

Tribunal meeting number 211

Case reference: 105243

Level 2 provider: De Veritate Sumus Ltd

Type of service: Information, Connection and Signposting Service (ICSS)

Level 1 provider: N/A

Network operator: Sound Advertising Limited

This case was brought against the Level 2 provider under Paragraph 4.5 of the Code of Practice

Background

The case concerned a 'Call connection' service operating on the number range 09030280XXX (the "Service")

The Level 2 provider for the Service was De Veritate Sumus Ltd (the "Level 2 provider"). The Level 2 provider had been registered with the Phone-paid Services Authority, previously known as PhonepayPlus since 10 December 2015.

The Network operator for the Service was Sound Advertising Ltd (the "Network operator").

The service

The Service was a 'Call connection' service that offered connection to organisations sought by consumers. In addition, the service offered consumers the option of downloading a recording of their phone call. The Service cost 60p per minute plus any call connection charges.

The Level 2 provider confirmed that the Service commenced operation on 16 December 2015.

The Executive noted that the Level 2 provider made amendments to the Service operation and promotion during the investigation. On 15 July 2016, the Level 2 provider supplied the following summary of the operation of the Service:

We have a small directory of premium rate numbers which each call to a different brand (for example Talk Talk). Users call one of our numbers on the understanding that they are calling the brand via a premium rate number to benefit from the ability of choosing to record their call. In the call, the caller is promoted to press "1" to confirm that they would like to record their call. If they do not wish to record then they continue by holding and are connected directly to the brand.

Should the user have selected to record then they are provided with a unique 4 character, alpha-numeric, code that can be repeated on request in the call. The user is then told to enter the code at recordcall.co.uk followed by being connected to the brand's number.

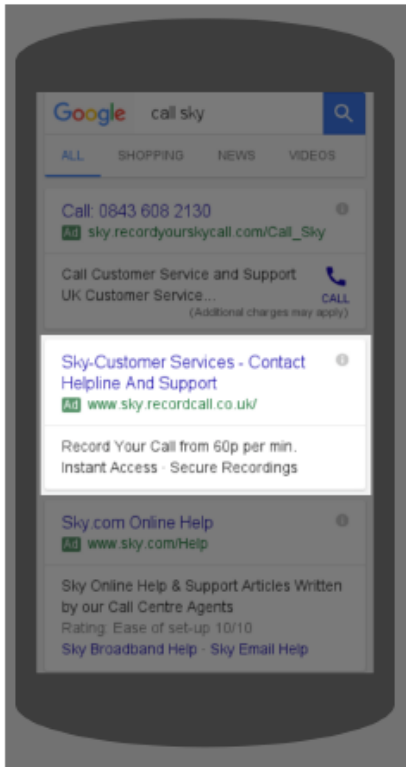
Each call is only saved in our system for 1 hour (60 minutes) from the end of the phone call. When the user goes to recordcall.co.uk they are prompted to enter their unique code, the phone number that they called from and an email address. NB. The number that they enter and the code must sync up in our system or the call cannot be accessed. The user is then emailed a link back to recordcall.co.uk where they can play and download the recording of their call.

None of this information is available to anyone other than the user, and recordings are encrypted without this access. So recordings are very secure.

In addition, the Level 2 provider supplied the following promotional material and user flow:

We have a number of brands that have been live over the last 3 months (available here: <http://recordcall.com/directory/>) and all of them work identically. So as to not duplicate what is sent, please find a single example below:

sky.recordcall.co.uk

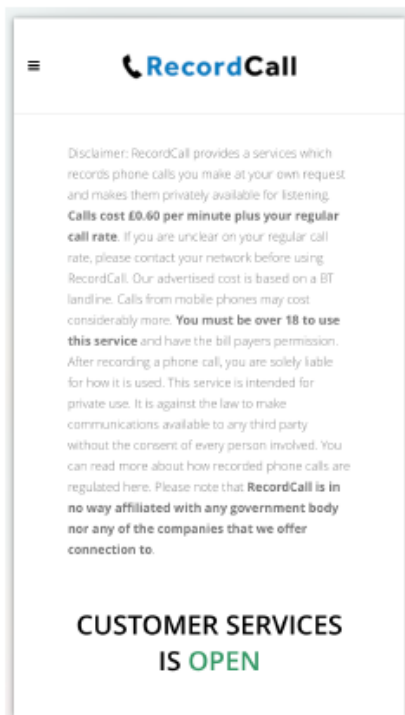


This screenshot is of an advert that shows on Google when someone searches for "Call Sky". The screenshot has been taken from the "Ad Preview Tool" in Google Adwords. I have highlighted the Record Call advert and darkened out all other visible results, to make things clearer.

This screenshot shows the advert on a mobile device because for all of our brands we only advertise on Mobile (around 99% of the time - which is as much as Google's system will allow, in our experience). We also work to ensure that we always appear 2nd in the advert results.

Additionally, we link to our website rather than having the call button on the advert (like the advert in 1st position on this result) in order to reduce the number of people accidentally tapping our advert and making calls.

Finally, please notice that we have the price of calls in the advert text. We have done this in order to save money by reducing the amount of accidental clicking our adverts by people not happy to pay for a premium rate number call.



When the advert is clicked, the user is faced with this web page.

