

Tribunal meeting number 179 / Case 1

Case reference: 72405
Level 2 provider: TotalSolve Limited (UK)
Type of service: Glamour Hunnies glamour video subscription service
Level 1 provider: IMImobile Europe Limited (UK); Wireless Information Network Limited (UK); Veoo Ltd (UK); Zamano Solutions Limited (Ireland)
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 a glamour video subscription service, charged at £3 per week, operating on dedicated shortcodes 87111 and 88108, and shared shortcodes 80252, 82999, 85878, and 88150 (the "**Service**").

The Level 2 provider for the Service was TotalSolve Limited (the "**Level 2 provider**"). The Level 2 provider has been registered with PhonepayPlus since 3 October 2012. From September 2013 the Level 1 provider for Service shortcode 80252 and shortcode 87111 was IMImobile Europe Limited ("**IMImobile**") (and subsequently Wireless Information Network Ltd ("**WIN**"); a contract between the Level 2 provider and WIN for shortcodes 80252 and 87111 was entered into on 1 March 2015). The Level 1 provider for Service shortcodes 82999, 88150 and 88108 was Veoo Ltd ("**Veoo**"). The Level 1 provider for Service shortcode 85878 was Zamano Solutions Limited ("**Zamano**").

Between 16 March 2015 and 17 December 2015, the Executive received 181 complaints concerning the Service. Complainants variously alleged that the Service charges were unsolicited.

The investigation

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

The Executive sent a breach letter to the Level 2 provider on 11 January 2016. Within the breach letter the Executive raised the following breaches of the PhonepayPlus Code of Practice (the "**Code**"):

- Paragraph 4.2.4 – Provision of false information to PhonepayPlus
- Rule 2.3.3 – Consent to charge
- Paragraph 3.4.12 – Failure to register a number

The Level 2 provider responded on 25 January 2016. On 4 February 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;
- Correspondence between the Executive and a Mobile Network operator's verifier;
- Correspondence between the Executive and a Third Party Verifier;
- Complainant message logs from the Level 2 provider, Level 1 provider and Mobile Network operator's verifier;
- Complainant questionnaires and responses;
- The breach letter of 11 January 2016 and the Level 2 provider's response of 25 January 2016; and
- Further correspondence between the Executive and the Level 2 provider dated 26 January 2016, 28 January 2016 and 2 February 2016.

The Service

The Service was stated to be a glamour video subscription service charged at £3 per week. The Executive understood that consumers could enter the Service either via a mobile originating ("MO") opt-in or a wireless application protocol ("WAP") opt-in.

IMImobile confirmed that the Service commenced operation on Service shortcodes 80252 and 87111 in September 2013.

Veoo confirmed that the Service commenced operation on Service shortcode 88150 in January 2014, on Service shortcode 82999 in April 2015 and on Service shortcode 88108 in July 2015.

Zamano confirmed that the Service commenced operation on Service shortcode 85878 in November 2013.

At the time of the adjudication the Service was operational.

The Executive noted from complainant message logs supplied by the Level 2 provider that some users of the Service opted in to the Service on Zamano shortcode 85878; some of those users were then in turn migrated to Veoo shortcodes 88150, 82999 and / or 88108. The Executive noted that the partial user migration from shortcode 85878 to shortcodes 88150, 82999 and 88108 was staggered over a period of time.

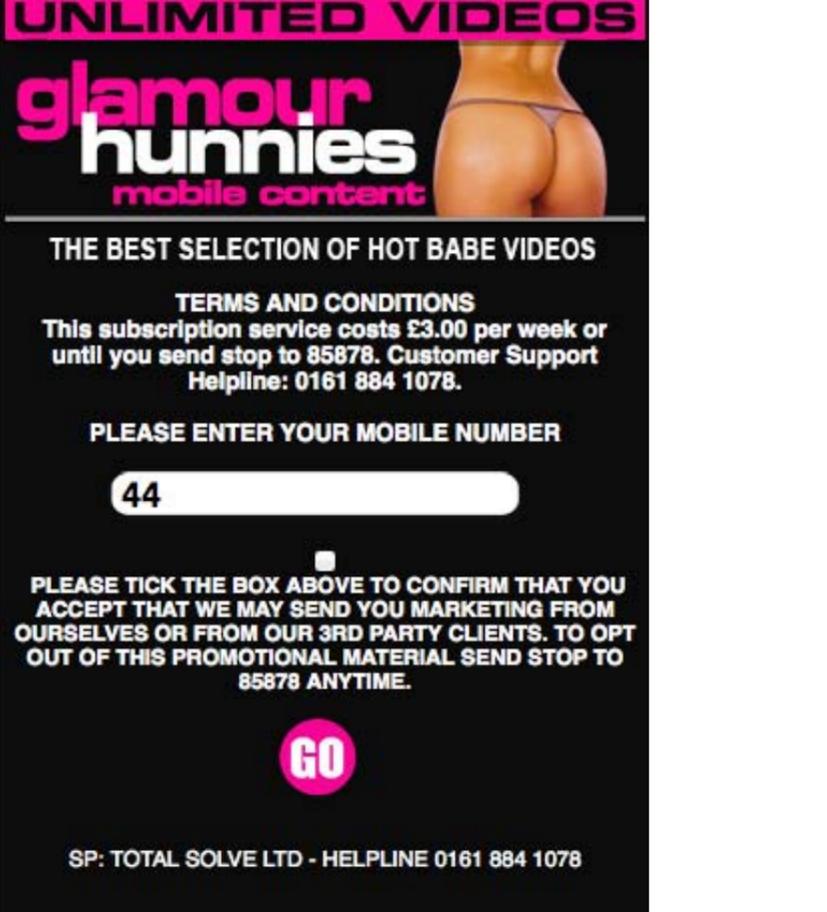
In addition to the above shortcode Service opt-in flow, the Executive noted from complainant message logs that some users of the Service opted in on IMImobile shortcode 87111, and that those users were migrated to IMImobile shortcode 80252 in January 2015.

The Level 2 provider supplied the following summary of the promotion and operation of the Service:



"The client is requested to input their mobile number on to the site after clicking on a banner (See attached Sample Banner). Once they do this, they receive a wap push message to their handset with our wap site, once the client clicks on the wap link they are taken to our wap site, this is where they are fully informed of the terms of the service, which also include the pricing and an exit route, they are again prompted to click on a link to subscribe, once they do this, they are then sent a join message welcoming them to the subscription service followed by billed message/s. the client is subsequently billed on a weekly basis and reminded that they are subscribed to the service once per month until they exit out."

