



Tribunal meeting number 184 / Case 2

**Case reference:** 85964  
**Level 2 provider:** Golden Brand Inc (Seychelles)  
**Type of service:** “Hot Selfie Babes” adult content subscription service  
**Level 1 provider:** Veoo Ltd (UK)  
**Network operator:** All Mobile Network operators

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

#### BACKGROUND

The case concerned an adult content subscription service under the brand name Hot Selfie Babes operating on shared shortcode 89945 (the “**Service**”). Message logs showed three available tariffs for the Service: 6 months free then £3 per month, 9 months free then £4.50 per month, or 12 months free then £6 per month.

The Level 2 provider for the Service was Golden Brand Inc (the “**Level 2 provider**”). The Level 2 provider has been registered with PhonepayPlus since 27 July 2015. The Level 1 provider for Service shortcode 89945 was Veoo Ltd (“**Veoo**”).

Between 24 August 2015 and 9 March 2016, the Executive received 27 complaints concerning the Service. Complainants variously alleged that the Service charges were unsolicited.

#### The Service

The Service was stated to be an adult content subscription service offering an initial free trial period before charging per month. All complainants were subscribed to the 9 months free then £4.50 per month tariff.

The Level 2 provider confirmed that the Service commenced operation on 1 November 2014, and was still operational as at 19 April 2016. Veoo confirmed that the Service commenced operation on shortcode 89945 on 14 August 2015.

The Executive understood that the Service was to be entered via a mobile originating (“MO”) opt-in. The Executive noted that the message logs supplied by the Level 2 provider showed that the users of the Service opted in to the Service in November 2014, but were only charged in August 2015 through Veoo shortcode 89945 following a migration and after the initial free trial period.

The Level 2 provider supplied the following description of the promotion of the Service:

*“Club members gain access to an unlimited library of selfie-style photos.”*



*“The campaign started November 1st 2014 and ran heavily on mobile internet sites mainly adult sites and “lads online media”; we ran out of media spend on December 2nd 2014 but left the site live for late-comers to sign-up.”*

*“The service was signed up on one of the 3 short codes listed above [63063, 89800, and 89069] and then the users enjoyed their chosen free period, often up to 9 months before charges commenced. Users were migrated to 89945 and a migration advice message was sent to the users. Most users were still inside their free period when the migration took place.”*

The Level 2 provider advised that consumers opted into the service by sending the keyword ‘ENTER’ to shortcode 89069, 63063 or 89800. The Executive did not see any evidence to show any consumers being charged via these shortcodes. The Executive understood the Level 1 provider for each shortcode was IMImobile Europe Limited (“**IMImobile**”) for shortcode 89069, Fonix Mobile Limited (“**Fonix**”) for shortcode 63063 and Open Market Limited (“**Open Market**”) for shortcode 89800.

The Level 2 provider stated that it was not able to find the original free trial promotion from November 2014, but provided a reconstruction of what the free trial promotion would have looked like (**Appendix A**).

### Summary of complaints

The Executive received 27 complaints concerning the Service from 24 August 2015 to 9 March 2016. Complainants variously alleged that the Service charges were unsolicited.

A sample of complainant accounts is provided below:

I have no idea who this company is yet they have billed me twice for £4.50 per time. This £9 charge appeared on my last bill and I am unhappy with the outcome from phoning what I believe the company to be.

1. No promotion at all. A service I have absolutely not consented to receive texts from. 2. No idea as I have never given permission to receive texts. 3. Monthly. 4. £3.75 + VAT /month, totaling £18.75 + VAT. consumer called : consumer has received a partial refund - consumer got a bar code via text message and advised another charge has showed on his bill

this company has charged me 4 times nov,dec,jan,feb 15th , i dont know this company and have not subscribed to this or any other company,they have sent unsolicited messages and charged me £3.75 each time, i recall receiving the first one and sending stop,they didnt stop ! i had,nt realized you could be reverse charged by getting messaged , its ridiculous



I never signed up to this service, I thought the messages were just spam until I noticed on my bank statement my bill had increased. Using your number checker I contacted veoo they stop the service but said the service was being provided by a secondary company Golden Brand and I would need to contact them to get a refund. I called Golden Brand but could not get through to customer services. I couldnt find a web address and the number was coming up with a cleaning company. I have been getting billed monthly for the last 4 months to a total of £18.

### **The investigation**

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (13<sup>th</sup> Edition).