*Please note that this is a current screenshot and that the Sky landing page and shows some text in **bold**. This bold text is a new addition to the page and part of our ongoing endeavours to stop people calling our numbers, not knowing what they cost.*

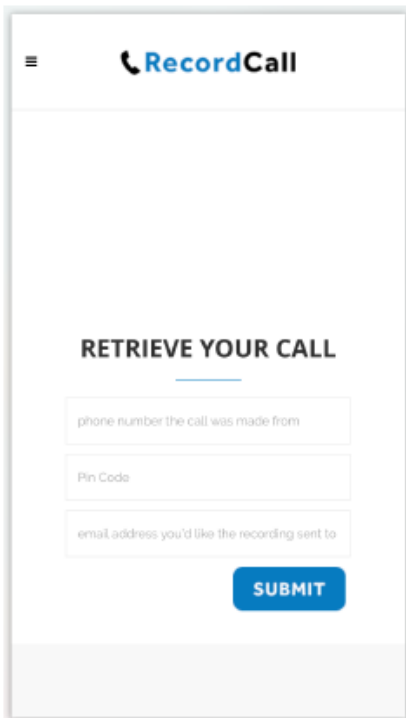
As you can see, the page is very heavily branded with the Record Call logo and before any number can be seen, the user must scroll past a large and comprehensive disclaimer.

Again, please note that the page is shown in mobile because we only target users with mobile adverts. To view this page on desktop - please click [this link](#) on your desktop computer.

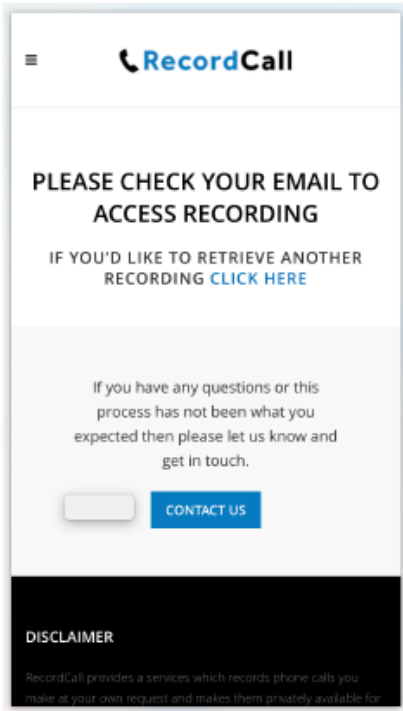


This screenshot shows what the user is faced with when the scroll down past the disclaimer. Notice the provide directly beneath the phone number.

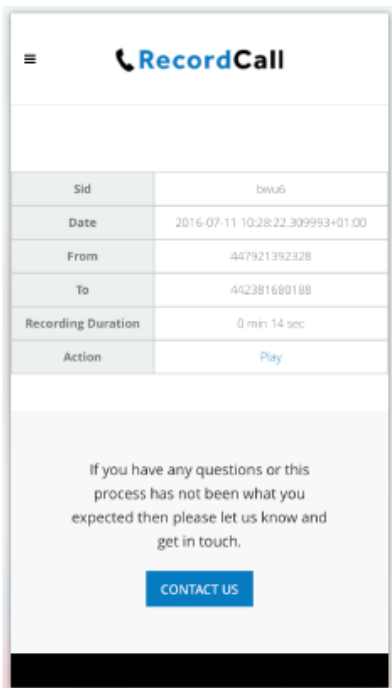
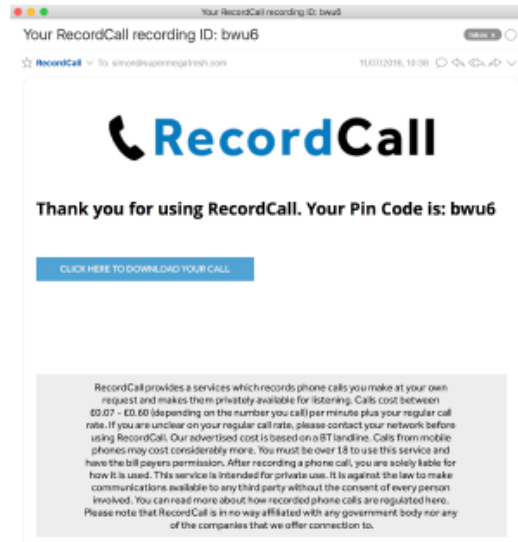
This is the point where the user calls our number and if they chose to record their call then they are told to visit recordcall.co.uk with the unique 4 character code that they were provided with.



This is recordcall.com (also where recordcall.co.uk re-directs to). The user enters in the number that they called from, the unique code they were provided with in the call and their email address.

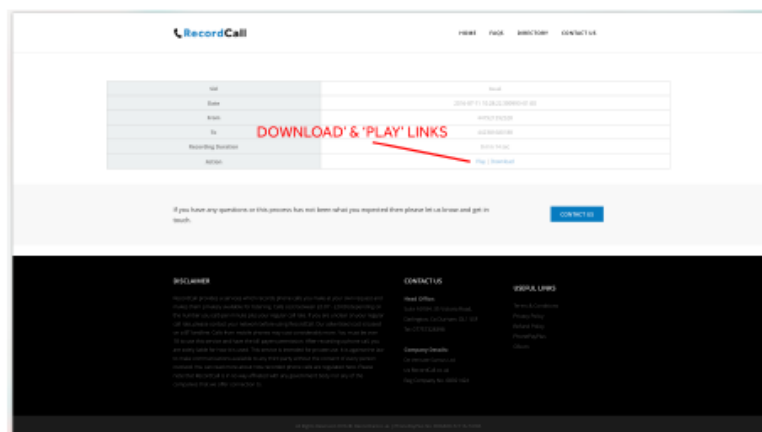


Once the correct details have been entered on recordcall.com the user is faced with this screen. Then the email (screenshot below) arrives at the address the user entered with a link to their recording on recordcall.com



After clicking on the link in the email, the user is returned to recordcall.com to see a variant of this page (the details shown will be specific to each unique caller).