In addition to the above statement, the Level 2 provider supplied the below service flow:

<p>Banner Clicked [Screen Shot 1]</p>	
<p>Wap Site Viewed [Screen Shot 2]</p>	



Number Entered [Screen Shot 3]	
Wap Push Message with PIN Received	

Wap Push Opened

[Screen Shot 4]

UNLIMITED VIDEOS

glamour hunnies
mobile content

CLICK ON ANY IMAGE BELOW TO WATCH VIDEO

UNLIMITED VIDEOS

glamour hunnies
mobile content

This involves a subscription service which costs £3 per week or until you send stop to 85878.
HELPLINE: 0161 884 1078

CLICK HERE TO VIEW

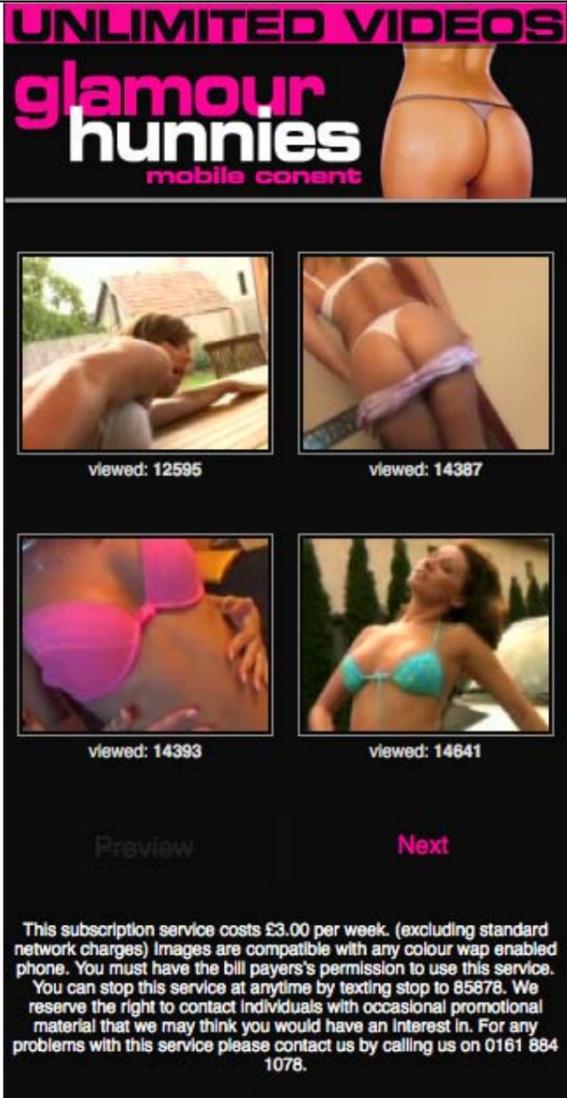
Views: 11184 Views: 9889

TERMS & CONDITIONS

This subscription service costs £3 per week. (excluding standard network charges) Images are compatible with any colour wap enabled phone. You must have the bill payers's permission to use this service. You can stop this service at anytime by texting stop to 85878. We reserve the right to contact individuals with occasional promotional material that we may think you would have an interest in. For any problems with this service please contact us by calling us on 0161 884 1078.

Service Provided by TotalSolve Ltd.



<p>Subscription Activated</p> <p>[Screen Shot 5]</p>	
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The Executive noted that all complaints received related to WAP opt-in. As the Executive's investigation focused on this method of entry to the Service, the Level 2 provider was not requested to provide an explanation as to how consumers would opt-in to the Service via the MO route.

Complaints

The Executive had received 181 complaints concerning the Service since 16 March 2015. Complainants variously allege that the Service charges were unsolicited.

A sample of complainant accounts is provided below:

“Service Description: Received text saying I was subscribed at £3 a week for service - wanted it stopped

Summary of Complaint: I did not subscribe to this and want it stopped”

“I do not know, they are billing my account £2.50 every week and as far as I know I gave never signed up for it, whatever it is.

As above I never, as far as I am aware signed up for any service that costs £2.50 a week for a 0 second phone call that I am not making. If I did I want to stop it now. But that seems to be hard to do. How is this legal? I hope it is not, because as far as I am concerned whoever runs this company is stealing my money. [sic]”

*“consumer has been getting charges for text messages
consumer does not know what has lead to her getting the charges
consumer's husband has been deleting the messages.
82999 - Veoo*

consumer's husband uses the phone, no one else uses the phone.

this has been going on for a few months and this months charges came up to at least £55

Husband has been replying STOP to the short codes but the messages has not stopped. [sic]”

“Sending me text message I never opt and never opened them. Charged 9 pound last month and send stop message but still getting the message. Call the operater but still no response.thx [sic]”

“I have no idea what this service is. I had been receiving messages but deleting them as i had assumed they were spam. My most recent phone bill has shown i have been charged £3 a time for them. It was only on the most recent message i realised i was gettign charged. I have never signed up to any services.

I didn't sign up to anything and so far have been billed £15.”

Complainant text message logs

During the preliminary investigation, the Level 2 provider supplied text message logs for 174 out of the 181 complaints received. The Executive noted that the text message logs supplied by the Level 2 provider generally showed that:

- Complainants purportedly opt-in to the Service in the time period July – October 2014 (the “**Opt-in Period**”);
- there was a high failure rate of chargeable Service messages following the Opt-in Period on Service shortcodes supplied by IMIMobile and Zamano; and
- the delivery status for Service messages was unclear.

The Executive noted that in these logs, failed messages generally occurred from the date of the complainants’ purported opt-in. The failed messages were later generally followed by successfully delivered chargeable messages.

An example message log can be found at **Appendix A.**

Complainant responses to the Executive’s questionnaire



In light of the high number of failed messages identified by the Executive in the complainants' text message logs and the possible explanations offered by the parties in the value chain for the failed messages, on 3 December 2015 the Executive contacted 165 complainants (the total number of complaints received by PhonepayPlus about the Service as at that date who supplied email addresses) with the following series of questions:

"Is the mobile phone that received the chargeable text messages on contract or pay-as-you-go?"

If the mobile phone that was charged is pay-as-you-go, please advise whether you regularly / always had more than £3 credit on your mobile phone?

Please advise whether the mobile phone that received the chargeable messages was regularly switched off and/or had no mobile signal for long periods of time (i.e. for more than several days)?

Please advise whether you transferred your mobile number between mobile telephone companies in the six months before you received the chargeable text messages? If yes, please confirm if you experienced long periods with no signal and/or difficulty in sending and receiving text messages."

In addition the complainants were sent a copy of Screen Shot One, Screen Shot Two, Screen Shot Three and Screen Shot Four (as shown as above) and asked whether they recalled viewing and/or interacting with it or a similar service promotion. As at 11 January 2016, the Executive had received responses to the questionnaire from 56 complainants. A breakdown of the responses received from complainants is set out below :

Question	Response	Comments
Is the mobile phone that received the chargeable text messages on contract or pay-as-you-go?	51 respondents confirmed they were on contract 4 respondents confirmed they were on pay-as-you-go 1 respondent did not respond to this question	
If the mobile phone that was charged is pay-as-you-go, please advise whether you regularly / always had more than £3 credit on your mobile phone?	Of the 4 respondents who stated they were on pay-as-you-go, 3 advised they always had at least £3 credit on their phone	
Please advise whether the mobile phone	53 respondents stated that	3 respondents did



<p>that received the chargeable messages was regularly switched off and/or had no mobile signal for long periods of time (i.e. for more than several days)?</p>	<p>the mobile phone that was receiving chargeable messages was not regularly switched off and / or had no mobile signal</p>	<p>not respond to this question</p> <p>3 respondents advised that they had experienced periods with no telephone signal and / or their mobile phone was switched off for long periods of time</p>
<p>Please advise whether you transferred your mobile number between mobile telephone companies in the six months before you received the chargeable text messages? If yes, please confirm if you experienced long periods with no signal and/or difficulty in sending and receiving text messages?</p>	<p>48 respondents advised they had not transferred their mobile number between mobile telephone companies</p>	<p>2 respondents did not respond to this question</p> <p>6 respondents advised that they had transferred their mobile numbers between mobile telephone companies.</p> <p>Of those 6 respondents 5 stated that they did not experience long periods of no signal and / or difficulty in sending and receiving text messages.</p> <p>Of those 6 respondents 1 did not clarify if they had experienced long periods of no signal and / or difficulty in sending and receiving text messages</p>