The Executive sent a breach letter to the Level 2 provider on 19 April 2016. Within the breach letter the Executive raised the following breaches of the PhonepayPlus Code of Practice (the "**Code**"):

- Rule 2.3.3 – Consent to charge
- Paragraph 4.2.4 – Provision of false information to PhonepayPlus
- Paragraph 3.12.5 – Subscription spend reminders
- Paragraph 3.4.1 – Failure of a provider to register with PhonepayPlus

The Level 2 provider responded on 6 May 2016. On 26 May 2016, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The complainants' accounts;
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider's responses including supporting documentation);
- Correspondence between the Executive and the Level 1 providers;
- Complainant message logs from the Level 2 provider;
- The Notice of Specified Service Charges and Duration of Calls published in accordance with paragraph 3.12.6 of the 13<sup>th</sup> Code of Practice; and
- The breach letter of 19 April 2016 and the Level 2 provider's response of 6 May 2016 including annexes.

## **SUBMISSIONS AND CONCLUSIONS**

### **ALLEGED BREACH 1**

#### **Rule 2.3.3 – Consent to Charge**

"Consumers must not be charged for premium rate services without their consent. Level 2 providers must be able to provide evidence which establishes that consent."



1. The Executive asserted that the Level 2 provider had breached rule 2.3.3 of the Code as consumers had been charged without their consent, and that the Level 2 provider had been unable to provide evidence which established that consent.

The Executive relied on correspondence exchanged with the Level 2 provider, the Level 1 providers, complainant accounts (as referenced in the 'Background' section above), and text message logs.

The Executive noted that the Level 2 provider advised opt-in to the Service was via a MO text with the keyword "ENTER" being sent to shortcode 89069, 63063 or 89800. The Executive understood the Level 1 provider for each shortcode was IMImobile for shortcode 89069, Fonix for shortcode 63063 and Open Market for shortcode 89800. The message logs provided by the Level 2 provider show opt-in to the Service from November 2014. The Level 2 provider advised that billing then started from August 2015 via shortcode 89945 which belongs to the Level 1 provider Veoo.

A summary of two example message logs is provided below:

#### Level 2 provider message log for mobile number \*\*\*\*\*143

The Level 2 provider advised \*\*\*\*\*143 opted into the service on 06/11/14 05:58 by sending the keyword "ENTER" to shortcode 63063. The Executive contacted Fonix who confirmed they had no record of any interaction for \*\*\*\*\*143.

#### Level 2 provider message log for mobile number \*\*\*\*\*003

The Level 2 provider advised \*\*\*\*\*003 opted into the service on 08/11/14 08:43 by sending the keyword "ENTER" to shortcode 89069. The Executive contacted IMImobile who confirmed there had been no MO interaction for \*\*\*\*\*003 to shortcode 89069, nor any other of their shortcodes.

The Executive sought to verify consent to charge for complainant MSISDNs by contacting the Level 1 providers for the shortcodes 89069, 63063 or 89800.

#### IMImobile response (shortcode 89069)

*"I can confirm that Golden Brand Inc have never been a client of IMImobile, nor have we had any dealings with the responsible person named on their Due Diligence report.*

*I have done an archive search on our database to see if there are any records of MO's or MT's for shared shortcode 89069, and can confirm that there is no record of any for the mobile numbers you provided from any of our clients."*



*"I can confirm that there has been no MO interaction from the below mobile number to shortcode 89069, nor any other of our shortcodes."*

Fonix response (shortcode 63063)

*"We don't contract with either of the companies mentioned in the attached emails ( [REDACTED] and Golden Brand Inc.)? Shortcode 63063 was run through us between approximately March 2014 and August 201[5] however it was used by an entirely separate company to those above.... The MSISDNs in the emails have not interacted with either shortcode."*

*"I have looked at the numbers below and none of them have any interactions with the shortcode 63063. I also can't see any MO opt-ins containing the word 'ENTER'.*

....

*The shortcode 63063 was a dedicated code used by a chat client.... We don't know and have never contracted with Golden Brand so we are not sure as to why they would be referencing Fonix."*

Open Market response (shortcode 89800)

*"... After looking into this I can see that this code originally belonged to Safari Mobile who have not been a premium customer of OpenMarket for over 2 years. Additionally 89800 was a shortcode used by Safari for only inbound traffic on behalf of the company [third party]."*

*OpenMarket Ltd currently has no relationship with either provider.*

*I believe Safari Mobile's current aggregator is Oxygen8 who should have all message logs. I'm sorry I couldn't be of more help."*

*"Thanks for the call. As discussed, for ... case ref.85960 it would be far better for you to request these logs from Safari Mobile who will be the direct L1 for these services and will hold the full logs for both services."*

Further to correspondence with Open Market, the Executive contacted Safari Mobile.