On mobile the recording's audio file can only be played - this is simply because the device used to demonstrate on does not allow for downloads. Please see screenshot below for desktop version which includes a "Download" option too - so users can keep a copy of their recording for their own personal reference.



The Executive noted that the Level 2 provider made changes to the Service landing page and on 22 September 2016 supplied the following promotional material and user journey:

Full consumer journey:

- * User sees our advert on a search engine (Google & Bing networks) and clicks on it
- * User is then taken to a landing page on our website (destination page depends on which advert was clicked)
- * After scrolling past our disclaimer and the price in very large (largest font on page - in a bright colour) text they see a phone number to call. Mobile users tap the number and desktop users must make a note of the number and call it from their phone
- * In the call the user is then asked the press "1" if they want to record their call. If "1" is pressed then they are read instructions on how to retrieve their recording after the call has ended. If they did not select to record the call then they are immediately connected and the call continues as normal¹
- * NB. All following steps are related to users who selected to record their call.
- * As instructed in the call, the user then goes to recordcall.co.uk or recordcall.com (within one hour of the call ending - or else the recording is purged for security purposes)
- * One the web page the user then enters the number that they called from, the PIN code provided in the call (unique to the recording in question) and an email address
- * The user is then sent an email containing a link which links them back to recordcall.com where they can play and download their recording.

Full details of any terms and conditions:

Terms and conditions can be found here: <http://recordcall.com/terms-conditions/>

Sky- Call Customer Services
Helpline Connection Service
sky.recordcall.co.uk
Contact Helpline And Support
Record Your Call from 60p per min.

CALLS COST £0.60P PER MIN PLUS YOUR PROVIDERS ACCESS CHARGE.

You should be at least 18 years of age and be the bill payer or have the bill payers permission to use this service. After recording a phone call, you are solely liable for how it is used. This service is intended for private use. It is against the law to make communications available to any third party without the consent of every person involved. You can read more about how recorded phone calls are regulated here. **Please note that RecordCall is in no way affiliated with any government body nor any of the companies that we offer connection to** This service is brought to you by recordcall.co.uk in conjunction with Sound Advertising T/A Mediate!

CUSTOMER SERVICES IS OPEN



CUSTOMER SERVICE
CALL NOW

090 302 80096 

If selected, all calls will be securely recorded and can be accessed via here. Calls cost £0.60p per min plus your providers access charge.

WHAT CAN SKY DO FOR YOU TODAY?

[Sky TV](#)

[Account & Billing](#)

[Sky Broadband](#)

WHAT CAN SKY DO FOR YOU TODAY?

[Sky TV](#)

[Account & Billing](#)

[Sky Broadband](#)

[Sky Talk](#)

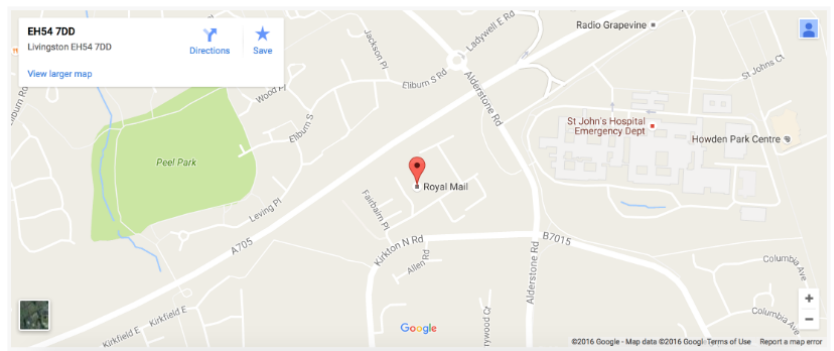
[Moving Home](#)

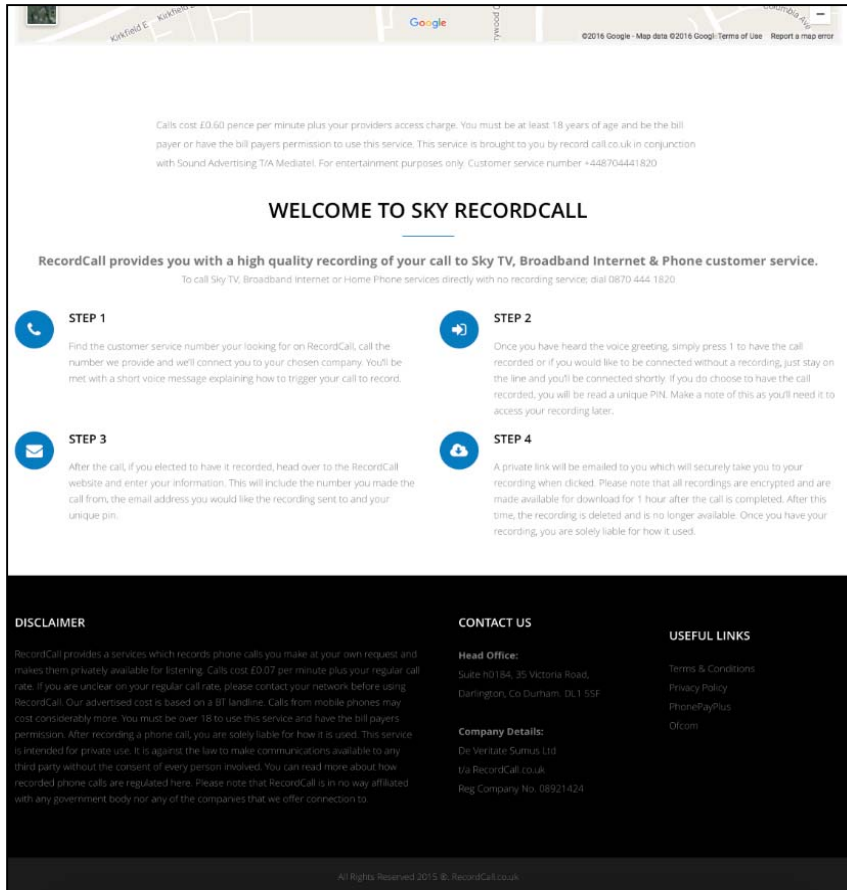
[Sky Go & Sky Go Extra](#)