Please advise if you recall viewing and interacting with the attached, or a similar, promotion?	53 respondents advised that they did not view / interact with the Service promotion	3 respondents did not respond to this question
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Previous complaint resolution procedure

On 10 December 2014 the Executive issued a set of required actions (the “**Action Plan**”) under the Track 1 procedure. Within the Action Plan the Executive alleged a breach of rule 2.3.3 for the failure of the Level 2 provider to hold robust evidence which verified opt-ins to the Service. On 9 January 2015 the Level 2 provider responded to the Action Plan advising it had implemented the Action Plan and engaged the services of a third party verifier: within its response it stated “*[we] recently went live with full online GoVerifyIt of which we can confirm all our wap opt in services now utilize*”.

The breach allegations raised in this case relied on evidence gathered from complainants who first contacted the Executive after the Track 1 procedure was finalised.

PRELIMINARY ISSUES

The Executive, having considered the Level 2 provider’s response to the breach letter, applied to amend the allegation of a breach of para. 3.4.12(a) of the Code of Practice (12th Edition) to an allegation of breach of para. 3.4.14(a) of the Code of Practice (13th Edition) (“**the 13th Code**”), being the equivalent provision in that edition of the Code. The Level 2 provider confirmed its consent to this amendment in writing on 28 January 2016. The Tribunal accepted the application.

The Level 2 provider applied for the case to be adjourned from 4 February 2016 to another Tribunal date, because its preferred representative was unavailable due to an appointment on 4 February.

The Chair of the Tribunal carefully considered the written application, together with the Executive’s written response. Having done so, the Chair refused the application on 1 February. In reaching that decision, the Chair took into account the personal reasons for the preferred representative’s inability to attend the hearing, and balanced this against the fact that no explanation was given as to why no alternative representative was instructed given his unavailability. In any event, given the nature of the hearing (to allow the Level 2 provider to make informal representations), the Chair’s view was that any issues of clarification that the panel members may have may best be addressed directly by representatives from the Level 2 provider in question who should be encouraged to attend the Tribunal. The Chair also took account of the fact that the preferred representative still had ample opportunity to assist his client prior to the hearing. The Chair was mindful that cases should be dealt with expeditiously. Balancing all these factors, the Chair refused the application. The Chair noted that should the Level 2 provider have any further representations, it may make them at the hearing when they could be considered by the panel.



In subsequent correspondence dated 2 February 2016, the Level 2 provider submitted that judgment against it on the case had already been made because it received no comment on its recent adjournment request that would have given it an opportunity to make informal representations. The Level 2 provider noted that the breach letter stated that the 'Target Tribunal Date' may be 4 February 2016 but it is 'subject to change'. The Level 2 provider noted Rule 4.4.14 of the 13th Code stated that it would be "entitled to make informal representations" and noted that this was described as "(...) the Tribunal's opportunity to explore and ask questions to gain a fuller understanding of the issues involved and of the actions of the parties concerned". The Level 2 provider submitted that neither the Executive nor the Tribunal were keen or willing to gain fuller understanding of the Service. Referring to page 12 of the Investigations and Sanctions Procedure, the Level 2 provider submitted that a complete case report had not been produced in accordance with that procedure, because it was providing important information to the Tribunal on 2nd February 2016, as late as two days prior to Target Tribunal Date.

Prior to consideration of the case, the Tribunal considered the Level 2 provider's submissions. The Tribunal noted that the Level 2 provider had not attended (in person or by telephone) to make informal representations, nor had it arranged for alternative representation following the Chair's decision not to grant an adjournment. The Tribunal noted that the Chair had expressly encouraged the attendance of the Level 2 provider, and the Executive's various attempts to encourage the provider's attendance. The Tribunal also noted the Level 2 provider's lack of response to these attempts. The Tribunal decided to proceed with consideration of the case, noting that the Level 2 provider had voluntarily decided not to attend despite the Tribunal Chair and Executive's encouragement to do so.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

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 had breached paragraph 4.2.4 because message logs supplied by the Level 2 provider were false, in that failed chargeable Service messages listed in the Level 2 provider message logs were not sent (or attempted to be sent) to complainants.

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

The Executive noted that the complaints received by PhonepayPlus following the Track 1 procedure spanned the period March 2015 to December 2015. Further, it noted from complainant text message logs supplied by the Level 2 provider that the apparent opt-in date for those complainants was consistently shown in nearly all complainant message logs as occurring between July 2014 and October 2014 regardless of when the complaint was

received. The Executive noted that in the complainant message logs the date of the first successfully charged Service message was generally significantly later than the purported date of Service opt-in.

As set out in the 'Background' section above, the Executive noted that it was common for complainant text message logs to show several months of failed chargeable Service messages prior to the issuing of successfully charged Service messages. The Executive understood that consumers that only received failed messages following their opt-in would not have been charged. A summary of two example message logs is provided below:

Level 2 provider message log for mobile number *****425

The Executive noted that the Level 2 provider message log stated that the initial opt-in to the Service occurred on 5 September 2014. The subscription confirmation message listed in the message log on 5 September 2014 at 13:36 stated:

"FreeMsg:U have subscribed to Glamour Hunnies video service for £3 per week until u send stop to 85878. Help? 01618841078"

The Executive noted from the message log supplied by the Level 2 provider that the 'delivery status' of the chargeable Service messages were variously described as 'FAILED', 'BILLED' or 'SENT'. The Level 2 provider provided the following information regarding the delivery status of the chargeable Service messages

"Failed' status would mean that no positive delivery receipt has been received from Level 1.

'Billed' status would mean that there has been a positive delivery receipt received from Level 1.

'Sent' status would mean that it has not been defined by Level 1 whether message was delivered to user or not."

The Executive noted that following the subscription confirmation message entry in the message log, the status of all chargeable Service messages from Service shortcode 85878 was listed as either 'FAILED' or 'SENT'. Further, the Executive noted that the first chargeable Service message listed as 'BILLED' was shown as occurring on 18 July 2015, some ten months and 13 days after the purported opt-in date.

Level 2 provider message log for mobile number *****721

The Executive noted that the Level 2 provider log stated that the initial opt-in to the Service occurred on 30 August 2014. The subscription confirmation message listed in the message log on 30 August 2014 stated:



“FreeMsg:U have subscribed to Glamour Hunnies video service for £3 per week until u send stop to 85878. Help? 01618841078”

The Executive noted from the message log supplied by the Level 2 provider that the ‘delivery status’ of the chargeable Service messages were variously described as ‘FAILED’, ‘BILLED’ or ‘SENT’.

The Executive noted that following the subscription confirmation message entry in the message log, the status of all chargeable Service messages from Service shortcode 85878 was listed as either ‘FAILED’ or ‘SENT’. Further, the Executive noted that the first chargeable Service message listed as billed was shown as occurring on 9 May 2015, issued from Service shortcode 82999, some eight months and nine days after the purported opt-in date.