Safari Mobile response (shortcode 89800)

*"Shortcode 89800 was owned by Safari Mobile. It was used as a shared code. No premium rate services operated on the shortcode. Rather, the shortcode was used solely as a route by which wifi users could identify themselves for Payforit charging."*



*I've had a look at each of the MSISDN's mentioned below and cannot see either an MO sent into shortcode 89800 from the users MSISDN or a billed MT being sent from 89800 to the users phone."*

In response to the Executive's request for a copy of the contract with each Level 1 provider who it contracted with for the initial MO opt-ins to subscribe to the Service, the Level 2 provider stated:

*"We used company called American Mobile Limited ("AML") for advertising our service and for enabling our opt-ins. It is this contract I attach.*

*AML held the contracts with the master aggregators. AML were acting like a sub-Level 1 provider to Golden Brand. Golden Brand did not get involved directly with the aggregators.*

*But all opt-ins are Golden Brand owned for our service. We moved the customers over to our current supplier Veoo when AML went into administration."*

In response to questioning by the Tribunal regarding AML, the Executive confirmed that it was familiar with cases where there were value chains where one Level 1 provider contracts with another Level 1 provider, who in turn contracts with the Level 2 provider.

The Executive contacted Fonix, IMImobile and Safari Mobile to confirm if AML was a client in regards to the MSISDNs provided and their shortcode.

#### Fonix response (shortcode 63063)

*"We never heard of and have never contracted with AML. As before, the below numbers have interactions with Fonix but with different and unrelated services to Golden Brand/AML, of which the logs were provided*

*[list of seven complainant MSISDNS].*

*We have no record of any interactions at all with the remaining numbers:*

*[list of nine complainant MSISDNS]."*

#### IMImobile response (shortcode 89069)

*"I can confirm that AML did used to be a client of IMImobile, however, there are no records to or from AML for any of the numbers listed.*

*I can also confirm that none of the below numbers ever sent or received messages on shared shortcode 89069 from any other IMImobile/WIN client."*



#### Safari Mobile response (shortcode 89800)

*“To the best of my knowledge, our platform has never seen either of those two MSISDNs – via 89800 or via any other shortcode.*

*When you supplied those two MSISDNs one week ago, we were able to look up the matching ImpulsePay alias. From the ImpulsePay alias we now know that those two MSISDNs interacted in 2013 and 2014 with some websites we hosted. These websites are/were not owned by AML. And prior to one week ago, we only had the ImpulsePay aliases for these interactions and not the underlying MSISDNs themselves. See, if someone visits a site that we host, the PFI API (ImpulsePay) knows who they are (their MSISDN), but we never know who they are until they make a purchase (of content that is neither adult content or a competition).*

*I will have to check my records. It is likely that AML was a client in 2013/14, using our Payforit services. And all of our Payforit clients would have had use of 89800 (as it was a shared, MO-only shortcode used for identifying wifi users so that they could be billed via Payforit). However, I would think that the fact of this relationship is immaterial. AML did not get those two MSISDNs from us/our platform. They certainly did not get those two MSISDNs from 89800.*

*So, to answer your exact question: AML was NOT a client of Safari Mobile in regards to the two MSISDNs provided and shortcode 89800.”*

In light of the responses supplied by the Level 1 providers, and the evidence of the complainants, the Executive alleged that the information supplied by the Level 2 provider to show that the complainants opted into the Service by sending an MO via the specified shortcodes was false. The Level 2 provider relied on this as evidence of opt—in for the complainants and so the Executive asserted that there was no evidence that consumers opted into the Service.

For the reasons set out above, the Executive asserted that the Level 2 provider did not have consent to charge complainants. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of rule 2.3.3 of the Code.

2. The Level 2 provider admitted the alleged breach.

The Level 2 provider stated that its Service was a low cost £4.50 per month glamour site. The Level 2 provider stated that its competitors were operating at a four times higher price, and the Service was better value for the customer than any of its competition. The Level 2 provider stated all its users received their first 9 months of the Service free of charge.

