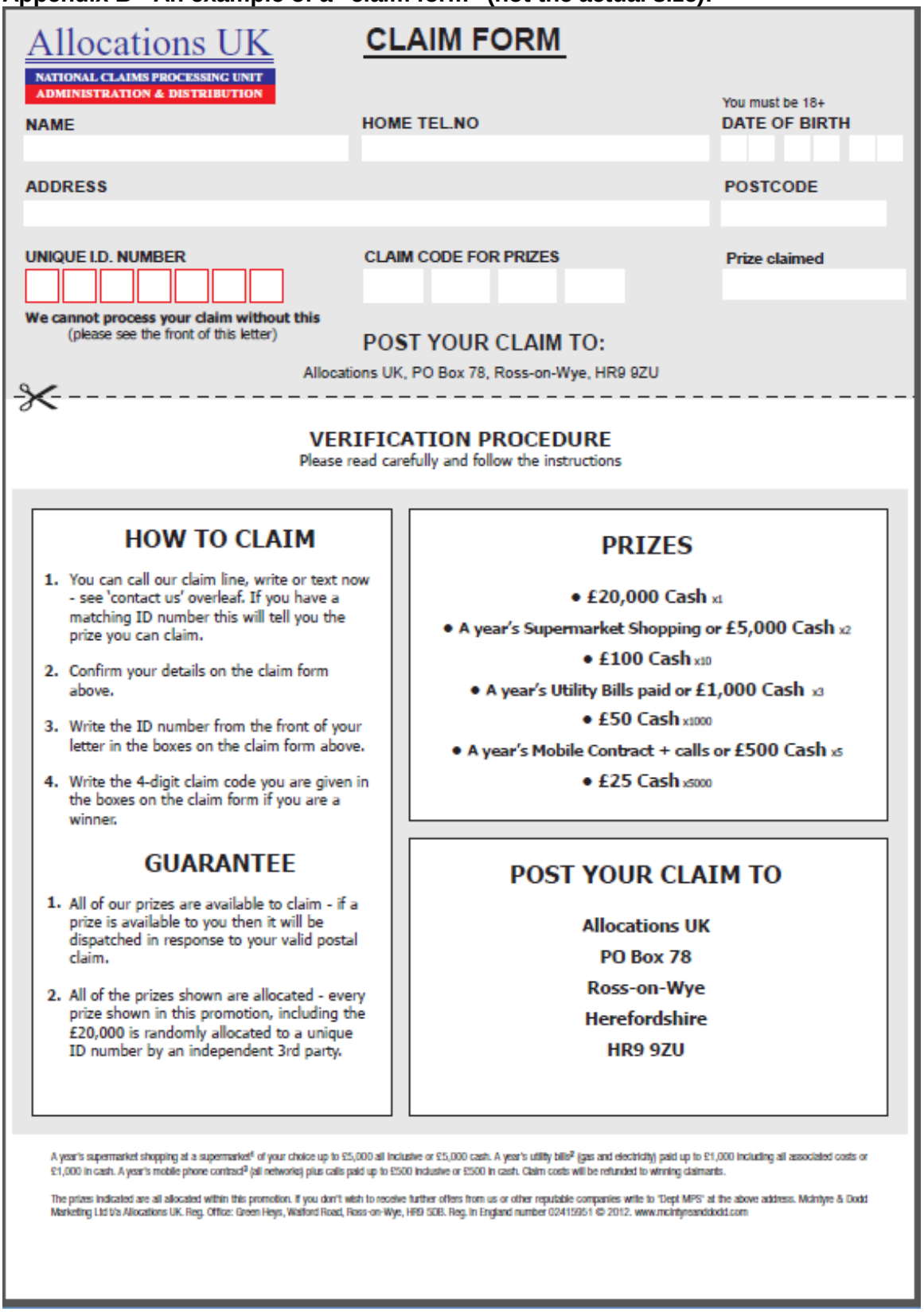
Contact us:

Call 09061 563130
or text SEND to 88222
or write and allow 28 days*

Calls cost £1.53 per minute from a BT landline. Max time 6 minutes. Min time 5mins 35secs. Max text cost £9.30, 6 x texts at £1.50 per text plus network charge. Calls from other networks and mobiles may cost more, please refer to your tariff. To find out if you've won, what you're entitled to and receive a Claim Code by post* you must write with your unique I.D. number and the code printed in the bottom right of this letter to Dept VC, Unclaimed Prize Rollout, PO Box 29, Ross-on-Wye, HR9 9WZ. All claim code requests must include a stamped self-addressed envelope and allow 28 days for delivery.

Closing date 30th September 2013. All claims must be received by the closing date to be valid. Open only to UK & CI residents aged 18 or over. Prizes limited to one prize per person. Winners list and rules available from 'Dept WR' at address below. Prizes despatched within 28 days. Queries? Contact Customer Services at Unclaimed Prize Rollout, PO Box 111, Ross-on-Wye, HR9 9WP and enclose a stamped self-addressed envelope, or on 01989 760538 with any technical queries (Mon-Fri 9am-5pm), prize information is not available. No purchase necessary. Postal claims only accepted. NT41UPRC/4

Appendix B - An example of a "claim form" (not the actual size):



Allocations UK

NATIONAL CLAIMS PROCESSING UNIT
ADMINISTRATION & DISTRIBUTION

CLAIM FORM

You must be 18+

NAME | HOME TEL.NO | DATE OF BIRTH

ADDRESS | POSTCODE

UNIQUE I.D. NUMBER | CLAIM CODE FOR PRIZES | Prize claimed

We cannot process your claim without this (please see the front of this letter)

POST YOUR CLAIM TO:

Allocations UK, PO Box 78, Ross-on-Wye, HR9 9ZU

VERIFICATION PROCEDURE

Please read carefully and follow the instructions

HOW TO CLAIM

1. You can call our claim line, write or text now - see 'contact us' overleaf. If you have a matching ID number this will tell you the prize you can claim.
2. Confirm your details on the claim form above.
3. Write the ID number from the front of your letter in the boxes on the claim form above.
4. Write the 4-digit claim code you are given in the boxes on the claim form if you are a winner.

GUARANTEE

1. All of our prizes are available to claim - if a prize is available to you then it will be dispatched in response to your valid postal claim.
2. All of the prizes shown are allocated - every prize shown in this promotion, including the £20,000 is randomly allocated to a unique ID number by an independent 3rd party.

PRIZES

- £20,000 Cash x1
- A year's Supermarket Shopping or £5,000 Cash x2
- £100 Cash x10
- A year's Utility Bills paid or £1,000 Cash x3
- £50 Cash x1000
- A year's Mobile Contract + calls or £500 Cash x5
- £25 Cash x5000

POST YOUR CLAIM TO

Allocations UK
PO Box 78
Ross-on-Wye
Herefordshire
HR9 9ZU

A year's supermarket shopping at a supermarket[1] of your choice up to £5,000 all inclusive or £5,000 cash. A year's utility bills[2] (gas and electricity) paid up to £1,000 including all associated costs or £1,000 in cash. A year's mobile phone contract[3] (all networks) plus calls paid up to £500 inclusive or £500 in cash. Claim costs will be refunded to winning claimants.