Level 2 provider message log for mobile number *****316

The Executive noted that the Level 2 provider log stated that the initial opt-in to the Service occurred on 20 September 2014. The subscription confirmation message listed in the message log on 20 September 2014 stated:

“FreeMsg: U have subscribed to Glamour Hunnies video service for £3 per week until u send stop to 87111. Help? 01618841078”

The Executive noted from the message log supplied by the Level 2 provider that the ‘delivery status’ of the chargeable Service messages were variously described as ‘FAILED’, ‘BILLED’, ‘SENT’ OR ‘ACCEPTED’.

The Executive noted that following the subscription confirmation message entry in the message log, the status of all chargeable Service messages from Service shortcode 87111 was listed as either ‘FAILED’, ‘SENT’ OR ‘ACCEPTED’. Further, the Executive noted that the first chargeable Service message listed as billed was shown as occurring on 6 December 2014, issued from Service shortcode 87111, some two months and 16 days after the purported opt-in date.

The Executive had directed the Level 1 providers to supply a sample of 39 complainant message logs. The Executive noted that, although the message logs provided by the Level 2 provider listed a purported opt-in on Service shortcode 85878 or Service shortcode 87111 followed by a series of failed messages, the Level 1 providers’ logs did not corroborate the vast majority of the failed Service message entries listed immediately after the purported Service opt-in listed in the Level 2 provider message logs.

The Executive noted that the Level 2 provider’s logs fell into three categories; (i) message logs which listed Service shortcode 85878 only, (ii) message logs which listed an opt-in on Service shortcode 85878 initially and then a migration to Service shortcode 88150 or



82999, and (iii) message logs which listed an opt-in on Service shortcode 87111 and then a migration to Service shortcode 80252.

The Executive noted that in the message log supplied by Zamano for mobile number *****425, the first chargeable Service message was listed on 18 July 2015; the message log also did not contain any failed chargeable Service messages.

The Executive noted that in the message log supplied by Zamano for mobile number *****721, no successful or failed chargeable Service messages were listed; the sole entry listed in the message log was a free to receive Service message listed on 7 May 2015. In the message log supplied by Veoo for mobile number *****721, the first chargeable Service message was listed on 9 May 2015 [the first chargeable Service message listed after the user of mobile number *****721 was migrated from Service shortcode 85878 to Service shortcode 82999].

The Executive noted that in the message log supplied by IMImobile for mobile number *****316, the first chargeable Service message was listed on 6 December 2015; prior to this date the message log did not contain failed chargeable Service messages.

In order to obtain further clarification on the message failure issue, the Executive had contacted Mobile Enterprise Ltd (the “**Verifier**”) which has access to mobile data held by the Mobile Network operator Vodafone Limited (“**Vodafone**”). The Verifier was sent a sample of 35 Vodafone complainant mobile numbers and was requested to supply message logs showing the interaction between the Service and the complainants’ mobile numbers.

The Executive noted from the message logs supplied by the Verifier that generally the first chargeable Service message occurred on the same date that successfully charged Service messages were shown in the Level 2 provider messages logs, and further, that failed messages were not listed in the period after the purported opt-in. For example the Verifier message log for mobile number *****425 listed the first chargeable Service message on 18 July 2015, the Verifier message log for mobile number *****721 listed the first chargeable Service charge on 9 May 2015 and the Verifier message log for *****316 listed the first chargeable on 6 December 2015.

The Executive noted that the Verifier had previously confirmed that all messages sent from the Service shortcode that charge or attempt to charge the consumer would appear in its text message logs. Similarly, IMImobile confirmed that all chargeable messages (attempted and successful) would appear in its text message logs. Zamano confirmed that where attempts to charge consumers were successfully transmitted to it, those attempts to charge consumers would appear in message logs supplied by Zamano (as noted in the ‘Background’ section above, unsuccessful charged Service messages were largely confined to Service shortcodes supplied by IMImobile and Zamano; unsuccessful Service messages were generally not a feature on Service shortcodes supplied by Veoo). In light of



this, the Executive asserted that the failed attempts to send the chargeable Service messages (as shown on the Level 2 provider's message logs) did not occur.

Furthermore, the Executive directed the Level 2 provider to provide an explanation for the apparent high failure rate of chargeable Service messages. On 20 November 2015 the following response was received from the Level 2 provider:

"We analysed this matter with special care and attention to details and the outcome showed that although premium failure rates are not immune to fluctuations in a wide range between 23% and 53%, the average rate oscillates around 40% regardless of country, service type or specifically Level 1 Provider. This leads to form a general picture on the marketplace.

Even though the % rates were not far from common trend, Total Solve have gone through vigorous check process with regards to this matter to find possible solutions for delivery drops. The road starting at Total Solve Platform exit door and ending on consumer phone SMS inbox is long and complex, vulnerable to obstacles including yet not limited to: network connectivity outages[1], insufficient airtime credit, message delays, queues resulting in SMS expire events and other various technical occurrences like incorrect network code supplied by Home Location Register (HLR) facilities. The very latter are subject to high error possibility due to users changing network without changing their mobile number therefore Total Solve implemented recurrent repeatable network checks to make sure that at least this potential obstacle on the communication string is eliminated. It is not to Total Solve's discretion to have power over users' credit airtime available for subscription fees that they made an offer to settle when subscriptions were initiated. Level 2 Provider's role is similar to Bank Society collecting monthly mortgage instalments as mutually agreed. To be even more specific, Total Solve's role is much alike Sports Centre making its facilities available but at the same time expecting and having a good faith that an opted in Membership is being paid monthly by direct debit as has been agreed by both parties through subscription request initiated by consumer. Such commitments cease upon opt out (unless contract stated otherwise) but until then, attempts to collect the periodic due fee are being by common practise continued. Nevertheless due to guidance notes received from Level 1 Providers we implemented a 120 day rule where if mobile number experiences continuous failed delivery receipts, such number has been opted-out from subscription. Total Solve continuously seek for best available solutions in cooperation with Level 1 Providers to reduce the failure rates to minimum...

...[1] Would any network carrier be confident enough to confirm that there is a square mile within UK territory that never experienced connectivity outage?" [sic]

In addition to seeking an explanation for the apparent high failure rate of Service messages listed in the Level 2 provider's message logs, the Executive also made enquiries with the Level 2 provider regarding the various message statuses listed in its message logs. On 20 November 2015 the Level 2 provider stated:

“Failed’ status would mean that no positive delivery receipt has been received from Level 1.

‘Billed’ status would mean that there has been a positive delivery receipt received from Level 1.

‘Sent’ status would mean that it has not been defined by Level 1 whether message was delivered to user or not.”

The Executive had also made enquiries with IMI mobile, Zamano and Veoo regarding the apparent high failure rate of chargeable Service messages shown within the Level 2 provider’s message logs. Although Veoo provided a response, most of the failed messages occurred on the IMI mobile and Zamano shortcodes, and therefore Veoo was not able to provide a comprehensive response on the issue. Responses from IMI mobile and Zamano are located below.

IMI mobile

There are a number of reasons that the messages may be routinely failing such as:

- *Failure at Network Level;*
- *Insufficient Credit;*
- *Subscriber blocked from Network or Level 1 provider level; and*
- *Message expired at Operator.*

TotalSolve Limited would have received the Delivery Receipts for the messages that were failing, which would have detailed the reasons.