The Level 2 provider noted that the 27 complaints received since August 2014, about a Service which had several thousand customers signed up to it, was a complaint ratio of 0.005%, which was an extremely low complaint ratio. The Level 2 provider submitted that the reason for the low complaint ratio was that they provided a fun, quality service with thousands of content items continuously refreshed, and users enjoyed the product and did not see a reason to complain



about a £4.50 cost for the Service. The Level 2 provider submitted that the complaint levels would have been in the hundreds by now if users thought the charge was unsolicited. The Level 2 provider submitted that the 27 customers had forgotten they signed up and made allegations about the charge being unsolicited. The Level 2 provider stated that any customer who complained was entitled to a no questions asked refund guarantee. The Level 2 provider stated that all customers were able to contact it and leave a message 24 hours a day. The Level 2 provider stated that any customer saying they could not get through was referring to the fact that it operated a voice-mail with call back, which was permitted.

The Level 2 provider reiterated that it did not hold a direct relationship with the Level 1 providers, so of course they had all come back saying they have not contracted with the Level 2 provider. The Level 2 provider asserted that the Executive had asked the wrong question to the Level 1 providers and by including the responses in the case had prejudiced the outcome against it.

The Level 2 provider asserted that some of the answers received back from the Level 1 providers were confusing at best, and the Executive did not make any further investigation into them – for example Fonix’s response in which it stated certain numbers had interactions with Fonix but with different and unrelated services to Golden Brand/AML. The Level 2 provider asserted that if the numbers have had interactions then they could be bona fide opt-ins. The Level 2 provider asserted that it was incumbent on PhonepayPlus to prove these opt-ins were not for its Services, and so far such proof had not been established. The Level 2 provider submitted that Safari Mobile’s response in which they stated *“it is likely that AML was a client in 2013/14, using our Payforit services. And all of our Payforit clients would have had use of 89800 ... however, I would think that the fact of this relationship is immaterial. AML did not get those two MSISDNs from us/our platform. They certainly did not get those two MSISDNs from 89800”* was conjecture and should not be relied upon in any kind of evidence. In addition, the Level 2 provider submitted that the answer from Open Market was totally inconclusive, and that they were making suppositions that cannot be relied upon in evidence. The Level 2 provider submitted that these answers were so confusing they could not really be relied upon in evidence, and asked that they be struck out from the case, because their inclusion prejudiced the outcome against it.

Further, the Level 2 provider submitted that the Tribunal could not be sure that the Level 1 providers were returning the correct information. In the case of IMI mobile, the Level 2 provider submitted that it could not be sure that the “archive” database search had been carried out correctly. The Level 2 provider submitted that if the information has been archived and was not present on the live system, this opened up the possibility for errors occurring.

The Level 2 provider stated that at all times it was reliant on AML for the collection of its opt-ins and it outsourced this process to AML. It had provided contracts to the Executive to prove this. The Level 2 provider stated that it did not directly control this process, but relied on the data it was supplied in good faith. Furthermore, AML were no longer in business so it could not go back to question them on the specifics of the allegations.





The Level 2 provider stated that, while it could present the argument that the Executive had not established sufficient evidence that the opt-ins provided could not have consented to the charges, it was prepared to accept the allegation made under Rule 2.3.3, primarily because it had been unable to go back to its source, AML and obtain more evidence, for reasons outside of its control.

3. The Tribunal considered the Code and all the evidence before it.

The Tribunal noted the Level 2 provider's stated reasons for why it could not provide evidence of valid consents for consumers. However, in the absence of supporting evidence, the Tribunal could not accept this excuse. In any event, the Tribunal noted that these facts would not excuse a Level 2 provider responsible for billing consumers from its obligation to hold valid consumer consent before billing.

In the circumstances, the Tribunal did not accept the Level 2 provider's challenges to the veracity of the Level 1 providers' evidence about consumer opt-ins via the relevant shortcodes.

Separately, the Tribunal commented that it could not give any significant weight to evidence of promotional material which the Level 2 provider had reconstructed from its recollections some time after the event.

The Tribunal noted that the Level 2 provider had stated that opt-ins for the Service were gathered via consumer MOs to shortcodes 63063, 89069 and 89800, but that the Level 1 providers responsible for those shortcodes stated they had not contracted with the Level 2 provider nor AML in respect of these shortcodes for the Service. Having considered this evidence, the Tribunal concluded that there had been no valid consumer consents on those shortcodes to be charged in respect of the Service.