[Sky ID](#)

OTHER WAYS TO REACH SKY

PO Box 43
Livingston
West Lothian
EH54 7DD
www.sky.com





Although the Level 2 provider supplied promotional material for desktop and mobile devices, the Executive noted that the majority of the Service's website traffic was generated by mobile users. The Executive therefore conducted the vast majority of the Service monitoring on mobile devices. The Executive monitored the service on three different handsets.

The Executive conducted monitoring of the Service on numerous occasions. The Executive noted that the monitoring it conducted showed consumer journeys which were broadly consistent, but which varied on occasions.

The Executive noted that, whilst a few consumer journeys showed pricing information on the sponsored Google search engine results, the majority of its monitoring demonstrated that the pricing information was not included on the sponsored Google search engine results.

Additionally, the Executive noted that, in respect of the majority of its monitoring, when it clicked on the website URL, an auto scroll function directed it to a section of the landing page that displayed the name of the commercial or public organisation and the Service number.

The Executive noted that the auto scroll function resulted in the majority of the key Service information not being immediately visible on the website landing page. In order to view the general Service information, the Executive had to scroll up or down the website page. In a few instances of monitoring, the Executive observed pricing information at the top of the website

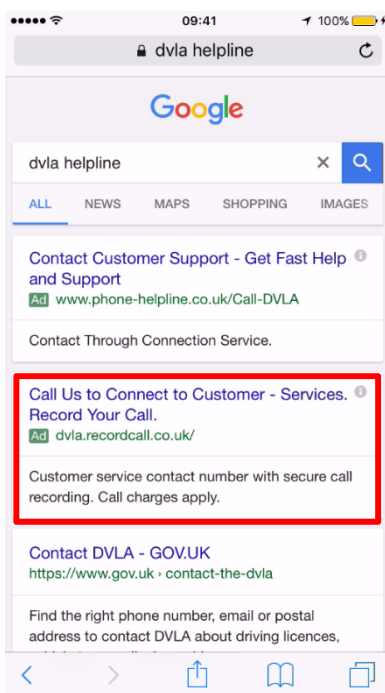
page. However, the auto scroll function resulted in the pricing information being visible for an extremely short period of time (no more than 1.6 seconds).

The Executive noted that pricing information was stated in a number of places on the website page: at the top of the website page (in a large blue font), just below the call to action (in a smaller light grey font), midway down the website page and within a “disclaimer” section at the bottom.

However, the Executive noted that, in most instances of monitoring, it was necessary to scroll upwards in order to view the pricing information at the top of the page. In addition, on a number of occasions it was necessary for the Executive to scroll downwards in order to view the pricing information below the call to action. The additional references to pricing information were situated further down the website page, and therefore the Executive always had to scroll downwards to view this information.

Screenshots of the initial landing pages taken from monitoring conducted by the Executive can be found below:

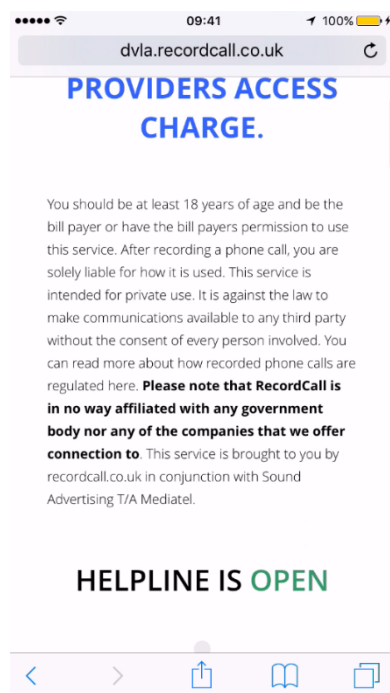
a) Clicked on Recordcall URL



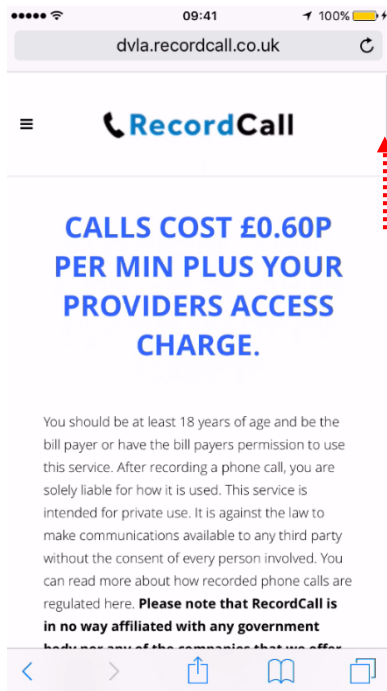
b) Website landing page



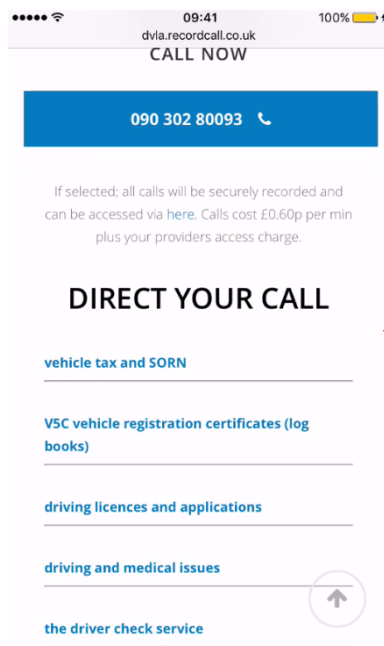
c) Scrolled up the page



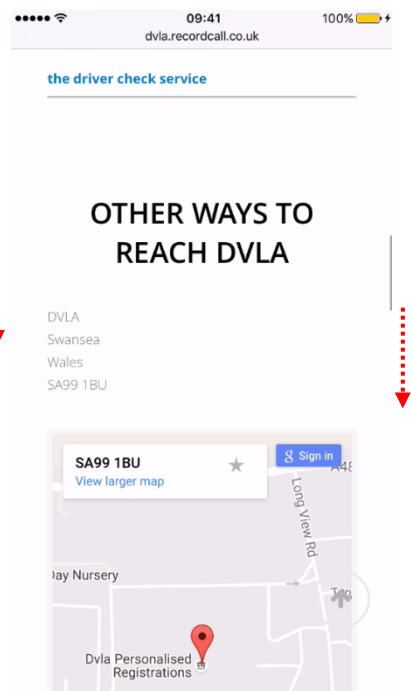
d) Scrolled further up the page down the page



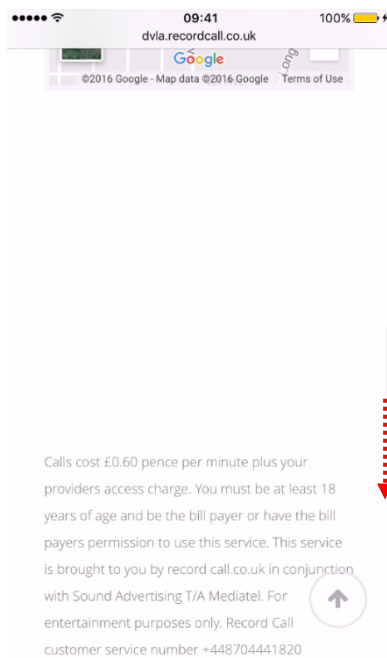
e) Scrolled down the page



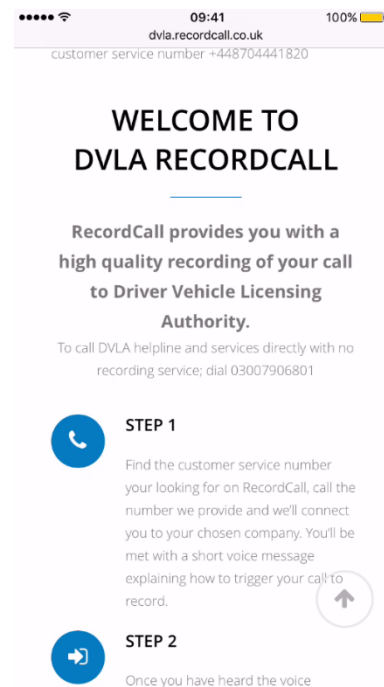
f) Scrolled further



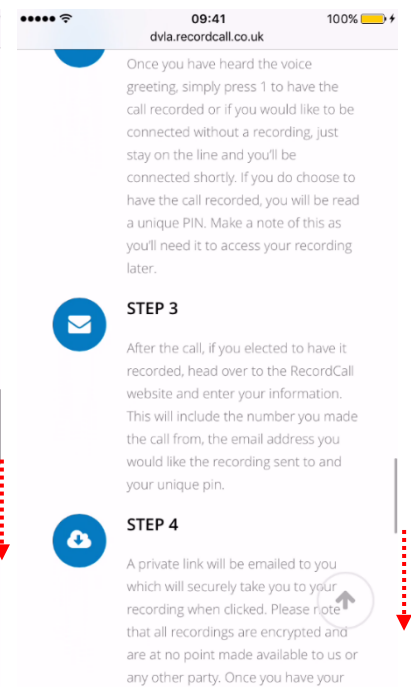
g) Scrolled further down the page



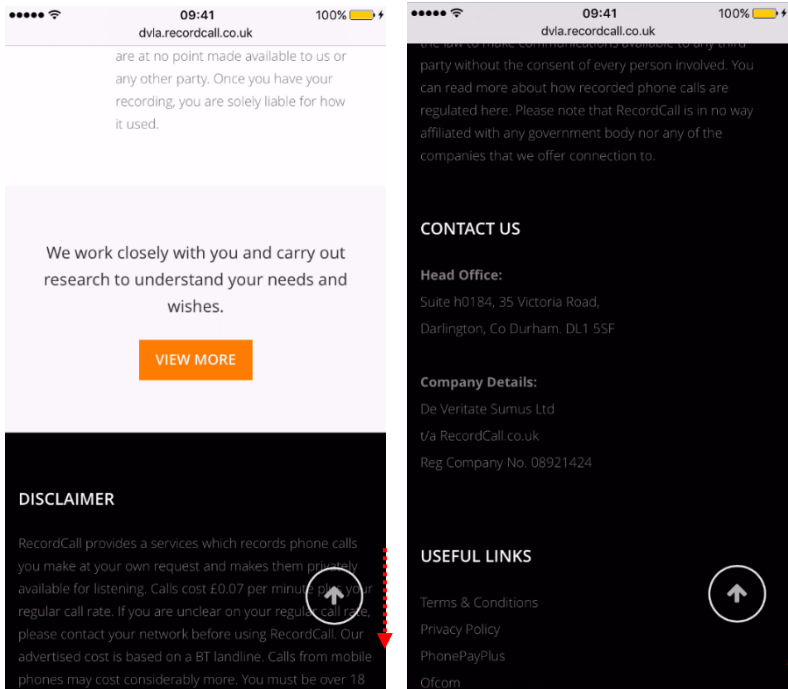
h) Scrolled further down the page



i) Scrolled further down



j) Scrolled further down the page k) Scrolled further down the page



The Executive also supplied supporting video recordings.