Our Technical Support Group team have looked in detail at the TotalSolve Limited traffic that went across the IMI mobile platform [graph supplied].

The Executive noted that IMI mobile confirmed in the above response that it would send delivery receipts for failed Service messages to the Level 2 provider advising the reason for the failure to successfully deliver the message. On 14 December 2015 the Executive sought clarification from IMI mobile that, given delivery receipts would be issued to the Level 2 provider, failed Service messages would be listed in message logs supplied by IMI mobile. On 15 December 2015 IMI mobile confirmed:

“Any failed messages would be listed in the logs produced and provided by IMI [IMI mobile] / WIN.”

When questioned on the status of unsuccessful Service messages, the Level 2 provider had confirmed that ‘Sent’ messages were messages which had not been defined by the Level 1 provider, but that ‘Failed’ Service messages were messages in respect of which the Level 1 provider had confirmed that there was “no positive delivery”. The Executive



submitted that, given complainant message logs supplied by IMImobile do not show failed Service messages in the period immediately after the Opt-in Period, and IMImobile's confirmation that where attempts were made by the Level 2 provider to charge complainants which failed those failed attempts would be listed in IMImobile's message logs, the possible explanations for the failed messages provided by the Level 2 provider could not be correct.

Zamano

Executive - "The Level 2 provider has supplied text message logs showing interaction between complainant mobile numbers and the Service. Having reviewed the message logs the Executive notes that there is a high failure rate for chargeable Service messages in a significant proportion of the message logs supplied (please see attached example). Please advise why chargeable Service messages appear to be routinely failing."

Zamano - "Please see Q3 below."

Executive - "Further to the information requested in question 2 [question listed above], please provide a copy of all correspondence exchanged with the Level 2 provider in relation to the high failure rate of chargeable Service messages."

Zamano - "Please see attached 'Service messages.pdf'." [The Zamano document titled 'Service messages.pdf' provided a copy of an email dated 2 November 2015 from [\[name\]@totalsolve.net](mailto:[name]@totalsolve.net) to [\[name\]@zamano.com](mailto:[name]@zamano.com) in response to an email from [\[name\]@zamano.com](mailto:[name]@zamano.com), stating that "we were looking for best solution to improve the success of our premium subscriptions. As it was difficult to limit the reasons to just one and rely on probabilities, we decided to 'migrate' existing users who experienced a number of failed premium service messages into other Level 1 Provider service in hope to increase delivery rates. We continuously investigate the possible reasons for high failure rates and at the same time, to avoid further issues we implemented a system where users that are not billed for 120 days are removed from subscription as was advised."]

The Executive noted Zamano's attempt to obtain clarification from the Level 2 provider regarding the level of failed messages listed in the Level 2 provider's message logs. On 15 December 2015 the Executive sought clarification from Zamano that, given the explanation provided for the failed messages from the Level 2 provider, failed Service messages would be listed in message logs supplied by Zamano if the Level 2 provider had made attempts to issue chargeable Service messages to complainants. On 17 December 2015 Zamano confirmed the following:

"Messages that would have been sent correctly by Total Solve would appear on Zamano message logs. However the communication between Level 2 and Level 1 is occasionally prone to various technical interferences resulting from faults in the way two end points are linked with each other. In such cases a message sent by Level 2 Provider may be dropped on such a line and never reach the Zamano gateway."



A number of the scenarios listed by Total Solve could indeed occur. It is, however, practical to extend the scope to the possibility of messages being undelivered to Zamano's gateway in the first place. Zamano is not in a position to comment on mobile numbers for which no record is held on our database."

The Executive noted Zamano's comments in relation to the possibility of "occasional...technical interferences" between the Level 2 provider's systems and the Zamano gateway. However, when questioned about the unsuccessful Service messages the Level 2 provider did not state that "technical interferences" had occurred on its systems. As noted above, when questioned on the status of unsuccessful Service messages, the Level 2 provider confirmed that 'Sent' messages were messages which had not been defined by the Level 1 provider, but that 'Failed' Service messages were messages for which the Level 1 provider had confirmed that there was "no positive delivery".

The Executive submitted that, given complainant message logs supplied by Zamano do not show 'FAILED' or 'SENT' Service messages in the period immediately after the Opt-in Period, and Zamano's confirmation that where attempts were made to charge complainants (which were sent correctly by the Level 2 provider) which failed, these 'FAILED' and 'SENT' attempts would be listed in its message logs, the possible explanations for the failed messages provided by the Level 2 provider could not be correct.

Further, the Executive referred to the complainant accounts, and the complainant responses to the Executive's questionnaire, as referenced in the 'Background' section above. The Executive considered that it was highly unlikely that the complainant accounts, and those complainants who responded to the complainant questionnaire stating that they never interacted with the Service website, were unfounded.

The Executive noted from the previous Track 1 procedure that in the Level 2 provider's response received by the Executive on 9 January 2015 to the Action Plan the Level 2 provider asserted that it "*recently went live with full online GoVerifyIt*". The Action Plan was issued to the Level 2 provider, in part, to address the issue of consent to charge that had occurred during 2014. The Executive noted however that it continued to receive complaints about consent to charge well into the fourth quarter of 2015. The Executive's view was that by inserting failed messages into logs and creating artificial opt-in dates in the period prior to closure of the Track 1 procedure, the Level 2 provider had attempted to persuade the Executive that a consent to charge breach of the Code had arisen only in the Opt-in Period from July-October 2014, and that the scope of such a breach was confined to a lack of independent third party verification, as opposed to a more serious allegation of unsolicited charging.

In light of the evidence provided by IMImobile, Zamano and the Verifier, the Executive considered that the message logs supplied by the Level 2 provider were incorrect, and that the Executive had been provided with false information.



The Executive submitted 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.

Firstly, the Level 2 provider addressed the consumer questionnaire. The Level 2 provider submitted that it infringed consumer privacy and was irrelevant to the case, and that the Executive had wasted public money in sending this ambiguous questionnaire.

The Level 2 provider noted that two questionnaires were sent to certain work email addresses. The Level 2 provider asserted that no employee of these established companies would admit any interaction with pornographic services (whether adult or non-adult in nature). The Level 2 provider asserted that the consumer would have been aware that its mailbox would be monitored by its employer. The Level 2 provider suggested that their employers would assume that the user subscribed to pornographic material during working hours. The Level 2 provider asserted that receiving such disrupting correspondence during work hours was likely to cause distress in an office environment. The Level 2 provider asserted that the computer on which the complainant received the questionnaire may have been in a place where it could be seen by clients including minors, and so sending screenshots of the service was in contradiction to PhonepayPlus' value of consumer and public interest protection. The Level 2 provider noted another example from which it had been able to identify its subscriber's email address, which had allowed the Level 2 provider to identify the user by full name, occupation and personal interests. The Level 2 provider submitted that this was reckless conduct by the Executive. The Level 2 provider acknowledged that subscribers might have provided the Executive with the email address but submitted this did not extend to receiving correspondence of an embarrassing nature. The Level 2 provider submitted that the questionnaire should be removed from evidence for this case entirely, as disclosure of personal data was not legally justified, and the individuals had the right to be protected from receiving embarrassing correspondence in the workplace.