The prizes indicated are all allocated within this promotion. If you don't wish to receive further offers from us or other reputable companies write to 'Dept MPS' at the above address. McIntyre & Dodd Marketing Ltd t/a Allocations UK. Reg. Office: Green Heys, Walford Road, Ross-on-Wye, HR9 5QB. Reg. In England number 02415951 © 2012. www.mcintyreanddodd.com

Appendix C – An extract from a promotional letter (not the actual size):

Yours sincerely,

Sandra Jenkins
Customer Manager

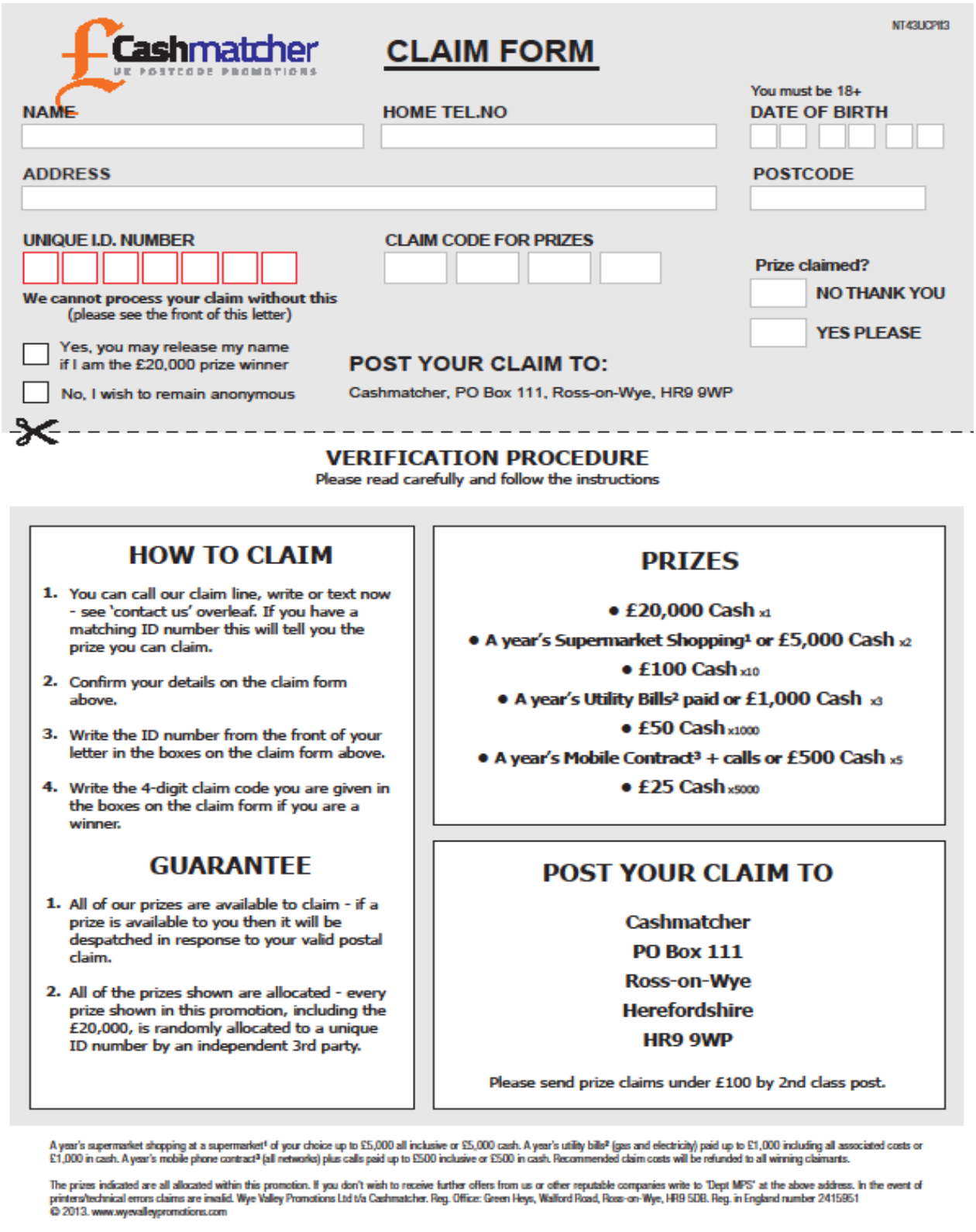
Contact us:

Call 09061 563130
or text SEND to 88222
or write and allow 28 days*

Calls cost £1.53 per minute from a BT landline. Max time 6 minutes. Min time 5mins 35secs. Max text cost £9.30, 6 x texts at £1.50 per text plus network charge. Calls from other networks and mobiles may cost more, please refer to your tariff. To find out if you've won, what you're entitled to and receive a Claim Code by post* you must write with your unique I.D. number and the code printed in the bottom right of this letter to Dept VC, Unclaimed Prize Rollout, PO Box 29, Ross-on-Wye, HR9 9WZ. All claim code requests must include a stamped self-addressed envelope and allow 28 days for delivery.

Closing date 30th September 2013. All claims must be received by the closing date to be valid. Open only to UK & CI residents aged 18 or over. Prizes limited to one prize per person. Winners list and rules available from 'Dept WR' at address below. Prizes despatched within 28 days. Queries? Contact Customer Services at Unclaimed Prize Rollout, PO Box 111, Ross-on-Wye, HR9 9WP and enclose a stamped self-addressed envelope, or on 01989 760538 with any technical queries (Mon-Fri 9am-5pm), prize information is not available. No purchase necessary. Postal claims only accepted. NT41UPRO14

Appendix D - An example of a "claim form" (not the actual size):



NT43UCP1t3

Cashmatcher
UK POSTCODE PROMOTIONS

CLAIM FORM

NAME

HOME TEL.NO

You must be 18+
DATE OF BIRTH

ADDRESS

POSTCODE

UNIQUE I.D. NUMBER

We cannot process your claim without this (please see the front of this letter)

CLAIM CODE FOR PRIZES

Prize claimed?
NO THANK YOU
YES PLEASE

Yes, you may release my name if I am the £20,000 prize winner

No, I wish to remain anonymous

POST YOUR CLAIM TO:
Cashmatcher, PO Box 111, Ross-on-Wye, HR9 9WP

VERIFICATION PROCEDURE

Please read carefully and follow the instructions

HOW TO CLAIM

1. You can call our claim line, write or text now - see 'contact us' overleaf. If you have a matching ID number this will tell you the prize you can claim.
2. Confirm your details on the claim form above.
3. Write the ID number from the front of your letter in the boxes on the claim form above.
4. Write the 4-digit claim code you are given in the boxes on the claim form if you are a winner.

GUARANTEE

1. All of our prizes are available to claim - if a prize is available to you then it will be despatched in response to your valid postal claim.
2. All of the prizes shown are allocated - every prize shown in this promotion, including the £20,000, is randomly allocated to a unique ID number by an independent 3rd party.

PRIZES

- £20,000 Cash x1
- A year's Supermarket Shopping[1] or £5,000 Cash x2
- £100 Cash x10
- A year's Utility Bills[2] paid or £1,000 Cash x3
- £50 Cash x1000
- A year's Mobile Contract[3] + calls or £500 Cash x5
- £25 Cash x5000

POST YOUR CLAIM TO

Cashmatcher
PO Box 111
Ross-on-Wye
Herefordshire
HR9 9WP

Please send prize claims under £100 by 2nd class post.

A year's supermarket shopping at a supermarket[1] of your choice up to £5,000 all inclusive or £5,000 cash. A year's utility bills[2] (gas and electricity) paid up to £1,000 including all associated costs or £1,000 in cash. A year's mobile phone contract[3] (all networks) plus calls paid up to £500 inclusive or £500 in cash. Recommended claim costs will be refunded to all winning claimants.

The prizes indicated are all allocated within this promotion. If you don't wish to receive further offers from us or other reputable companies write to 'Dept MPS' at the above address. In the event of printers/technical errors claims are invalid. Wye Valley Promotions Ltd t/a Cashmatcher. Reg. Office: Green Heys, Walford Road, Ross-on-Wye, HR9 5DB. Reg. in England number 2415951
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