Pre-recorded Service message

The Executive noted that a pre-recorded Service message was included before connection to the commercial or public organisation. However, the Executive noted that the pre-recorded Service message did not include pricing information.

The Executive supplied a copy of the interactive voice response (IVR) recording to demonstrate the content of the *pre-recorded Service message*.

Summary of complaints

The Executive received 20 complaints concerning the Service since 7 May 2016.

Complainants variously alleged that the Service was misleading and that that they were not made aware of the Service costs.

This is a scam number that advertises itself and redirects calls to Sky customer service. They bill an access charge of £4.54 and a service charge of £0.655 per minute on top of the phone allowance.

I searched for "EE contact number" and absentmindedly used one of the top links for the number. I clicked on a link using my smartphone and dialled the number. The link had the EE insignia.

Last Monday I couldn't remember the number for Sky so I Googled for sky customer service and clicked on the first link it gave me. This took me to a web page I presumed was Sky (sky.recordcall.co.uk), as it had the sky logo on it, and also had a telephone number on it, which I clicked to call (09030280096). The call then answered with a recording asking if I wanted my call recording, so I thought that's strange and decided to try again, So I tried again and it was the same, so I didn't choose to have my call recorded and waited to be connected and eventually got a lady saying welcome to Sky. Something didn't seem right so I tried again, the same. I then decided to check the number on your site and found it to be premium rate and from a company nothing to do with Sky !!

We have been charged almost £25.00 on the 08/09/16 for making a call to Sky as apparently we have gone via a third party using a premium number that records call and charges for the calls. We were not notified of the fact that we would be charged or that it was via a third party.

In response to a request for general compliance advice on call recording services, the Level 2 provider had been advised on 5 January 2017 to contact the Information Commissioner's Office and had been directed to the Information Connection and Signposting Services Special Conditions section of the PSA's website.

The investigation

In accordance with the transitional arrangements set out at paragraph 1.8 of the PSA Code of Practice (14th Edition), the Executive conducted this matter as a Track 2 procedure in accordance with paragraph 4.5 of the Code of Practice (14th Edition).

Interim measures

Interim Measures were not sought by the Executive.

Apparent breaches of the Code

The Executive asserted that the service contravened the Phone-paid Services Authority Code of Practice 13th and 14th Edition (“the Code”) and in particular the following Code provisions:

Rule 2.2.1 – Transparency and pricing

Rule 2.2.7 – Pricing information

Rule 2.3.2 – Misleading

Rule 3.4.14a – Number registration (*13th and 14th Editions*)

Paragraph 3.11.3 – Special conditions ICSS 1

Paragraph 3.11.3 – Special conditions ICSS 5

Paragraph 3.11.3 – Special conditions ICSS 11

On 22 June 2017, 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);

Correspondence between the Executive and the Network Operator;

Correspondence between the Executive and the Liquidator;

PSA Special Conditions in respect of ICSS;

Revenue and call volume information for the Service;

Monitoring videos and screenshots supplied by the Executive;

The Warning Notice and attachments.

Preliminary issue

The Tribunal considered as a preliminary issue whether the Level 2 provider had been served with the Warning Notice and notified of the Tribunal hearing date.

By letter dated 23 May 2017, the Executive had been notified that the Level 2 provider had decided to place the company into creditors' voluntarily liquidation and that AABRS had been appointed as the Liquidators.

On 6 June 2017 the Executive had contacted both the Level 2 provider and AABRS to notify them of the Tribunal date and also to enquire as to whether either party wished to make representations at the Hearing.

By letter dated 7 June 2017 AABRS had responded, stating that it did not propose to make any submissions or informal representations for and on behalf of the company.

Having considered the correspondence exchanged between the Executive and both the Level 2 provider and the liquidator, the Tribunal was satisfied that the relevant parties had been served with the Warning Notice and had been duly notified of the Tribunal Hearing date. Accordingly, the Tribunal was satisfied that it was appropriate for the Hearing to proceed in the absence of representations from the Level 2 provider.

Submissions and Conclusions

Alleged breach 1

Rule 2.2.1 – “Consumers of PRS must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

1. The Executive asserted that the Level 2 provider had breached rule 2.2.1 of the Code as consumers were not given all of the necessary information in order to make an informed decision to use the Service. The Executive asserted that the key Service information was not clear and prominent on the website landing page for mobile device users.

The Executive relied upon the PSA's “Guidance on Promoting premium rate services” which states at paragraph 2.3:

“...the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

Cost

Brand information

Product or service information

How it is delivered or used

How it is paid for – one off payment, recurring charges, etc.

How to get help where necessary”

Paragraph 6.2 states:

“Once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see section 2 of this Guidance)...”

The Executive also relied upon complainant accounts which variously alleged that consumers did not understand the true nature of the service and, in particular, they did not appreciate they were not telephoning the organisation concerned directly.

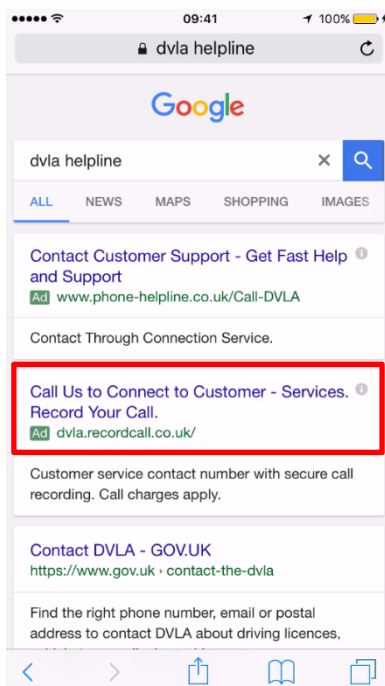
“We were not notified of the fact that we would be charged or that it was via a third party.”