The Level 2 provider noted that only a little above 30% of users replied to the Executive's questionnaire and in one case withdrew their complaint. The Level 2 provider submitted that it would be a natural defence mechanism for someone under interrogation to do so, where they feel like an accused party being asked a question which tends to intrude on privacy and seeks inconvenient details. The Level 2 provider noted that some subscribers admitted they were abroad on numerous occasions or kept their phones on flight mode during nights, or just off during working hours. The Level 2 provider noted that all respondents denied any relationship with the Service, and submitted that this was a typical symptom for addictions. The Level 2 provider stated that researches have proved that brains of habitual users of pornography show great similarity to brains of addicted persons, though it did not claim that subscribers were addicted. The Level 2 provider submitted that a denial was the first and default reaction of people when asked if they have done



something not socially acceptable; interaction with pornographic services falls into this category.

Secondly, the Level 2 provider queried on what basis the Verifier made judgements and were ascribed with full confidence of knowledge on the technical matter that a charge attempt would appear on network logs. The Level 2 provider queried if the Verifier was a professional with background knowledge about how network systems worked, or was it making assumptions. The Level 2 provider stated it was not clear whether the Verifier acted as a network insider, or an intermediary between the network and Executive. The Level 2 provider noted that the Verifier had access to network carrier records and disclosed this personal information about consumers to the Executive. The Level 2 provider noted that it did not see in the evidence a written approval granted by the network to disclose private consumer data, and requested this document.

Thirdly, the Level 2 provider submitted that the Executive had not commented on its explanation on possible reasons for message delivery failure. The Level 2 provider submitted that the Executive did not hold a sufficient understanding in the field of how the Service operated, how a structure of value chain is composed, and what the relations between each particular entity were. The Level 2 provider stated that it fulfilled its obligation towards consumers and sent service messages out to subscribers in accordance with the service flow schedule. The Level 2 provider stated that it was keen to cooperate with the Executive to come to agreement on remedies to benefit all parties involved.

In response to the allegation that it had not previously cited technical interferences, the Level 2 provider stated that it was only in November 2015 that it was in touch with Zamano. The Level 2 provider stated that it had confirmed that it was doing its best to identify what the technical issue causing failed deliveries was. The Level 2 provider stated that it had finally found a possible reason why messages would not reach the Level 1 Provider and subsequently not be visible on their logs. The Level 2 provider stated that its investigation showed that due to a misconfiguration of one of the application firewalls, its server blocked outgoing traffic, considering it as being malicious. The Level 2 provider stated that the firewall had now been configured to be less aggressive in the detection process. The Level 2 provider stated that this fully explained why such circumstances occurred, and the Level 2 provider stated that this issue affected only a limited channel string that affected an insignificant amount of subscribers.

The Level 2 provider stated that it had always been proactive in offering reimbursements to subscribers that were willing to seek a refund. The Level 2 provider submitted that it had provided information that technical interferences had occurred. The Level 2 provider submitted that it was facing a “wall of misunderstanding” of service operation and lack of acceptance that network coverage, technical integrations (which were called ‘handshakes’ between two systems in IT jargon), and software were so vulnerable and exposed to interference.



The Level 2 provider submitted that the majority of Executive material submitted in this case (for all three alleged breaches of the current Code) created a dangerous precedent, placing public confidence in the PhonepayPlus framework under risk due to the fundamental rule of natural justice being breached.

The Level 2 provider stated that it believed that it had not had the benefit of a presumption of innocence, in that it had been facing potential breaches without a sign of good faith from the Executive. The Level 2 provider felt that it had carried the burden of proof. The Level 2 provider highlighted a risk of creating dangerous precedent when the Level 2 Provider is found at fault before it had a chance to defend its case. The Level 2 provider noted that the Executive had not addressed or accepted its explanations and had rejected a request for an extension to respond. The Level 2 provider stated that as a result its response had been stigmatised by preparation under stress and discomfort, which it considered as unfair treatment.

In the light of above evidence (and lack of valid evidence provided by Executive), the Level 2 provider denied the alleged breach on Rule 4.2.4 of the Code.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that in respect of the relevant factual part of the alleged breach raised, it needed only satisfy itself, on a balance of probabilities, that the information provided by the Level 2 provider was not correct and/or was misleading, and if it so found, it did not need to consider the question of motive. The Tribunal found that, on the evidence before it, the Level 1 provider and Verifier logs were accurate. The Tribunal found that there was clear evidence of inconsistencies between the logs of the Level 2 provider and the Level 1 provider logs. The Tribunal also found that there was clear evidence of inconsistencies between the logs of the Level 2 provider and the Verifier.

The Tribunal found that there was no plausible explanation from the Level 2 provider as to the discrepancies. The Tribunal also found that the reasons advanced by the Level 2 provider as to why its messages did not land on the Level 1 provider's platform were not plausible, particularly as no evidence had been provided in support of those reasons. For the above reasons the Tribunal was satisfied that the Level 2 provider's logs which had been supplied to the Executive were not accurate, and were therefore false. Accordingly, the Tribunal upheld a breach of para. 4.2.4 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.3.3

"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 the Level 2 provider had been unable to provide evidence which established that consent.

Referring to the alleged breach of paragraph 4.2.4 of the Code, the Executive asserted that complainant message logs supplied by the Level 2 provider, which purported to demonstrate that consumers opted-in to the Service in a period when the Level 2 provider did not have operational robust verification of consent to charge, were false.

The Executive noted that the Verifier had provided 35 message logs to the Executive, all of which did not contain failed chargeable Service messages dating from the Opt-in Period. Correspondence with the Verifier suggested that attempts to deliver chargeable Service messages which failed would appear in its message logs. Given the absence of failed chargeable Service messages in the Verifier's message logs, the Executive asserted that the entries in the Level 2 provider's complainant message logs must therefore be false.

The Executive had directed Zamano to provide message logs for 27 complainants. The Executive noted that Zamano advised that it held no data for 13 of the mobile numbers supplied, despite the corresponding Level 2 provider message logs listing attempts to charge the mobile numbers via a Zamano shortcode. Whilst message logs for the remaining 14 mobile numbers were supplied, the Executive noted that none of the message logs supplied by Zamano corresponded with those supplied by the Level 2 provider.

In addition to the Zamano message logs, the Executive also noted that of the 12 message logs that were supplied by IMImobile, seven message logs did not list all the failed Service messages immediately after the purported Opt-in Period which were contained in the corresponding Level 2 provider's message logs.

As referenced earlier in the alleged breach of paragraph 4.2.4 of the Code, the Level 2 provider supplied an explanation why Service messages may fail to successfully charge a consumer. However, taking into account the responses received from IMImobile and Zamano (both referenced in the alleged breach of paragraph 4.2.4 of the Code) and the responses to the complainant questionnaire, the Executive asserted that no credible explanation had been provided as to why the Level 2 provider logs show Service messages to complainants were failing after the purported Opt-in Period, but these failures were not shown in the Level 1 provider logs.

Referring to the alleged breach of paragraph 4.2.4, the Executive submitted that by inserting failed messages into logs and creating artificial opt-in dates in the period prior to closure of the Track 1 procedure, the Level 2 provider had attempted to persuade the Executive that the consent to charge breach arose only in a limited period, and that the scope of the breach was confined to a lack of independent third party verification rather than a more serious allegation of unsolicited charges.