Consequently, having considered the reasons advanced by the Executive and the Level 2 provider's admission, the Tribunal found that the Level 2 provider had charged consumers without their consent and had not provided evidence which established consumers' consent to be charged for the Service. Accordingly, the Tribunal upheld a breach of rule 2.3.3 of the Code.

#### **Decision: UPHELD**

#### **ALLEGED BREACH 2**

##### **Paragraph 4.2.4 – Provision of false information to PhonepayPlus**

"A party must not knowingly or recklessly conceal or falsify information, or provide false or misleading information to PhonepayPlus (either by inclusion or omission)."

1. The Executive asserted that the Level 2 provider breached rule 4.2.4 of the Code as information supplied by the Level 2 provider purporting to show consumers' MO opt-in to the Service was false.



As noted in the alleged breach of paragraph 2.3.3, MO opt-in information supplied by the Level 2 provider, which purported to demonstrate that consumers opted-in to the Service, was false.

As noted in the alleged breach of rule 2.3.3, the Executive sought verification from the Level 1 providers IMI mobile, Fonix Mobile and Safari Mobile for their respective shortcodes 89069, 63063 and 89800, if they had a record of the MO opt-in details provided by the Level 2 provider. IMI mobile, Fonix Mobile and Safari Mobile all confirmed they had no record of any MO opt-in for the MSISDNS supplied. The Executive submitted that as the MOs were stated to be to shortcodes operated by those Level 1 providers (and, if they were sent, logically must have been received via the Level 1 providers' platform to activate a subscription), the Level 1 providers would have a record of the MOs if they had been sent.

The Executive noted that the Level 2 provider did not register with PhonepayPlus as a Level 2 provider until 27 July 2015, shortly before the complainants began to be charged, but over 8 months after their purported MO opt-ins. The Executive also noted that it would not have been permissible to operate a sexual entertainment service using shortcode 63063, as this was not a shortcode designated for this purpose by Ofcom.

As referenced earlier in the alleged breach of rule 2.3.3, the Level 2 provider had supplied MO opt-in details. However, taking into account the responses received from the Level 1 providers, and the complaints, the Executive asserted that the Level 2 provider had supplied false MO opt-in information. The Executive asserted that by providing artificial opt-ins, the Level 2 provider had attempted to persuade the Executive that it had consent to charge and had not sent unsolicited charges.

In response to questioning by the Tribunal, the Executive confirmed that they did not have any evidence which supported the Level 2 provider's assertion that AML had provided the logs to the Level 2 provider. The Executive noted that they had seen a contract between AML and the Level 2 provider. The Executive noted that the evidence of the opt-ins had been provided separately, on documents without a header. The Executive noted that when it had checked, it had seen evidence of service content at the URL provided by the Level 2 provider. This may have been present in both "free" and "billed" periods.

The Executive asserted that, for all the reasons stated above, the Level 2 provider had provided false or misleading information to PhonepayPlus during the Executive's investigation into the Service. Accordingly, the Executive asserted that the Level 2 provider had breached paragraph 4.2.4 of the Code.

2. The Level 2 provider denied the alleged breach. The Level 2 provider submitted that the allegation was extremely serious and must be backed up with significant evidence in order to be proven.

The Level 2 provider asserted that it was incorrect to state that *"IMI mobile, Fonix Mobile and Safari Mobile all confirmed they had no record of any MO opt-in for the MSISDNS supplied"*,



because both Fonix and Safari have indicated they have activity on their systems for some of the MSISDNS but were unable to elaborate and were not requested to do so by the Executive. The Level 2 provider referred to its submissions in relation to the breach of rule 2.3.3. and submitted that the evidence provided by some of the Level 1 providers was so weak it could not be relied upon in evidence for such a serious allegation.

The Level 2 provider submitted that it had not knowingly furnished false information. The Level 2 provider furnished the information that was provided to it by its “sub-Level 1 provider” AML. It had accepted this information in good faith. The Level 2 provider submitted that the Executive had not proved that it had knowingly furnished false opt-ins. The Level 2 provider submitted that its contracting with AML and placing trust in them was not reckless at the time.

The Level 2 provider stated that it had not had opportunity to cross-check the facts with AML since they were no longer trading, and submitted that this did not make its sharing of the opt-ins it had with the Executive in any way reckless.