“he was frustrated that he couldn't get to SKY helpline; he then Goggled number for SKY customer service... he didn't know he wasn't aware at the time, the number dialled was PR” [sic]

The Executive had conducted the majority of its Service monitoring on mobile devices. The Executive noted that when it clicked on the website URL, an auto scroll function directed it to a section of the landing page that displayed the name of the commercial or public organisation and the Service number.

The Executive submitted that the auto scroll function resulted in the key Service information not being immediately visible on the website landing page. In order to view the key Service information, the Executive had been required to scroll up or down the website page.

Google sponsored link



Website landing page



The Executive stated that when it scrolled up the website page, it had been provided with a summary of the nature of the Service on offer (being an Information, Connection and Signposting service offering call connection with a recording option) and the costs of using the Service. When scrolling down the website page the Executive had been provided with call costs, a non-premium rate contact number for the commercial organisation and a step by step guide on how the Service operated.

The Executive asserted that, without all of this information, it was unlikely that a consumer would be able to make an informed decision to use the Service. The fact that scrolling was necessary in order for a consumer to view the key Service information on the website landing page for mobile devices, may have resulted in consumers not being aware of all information necessary to make a decision to purchase, prior to making a purchase. The Level 2 provider had confirmed that the majority of its traffic was generated by mobile devices, which indicated that the vast majority of users may not have been aware of the key service information prior to using the Service.

The Executive asserted that consumers were therefore not clearly informed of the key Service information required in order to make an informed decision prior to purchase. Consequently, a breach of Rule 2.2.1 had occurred.

2. The Level 2 provider did not make representations in respect of the alleged breach.
3. The Tribunal considered the Code and all the evidence before it.

The Tribunal considered that the monitoring evidence supplied by the Executive clearly demonstrated that consumers using a mobile device would have been required to scroll either up or down in order to view the key service information. The conclusion of the Tribunal was that it was unlikely that consumers of the Service would have viewed and digested the key service information before entering the Service.

The Tribunal was satisfied, on the balance of probabilities, that consumers of the Service were not fully and clearly informed of all information likely to influence the decision to purchase, before any purchase was made.

Accordingly, for the reasons advanced by the Executive, the Tribunal upheld a breach of rule 2.2.1 of the Code.

Decision: UPHELD

Alleged breach 2

Paragraph 2.2.7. - “In the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”

1. The Executive asserted that the Level 2 Provider had breached rule 2.2.7 because pricing on the promotional website was not prominent or proximate to the premium rate number on the website.

The Executive relied upon the PSA Guidance on Promoting premium rate services which states:

Paragraph 3.2

“As a starting point, pricing information will need to be easy to locate within a promotion (i.e. close to the access code, number or call to action for the PRS itself), easy to read once it is located and easy to understand for the reader (i.e. be unlikely to cause confusion). Loose or unclear descriptions of price are not acceptable, as they are unlikely to provide a sufficient understanding to consumers of how much they are being charged...”

Paragraph 3.7

“Pricing information needs to be put where consumers will easily see it, not where it is hard to find. This is because the price ought to be part of what attracts consumers into making a purchase. The rules in our Code are there because consumers want this information so they can choose what they buy and how much they pay for it. It is likely to be judged as ‘prominent’ if the information is clearly visible when a consumer makes their purchase and triggers the payment.”

The Executive also relied upon the complainants’ accounts which variously alleged that consumers were unaware of the price for using the service, a sample of complaints is below:

“I had a problem with my sky broadband and I googled for a phone number & the above number popped up. I was not informed of any charges...”[sic]

“they is no pricing information...” [sic]

The Executive stated that it had conducted the majority of the Service monitoring on mobile devices. This monitoring had shown pricing information in a number of places on the website page: at the top of the website page (in a large blue font), just below the call to action (in a smaller light grey font), midway down the website page and within a “disclaimer” section at the bottom.

In the majority of the monitoring conducted from mobile devices, when the Executive clicked on the website URL, an auto scroll function directed it to a section of the landing page that displayed the name of the commercial or public organisation and the Service number, but which did not contain the pricing. The pricing information could only be viewed by scrolling up or down the website page. The Executive relied upon video recordings of the Service.

The Executive stated that, in a few instances of monitoring, the auto scroll function did allow the pricing information at the top of the webpage to be visible, but only for a very short period of time (approximately 1.6 seconds). The Executive asserted that, in the limited number of consumer journeys when this pricing information was visible, a consumer would be unlikely to be able to read or digest the pricing information in the time available.

The Executive further stated that, in a few instances of monitoring, the pricing information did appear below the call to action without the need to scroll. However the Executive submitted that, where this was the case, the pricing was presented in a light grey font against the white background of the website landing page. Similarly, the pricing information in the disclaimer section was presented in a light grey font against a black background. The Executive asserted that this combination of colours reduced the clarity and prominence of the pricing information and the ease with which it could be seen by consumers.

The Executive submitted that the use of a light grey font colour, together with the fact that scrolling was usually required in order for a consumer to view the pricing information on mobile devices, may have resulted in consumers not being aware of the Service costs before dialling the Service number.

The Level 2 provider had confirmed that most of its traffic was generated by mobile devices. Consequently the Executive asserted that the majority of users may not have been aware of the pricing information prior to using the Service.