Further, in any event the Level 2 provider had charged consumers in the period after 9 January 2015 whilst knowing that it did not have the required robust third party verification of consent to charge in respect of those consumers. The Executive submitted that at the time the charges were made, the Level 2 provider was aware that it did not hold the required robust third party verification of consent to charge for consumers who opted-in (if in fact they did opt-in) prior to that date.

For all the reasons set out above, the Executive asserted that the Level 2 provider did not have consent to charge for the 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 denied the alleged breach. The Level 2 provider reiterated its view that it had not had the benefit of a presumption of innocence and that the burden of proof had been placed on the Level 2 provider. The Level 2 provider submitted that this was unacceptable, and until the Executive presented evidence of breach, it had a right to assert that no breach of the Code occurred.

The Level 2 provider referred to its response to the allegation of breach of Code para. 4.2.4 and submitted that the consumer questionnaire and Verifier evidence should be removed from the case. The Level 2 provider stated that it had doubts about the Verifier's statements on how network systems worked and moreover how particular SMS messages were logged into the network system.

The Level 2 provider raised a concern with the email dated 15 July 2015, in which the Executive stated that it had contacted MEUK directly, rather than its usual contact, whose name had been redacted. The Level 2 provider queried whether the Executive had only contacted MEUK due to its official contact being unavailable. The Level 2 provider was concerned about the transparency and validity of this evidence.

The Level 2 provider disputed that the Executive should be allowed to use the "suggestion" of the Verifier that "*attempts to deliver chargeable Service messages which failed would appear in its message logs*" as evidence against it. The Level 2 provider submitted that it was essential for the Executive to clarify the basis for this suggestion, and in particular whether the Verifier based their suggestions on assumptions or technical knowledge, and whether they had obtained network logs through official procedure.

The Level 2 provider disputed the Executive's assertion that it had not provided a credible explanation, and submitted that it had not been given a chance to explain this matter and have its explanation heard with due care. The Level 2 provider stated that it was disappointed that communication between the Executive and IMI mobile was taking place without its input or knowledge. In particular, the Level 2 provider stated that it was concerned that a report of delivery ratio was carried out by IMI mobile in July 2015 but it had not received a copy of the report to allow it to compare those figures with its statistics.



The Level 2 provider submitted that it was self-explanatory that once one string in its firewall (“fail2ban” application type) treated service messages as interruptive, it blocked them from being forwarded to the Level 1 provider’s system, whilst its technical platform would still log them as being distributed. The Level 2 provider stated that for this reason it would have received no delivery receipt and recorded such statuses as SENT. The Level 2 provider stated that this issue had been permanently fixed and the entire system was adjusted to ensure that such issues did not recur in future. The Level 2 provider asserted that firewall issues were very common because this type of software was designed to protect user systems, however such high degree of protection may not be applicable for certain types of peer-2-peer communication channels, such as API connections between Level 2 provider and Level 1 provider technical platforms. The Level 2 provider submitted that the Executive had not attempted to understand service operation and how complex and vulnerable the matter of message delivery is, and had instead asserted a negative version of events.

The Level 2 provider submitted that the Executive’s assertion that it had charged consumers in the period after 9 January 2015 whilst knowing that it did not have the required robust third party verification of consent to charge contradicted the Action Plan agreed during Track 1 procedure. The Level 2 provider stated that it did implement third party verification, and so it could not have known that it did not have such a system in place. The Level 2 provider submitted that the Executive’s assertion was therefore illogical. The Level 2 provider had stated to PhonepayPlus during the Track 1 procedure that it had utilised the best available option at that time – a trial offline version of GoVerifyIt. The Level 2 provider stated that it had reached an agreement with the Executive in January 2015 and moved onto the full version of online verification provided by GoVerifyIt since that date. The Level 2 provider submitted that repeating this accusation was irrelevant and established a dangerous precedent. The Level 2 provider reasserted that it had implemented and adhered to the Track 1 Action Plan.

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

The Tribunal considered the Level 2 provider’s submission that this matter had already been dealt with via the previous Track 1 procedure. The Tribunal noted that complainants in this case had contacted the Executive in relation to charges which they had started receiving after the conclusion of the Track 1 procedure. Accordingly the breach of charging without consumer consent had occurred after the Track 1 procedure had been concluded.

The Tribunal noted that the Level 2 provider had not provided any evidence to establish consumers’ consent, and nothing in the Level 1 provider or Verifier’s logs evidenced that consent. The Tribunal referred to its previous findings regarding breach of para. 4.2.4. Given its findings in relation to that breach, and in particular that the Level 2 provider’s logs had been falsified, the Tribunal concluded on the evidence before it that consumers had been charged without their consent and that the Level 2 provider had failed to provide evidence establishing such consent. Accordingly, the Tribunal upheld a breach of rule 2.3.3 of the Code.

Decision: UPHELD

ALLEGED BREACH 3

Paragraph 3.4.14(a) (13th Code)

“Level 2 providers must, within two working days of the service becoming accessible to consumers, provide to PhonepayPlus relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service.”

1. The Executive asserted that the Level 2 provider acted in breach of paragraph 3.4.14(a) of the 13th Code as it failed to provide PhonepayPlus with relevant details to identify the Service operating on shortcode 88108 to consumers. Consequently, the Level 2 provider had failed to provide PhonepayPlus with the identity of Level 1 providers concerned with the provision of the Service. Such information was commonly provided to PhonepayPlus as part of the registration process, but the Level 2 provider failed to register this number with PhonepayPlus when the Service commenced operation on shortcode 88108.

The Code required that Level 2 providers supply relevant details to identify services to consumers. The Executive noted that the PhonepayPlus Registration Scheme was in place to facilitate providers to supply relevant details to identify their services to consumers. Once a provider has supplied details of its services, including the premium rate number(s) it operates on, the details then appear on the ‘Number Checker’ section of the PhonepayPlus website, www.phonepayplus.org.uk. The Number Checker allowed consumers to enter a premium rate number they may not recognise on their phone bill, and obtain information regarding that premium rate number.

The Executive noted from the information supplied by Veoo that the Service commenced operation on shortcode 88108 in July 2015. The Executive noted this was confirmed in a message log supplied by the Level 2 provider and the corresponding Level 1 provider and verifier logs. The Executive also noted that Service shortcode 88108 was first registered on the PhonepayPlus Registration Scheme on 18 August 2015. The Executive noted that the information on the PhonepayPlus Number Checker indicated that the Service shortcode was not registered with PhonepayPlus until 18 August 2015, despite the Service commencing operation on Service shortcode 88108 in July 2015. The Executive asserted that where services are not registered, consumers do not have the ability to access information relating to the Service, which impairs PhonepayPlus’ regulatory function.

The Executive submitted that the failure to provide the requisite information to PhonepayPlus by registering the Service number was a breach of paragraph 3.4.14(a) of the 13th Code.

2. The Level 2 provider denied the alleged breach. The Level 2 provider wished to show its goodwill and explain the matter, so the Tribunal could see the Level 2 provider’s will to cooperate.