Subject to its admission of a breach of Rule 3.4.1, the Level 2 provider submitted that at all times of providing a premium rate service it had been registered.

3. The Tribunal considered the Code and all the evidence before it.

The Tribunal referred to its previous findings pursuant to Code rule 2.3.3, and the consumer complaints, and found that the evidence of opt-ins which had been supplied to the Executive by the Level 2 provider was false. The Tribunal did not find that there was sufficient evidence that it was the Level 2 provider’s intention to supply false evidence to the Executive. Noting that it would have been easy to take reasonable steps to verify if the opt-ins for complainants were supported by the Level 1 providers, the Tribunal did find that the Level 2 provider had been reckless in providing this false information to the Executive.

Consequently, the Tribunal was satisfied, on the balance of probabilities, for the reasons advanced by the Executive, that the Level 2 provider had recklessly provided false and misleading information to the Executive. Accordingly, the Tribunal upheld a breach of paragraph 4.2.4 of the Code.

**Decision: UPHELD**

### **ALLEGED BREACH 3**

#### **Paragraph 3.12.5 – Spend reminders**

“Any reference to compliance with the rules or obligations under this Code shall include compliance with all specified amounts, call durations and actions set by PhonepayPlus under paragraph 3.12.1. A breach of any specified amount, duration or action set under that paragraph shall be a breach of the Code.”



1. The Executive asserted that the Level 2 provider had acted in breach of paragraph 3.12.5 of the Code as once monthly billing started, message logs showed either no subscription reminder messages, or a monthly reminder being sent after charges had been incurred for a month or more.

The Executive referred to paragraph 3.12.1 of the Code which stated:

*“PhonepayPlus may, in relation to the service categories set out in paragraph 3.12.2 below, specify:*

- a) the service charges which may be spent per call or calls taken together in any 24 hour period or monthly billing cycle*
- b) the duration permitted for a call or calls to a service in any specified time period,*
- c) the actions which must be taken at specified intervals, or after specified service charges or call duration have been reached, including but not limited to:*
  - i. The provision of a spend or call duration reminders;*
  - ii. The immediate termination of the service after provision of a spend or call duration reminder unless the consumer positively confirms a wish to continue to use the service;*
  - iii. The immediate termination of the service.”*

The Executive also referred to the Notice of Specified Service Charges and Duration of Calls published in accordance with paragraph 3.12.6 of the 13th Code of Practice. The Notice at paragraph 8.2. specifies that:

*“...for all subscription services, once a month, or every time a user has spent £20.45 (inclusive of VAT) if that occurs in less than a month, the following information must be sent free to subscribers:*

- (i) The name of the service;*
- (ii) Confirmation that the service is subscription-based;*
- (iii) What the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent;*
- (iv) The charges for the service and how they will or can arise;*
- (v) How to leave the service; and*
- (vi) Level 2 provider contact details. “*

The Executive relied on the message logs supplied by the Level 2 provider. A summary of two example message logs is provided below:

Level 2 provider message log for mobile number \*\*\*\*\*143



The Executive noted that the Level 2 provider message log for mobile number \*\*\*\*\*143 showed that during the free trial period of the Service, quarterly subscription reminder messages were sent to the consumer (as below), and not monthly subscription reminder messages. Further, the Executive noted that the quarterly subscription reminder messages did not contain all the information required by the Code, including that the Service was subscription based, the billing period and the charges for the Service.

“06/11/14 05:59 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit 0207 1172790 supporthotselfiebabes.com”

“20/02/15 22:29 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit 0207 1172790 supporthotselfiebabes.com”

“26/05/15 22:31 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit. Yr billing period starts in 3 months. 0207 1172790”

The Executive further noted that the Level 2 provider log showed that once monthly billing started on 21 August 2015 after the free trial period had ended, a subscription / spend reminder message was only sent on 15 December 2015, nearly 4 months after the initial charge had been incurred.

“15/12/15 21:15 Free Msg Hot Selfie Babes 1<sup>st</sup> 9 months free then £4.50 a month. Unsub rply STOP. 02071172790 supporthotselfiebabes.com.”

#### Level 2 provider message log for mobile number \*\*\*\*\*003

The Executive noted that the Level 2 provider message log for mobile number \*\*\*\*\*003 showed that during the free trial period of the service quarterly subscription reminder messages were sent to the consumer (as below), and not monthly subscription reminder messages. The Executive noted that the quarterly subscription reminder messages did not contain all the information required by the Code, including that the Service is subscription based, the billing period and the charges for the service.

“08/11/14 08:44 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit 0207 1172790 supporthotselfiebabes.com”

“20/02/15 22:39 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit 0207 1172790 supporthotselfiebabes.com”

“26/05/15 22:40 click <http://bit.ly/1D57KHR> for latest photo-- - sharing listings or reply STOP to quit. Yr billing period starts in 3 months. 0207 1172790”



The Executive further noted that the Level 2 provider log showed that once monthly billing started on 21 August 2015 after the free trial period had ended, a subscription / spend reminder message was only sent on 15 January 2016, nearly 5 months after the initial charge had been incurred.

“15/01/16 21:59 Free Msg Hot Selfie Babes £4.50 a month. Unsub rply STOP. GB 02071172790”

The Executive also relied on further examples of message logs supplied by the Level 2 provider in respect of this conduct.

The Executive noted that the obligation to send subscription reminders was also present prior to 1 July 2015 pursuant to the 12<sup>th</sup> edition of the Code of Practice, rule 2.3.12(d). However in light of the evidence referred to in the other above alleged breaches, the Executive stated that it did not separately allege a breach of Code rule 2.3.12(d).

For the reasons set out above the Executive asserted that the Level 2 provider did not comply with the Code in relation to spend reminder messages for subscription services. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of paragraph 3.12.5 of the Code.

2. The Level 2 provider admitted the alleged breach. The Level 2 provider stated that this was an oversight on its part as it had not understood the rules on monthly reminders when it launched the Service. The Level 2 provider stated that when it tried to implement the reminders later on the warning of its billing provider Veoo, it encountered technical challenges putting them into place since it had no system developer.
3. The Tribunal considered the Code and all the evidence before it. Having considered the reasons advanced by the Executive and the Level 2 provider’s admission, the Tribunal found that the Level 2 provider had failed to comply with the Code requirement in relation to spend reminder messages for subscription services. Accordingly, the Tribunal upheld the breach of paragraph 3.12.5 of the Code.

#### **Decision: UPHELD**

#### **ALLEGED BREACH 4**

##### **Paragraph 3.4.1 – Failure to register with PhonepayPlus**

“Before providing any premium rate service all Network operators, Level 1 and Level 2 providers must register with PhonepayPlus subject only to paragraph 3.4.3 below.”

1. The Executive submitted that the Level 2 provider was not registered with PhonepayPlus for a period of time when the Service was operational and was accordingly in breach of the obligation set out in paragraph 3.4.1 of the Code.



The Executive noted that:

- i. From 1 September 2011, all Level 2 providers must register (or re-register if they had previously been “registered” under Code 11) with PhonepayPlus prior to providing any premium rate services.
- ii. Code 12 registration must be renewed annually (paragraph 3.4.6 of the Code).
- iii. PhonepayPlus fully publicised registration Code 12 requirements, both to individual Network operators and providers and Industry wide, prior to September 2011 and on an on-going basis since that time. The current requirements are clearly outlined on the PhonepayPlus website (<http://www.phonepayplus.org.uk/for-business/register-or-renew-your-registration-with-phonepayplus>).

The Executive noted that the Level 2 provider had stated that it had operated the Service from 1 November 2014. However, the Registration Scheme database showed that the Level 2 provider registered with PhonepayPlus on 27 July 2015. Therefore, based on the Level 2 provider’s statements, for 8 months and 26 days the Level 2 provider was not registered on the Registration Scheme as required in the Code.

The Registration Scheme provides details of all PRS providers operating in the UK and is in place to benefit consumers, by giving them information about providers which operate premium rate services (for example customer care telephone numbers), to benefit PRS providers by assisting them with their due diligence, and to assist PhonepayPlus in taking targeted enforcement action at providers causing consumer harm. Providers which therefore fail to register with the Registration Scheme undermine the ability of the Registration Scheme to achieve these goals.

In response to questioning by the Tribunal, the Executive confirmed that PhonepayPlus guidance recommended that Level 1 providers, as part of their due diligence obligations under the Code, check whether a Level 2 provider was registered. The Executive noted that, by the time the Level 2 provider contracted with Veoo, it had registered. The Executive did not know whether Veoo had checked with the other Level 1 providers (who were its competitors) as to whether the Service opt-ins were valid.