The Level 2 provider stated that the delay in registration was caused by PhonepayPlus password reset that took place shortly before the date that the new short code ought to have been registered. The Level 2 provider stated that it was not aware of the password change because emails from PhonepayPlus automated services (from 'noreply@phonepayplus.org' and 'website@phonepayplus.org') landed in its spam folder. The Level 2 provider stated that it would not expect that password set up manually by itself could be subject to reset automatically without warning, and it took them time to find a reason why it was not able to log into its account. It had believed that PhonepayPlus' service that was under maintenance works. This explained the slight delay. The Level 2 provider submitted that spam filters categorising such senders as spam agents had been identified as a very common issue, and it required only basic knowledge to be aware that such emails are very likely to be marked as spam simply because there is no chance for the email to be verified by recipients; such validation was possible by sending a reply to the sender.

The Level 2 provider submitted that the delay had little or no effect, as PhonepayPlus did not receive any direct complaint on the service operating on this shortcode before 23 August 2015. The Level 2 provider submitted that the breach was insignificant. The Level 2 provider stated that it fully understood the importance of short code registration for consumer good, and it would certainly adhere to this rule in future.

Prior to amendment of the alleged breach, the Level 2 provider had submitted that the breach had been brought under the incorrect Code rule, and it was impossible to apply para. 3.4.12(a) of the 12th Edition of the Code of Practice to the shortcode registration requirement, and the Level 2 provider had submitted that this potential breach should be excluded in full, otherwise there would be a jurisdictional error. The Level 2 provider cited examples of such errors, including breaching natural justice.

After the amendment of the allegation, the Level 2 provider submitted that the Executive had only read its words with due comprehension on 26 January 2016, and submitted that it had been placed into a position of being required to provide explanations and reasoning whilst receiving no understanding or actual cooperation from Executive, let alone cooperation on the timescale of the process.

The Level 2 provider, referring to page 5 of the Investigations and Sanctions Procedure, submitted that the Tribunal should consider this matter as of minor severity and agree that it should have been addressed via Track 1 procedure or even via straightforward email correspondence.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Level 2 provider had in effect admitted the facts of the breach. The Tribunal noted the assertion that the failure to register had had little actual impact. The Tribunal found, on the evidence before it, that there was a clear failure to provide requisite information to

PhonepayPlus by registering the Service number, and the Level 2 provider had therefore breached para. 3.4.14(a) of the 13th Code.

Decision: UPHELD

SANCTIONS

Initial overall assessment

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

Paragraph 4.2.4 - Provision of false information to PhonepayPlus

The initial assessment of paragraph 4.2.4 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 deliberately supplied false and misleading information to PhonepayPlus.

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 3.4.14(a) (13th Code) – Failure to register a number

The initial assessment of paragraph 3.4.14(a) of the 13th Code was **significant**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The Level 2 provider had negligently failed to comply with a PhonepayPlus requirement, being registration of the service, albeit for a limited period of between 2 and 6 weeks.

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 the following the following aggravating factor:

- The Level 2 provider had previously been subject to a Track 1 procedure, which had included requirements regarding consent to charge.

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

- There was evidence that some complainants had been refunded by the Level 2 provider.



The Level 2 provider's evidenced revenue in relation to the Service in the period from March 2015 to December 2015 was in the range of Band 2 (£500,000 - £999,999). The Tribunal took this period as the relevant period for the purposes of determining appropriate sanctions.

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 requirement to remedy the breach of being unable to provide evidence which establishes consumer consent to be charged. Within one month of the date of publication of this decision the Level 2 provider is to provide PhonepayPlus with current and satisfactory evidence of consumer consent to charge in relation to all of its services in line with the requirements of the Code and published Guidance. Such evidence is to include evidence of the systems in place to obtain evidence of consent, and the evidence of consent obtained for each consumer who has opted in to its services in the period from 25 February 2016 to 3 March 2016;
- a fine of £250,000; and
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PhonepayPlus that such refunds have been made.

Administrative charge recommendation:

100%



Appendix A

OPT IN						
SHORTCODE	MSISDN	MESSAGE TYPE	MESSAGE CONTENT	RECEIPT	COST	DATE & TIME
FREEMSG		WAP PUSH	http://glamourhunnies.com/?pass=8e4faad6	SENT	£0.00	05/09/2014 13:32
MTS						
SHORTCODE	MSISDN	MESSAGE TYPE	MESSAGE CONTENT	RECEIPT	COST	DATE & TIME
85878		JOIN	FreeMsg: U have subscribed to Glamour Hunnies video service for £3 per week until u send stop to 85878. Help? 01618841078	SENT	£0.00	05/09/2014 13:36
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	05/09/2014 13:36
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	12/09/2014 13:14
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	19/09/2014 13:51
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	26/09/2014 13:18
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	03/10/2014 13:50
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/10/2014 18:47
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	10/10/2014 13:08
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	17/10/2014 13:36
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	24/10/2014 13:49
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	31/10/2014 13:29
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/11/2014 18:02
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	07/11/2014 13:15
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	14/11/2014 13:04
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	21/11/2014 13:09
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	28/11/2014 13:56
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	05/12/2014 13:06
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/12/2014 19:52
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	12/12/2014 13:20
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	19/12/2014 13:23
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	26/12/2014 13:04
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	02/01/2015 13:22

85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/01/2015 18:43
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	09/01/2015 13:35
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	16/01/2015 13:51
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	23/01/2015 13:29
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	30/01/2015 13:03
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/02/2015 19:17
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	06/02/2015 13:43
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	13/02/2015 13:12
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	20/02/2015 13:05
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	27/02/2015 13:10
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/03/2015 19:27
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	06/03/2015 13:04
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	13/03/2015 13:49
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	20/03/2015 13:46
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	27/03/2015 13:08
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	03/04/2015 13:13
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/04/2015 19:29
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	10/04/2015 13:23
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	17/04/2015 13:22
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	24/04/2015 13:05
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	01/05/2015 13:41
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/05/2015 18:21
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	08/05/2015 13:13
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	15/05/2015 13:14
85878		BILLING	http://glamourhunnies.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	22/05/2015 13:18



85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	29/05/2015 13:03
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	05/06/2015 13:43
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/06/2015 19:16
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	12/06/2015 13:34
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	SENT	£3.00	19/06/2015 13:07
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	26/06/2015 13:53
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	03/07/2015 13:30
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/07/2015 18:53
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	FAILED	£3.00	10/07/2015 13:14
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	BILLED	£3.00	18/07/2015 14:07
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	BILLED	£3.00	25/07/2015 14:14
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	BILLED	£3.00	31/07/2015 17:19
85878		REMINDER	FreeMsg:U are subscribed to Total Solves video service costing £3 per week until u send stop to 85878. HelpLine 01618841078 16+ ONLY.	SENT	£0.00	05/08/2015 18:17
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	BILLED	£3.00	07/08/2015 17:30
85878		BILLING	http://gjamourhunnie.com/?pass=51bf5746d TEXT STOP TO 85878 TO STOP ALL MESSAGES, FOR HELP 24HOURS CALL 01618841078	BILLED	£3.00	14/08/2015 17:30
85878		STOP COMMAND	STOP	RECEIVED	£0.00	18/08/2015 13:07
85878		STOP CONFIRMATION	FreeMsg: you have now been completely unsubscribed from our service, you will not receive any further messages from this service.	SENT	£0.00	18/08/2015 13:07