In response to questioning by the Tribunal, the Executive confirmed that it was its position that a provider was required by the Code to register with PhonepayPlus even where its activities at that stage were limited to promoting and running a Service during a free trial period, if the Service would commence premium rate billing at the end of that free trial period.

Accordingly, the Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.1 of the Code.

2. The Level 2 provider admitted the alleged breach. It accepted that its failure to register as a service provider until shortly before it commenced its premium service was an error.



The Level 2 provider stated that at all times of providing a premium rate service it had been registered, noting that its users received their first 9 months free of charge. The Level 2 provider accepted that in this respect it had misread or misunderstood the requirement to be registered when providing a service that had a 9 month free period. The Level 2 provider requested some leniency since it did in fact register before any consumer billing started.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Level 2 provider had admitted the breach, on the basis that it had misunderstood the requirement to be registered when providing a service that had a 9 month free period, and had in fact registered before any consumer billing started.

The Tribunal noted that the Level 2 provider had supplied a contract between it and AML dated 1 September 2014 “for its opt-ins,” with a required start date of 1 September 2014. The Tribunal considered that the Level 2 provider was aware it was operating a premium rate service from this point and should have registered with PhonepayPlus, even if the initial period was a free trial period.

Consequently, having considered the reasons advanced by the Executive and the Level 2 provider’s admission, the Tribunal found that the Level 2 provider had failed to register with PhonepayPlus as required by the Code. Accordingly, the Tribunal upheld a breach of paragraph 3.4.1 of the Code.

**Decision: UPHELD**

## SANCTIONS

### Initial overall assessment

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

#### Rule 2.3.3 – Consent to charge

The initial assessment of rule 2.3.3 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Level 2 provider charged consumers without having reliable evidence of consent to charge; and
- The case had a clear and highly detrimental impact on consumers.

#### Paragraph 4.2.4 - Provision of false information to PhonepayPlus

The initial assessment of paragraph 4.2.4 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:





- The Level 2 provider recklessly supplied false and misleading information to PhonepayPlus.

### Paragraph 3.12.5 – Spend Reminders

The initial assessment of paragraph 3.12.5 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- Spend reminders were entirely missing from service message flows; and
- The Level 2 provider had admitted that it had been unable to implement reminders even after being warned due to it having no system developer.

### Paragraph 3.4.1 – Failure to register with PhonepayPlus

The initial assessment of paragraph 3.4.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Level 2 provider had unreasonably failed to register its organisation with PhonepayPlus for an extended time period.

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

### Final overall assessment

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

- The Level 2 provider had admitted the majority of the alleged Code breaches.

The Level 2 provider's evidenced revenue in relation to the Service in the period from August 2015 to January 2016 was in the range of Band 4 (£100,000 to £249,999).

Having taken into account the circumstances of the case, 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 £50,000; and



- a requirement that the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund. Refunds should be directly credited to the users' mobile accounts and the Level 2 provider must provide evidence to PhonepayPlus that the refunds have been made.

The Tribunal commented that, given its findings that no consumers had opted into the Service on shortcodes 63063, 89800, or 89069, the fine would normally have been as a minimum the level of the Level 2 provider's gross revenue for the Service, but the amount had been reduced in light of the universal refund sanction imposed, and the Level 2 provider's admissions of breaches.

**Administrative charge recommendation:** **100%**

Appendix A



**HOT BABES**

**JOIN NOW and get 9 MONTHS FREE!!!!**

Thereafter this service is billed at £4.50 per month.

To end subscription at any time send **STOP to 63063**

**text ENTER to 63063**

**Updated daily with the hottest selfies from the UK and around the world!**

Helpline: 0207 1172790  
Email: [support@hotsselfiebabes.com](mailto:support@hotsselfiebabes.com)

Hot Selfie Babes is a image content service which allows consumers to browse images via mobile. You must be 18+ to use this service and have prior permission from the bill payer. To protect your privacy and the privacy of others never share any personal information whilst using Hot Selfie Babes. After 9 months free trial service charged at £4.50 once per month via premium SMS, plus standard network charges. All women displayed on this site are over 18yrs old. We reserve the right to contact individuals with occasional free promo info texts. To stop promo msgs or stop the service then just text stop to 63063

Hot Selfie Babes is a trading style of Golden Brand Inc. 8 Global Gateway, Rue de la Perle Mahe, Providence, Seychelles.