The Executive also referred the Tribunal to the following examples of pricing information within the disclaimer at the bottom of the website:

“Calls cost £0.07 per minute plus your regular call rate. If you are unclear on your regular call rate, please contact your network before using RecordCall. Our advertised cost is based on a BT landline. Calls from mobile phones may cost considerably more.”

“Calls cost between £0.07 - £0.40 (depending on the number you call) per minute plus your regular call rate. If you are unclear on your regular call rate, please contact your network before using RecordCall. Our advertised cost is based on a BT landline. Calls from mobile phones may cost considerably more.”

The Executive submitted that, in light of the fact that the actual cost of the Service was 60 pence per minute plus network extras, it was likely that the inconsistent references to pricing information could cause confusion for those consumers who viewed it.

In light of the above, the Executive asserted that the pricing information was not sufficiently prominent and that consumers may not have been aware of the Service pricing before using the Service. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of rule 2.2.7 of the Code.

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal considered the Code and all the evidence before it, and in particular the monitoring evidence supplied by the Executive.

The Tribunal was satisfied that the pricing information in respect of the service was usually only visible to those consumers who scrolled either up or down to view it. The Tribunal was further satisfied that, even when consumers did scroll up or down, the colour and typeface of the pricing information had the effect of making the pricing information very difficult for consumers to read.

The Tribunal acknowledged that the auto-scroll function did, on some occasions, result in the pricing information for the Service being visible to consumers without the need for them to scroll upwards or downwards. Notwithstanding this, the Tribunal's view was that the pricing information was visible for such a short period of time, that it was likely a consumer would have had insufficient time to read it.

For the reasons set out above, The Tribunal was satisfied that the pricing information in respect of the service was not sufficiently prominent and proximate to the premium rate number and that, as a consequence, it was likely that consumers of the Service were unaware of the cost of the Service before using it.

Accordingly, the Tribunal upheld a breach of rule 2.2.1 of the Code.

Decision: UPHELD

Alleged breach 3

Rule 3.2.3 – “PRS must not mislead or be likely to mislead in any way”

1. The Executive asserted that the Level 2 provider had acted in breach of rule 2.3.2 of the Code for two reasons:

- 1). The website landing page does not make it clear that it is not the actual website for the relevant public or commercial organisation.
- 2). The expected waiting times advertised on the website landing pages were not based upon adequate factual information.

The Executive relied upon the PSA Guidance on ‘Promoting premium rate services’ which states at Paragraph 7.1:

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

Ground 1 - The website landing page did not make it clear that it was not the actual website for the relevant public or commercial organisation.

The Executive relied upon the following complaints from consumers:

“consumer said that his daughter was misled into calling this number and she believed that it was asos that she was calling. Because it looks as though it is from asos.” [sic]

“under the impression he called 'SKY”

“We were not notified of the fact that we would be charged or that it was via a third party.”

The Executive submitted that it had monitored the Service and come across the following landing page:

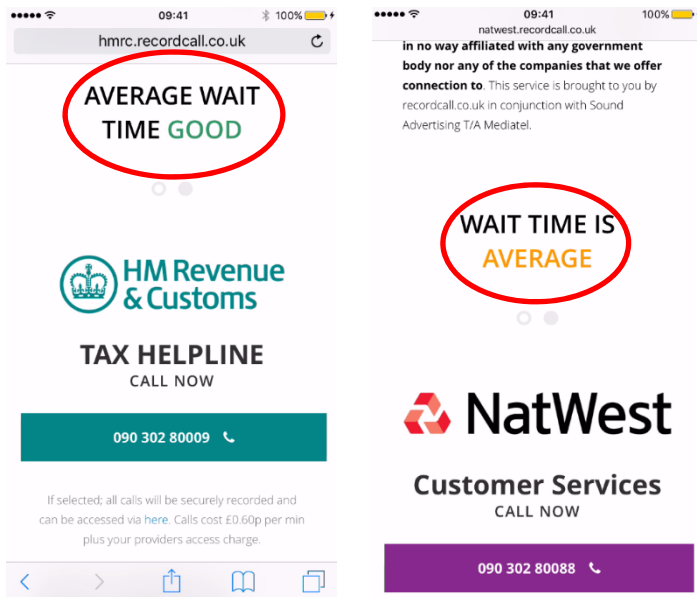


The Executive asserted that the complainants had been misled and that other consumers were likely to have been misled about the nature of the Service. This was due to the website landing page not making it clear to the consumer that it was not the actual website for the relevant public organisation (such as the Driver and Vehicle Licensing Agency as per the example above).

The Executive submitted that the Level 2 provider, in not making this information available on promotions, had failed to make it clear to consumers that the website belonged to a third party company. As a result, consumers may be misled into accessing the Service through a website which they believed belonged to the actual public or commercial organisation.

Ground 2- The expected waiting times advertised on the website landing pages were not based upon adequate factual information.

The Executive stated that it had conducted extensive monitoring of the Service, the majority of which did not show information about expected call waiting times on the website landing pages. However, on some occasions the monitoring had shown website landing pages with an expected wait time indicated. An example is below:



As a result of its monitoring, the Executive sought clarity as to how the expected wait time was determined by the Level 2 provider. On 25 October 2016, the Level 2 provider stated the following:

“In order to determine if a number that we are connecting to has a Good, Average or Bad wait time each day; we call the numbers ourselves and see how long we have to wait. We don’t work on a specific framework here - we simply use judgement each time to say what category we believe the wait falls under.

Additionally, we are subscribed to every company’s Twitter accounts - which is where company’s post of there are issues that maybe causing long waits, etc. If something comes to our attention then we check the number again to judge the wait time’s status.”

Having considering the Level 2 provider’s response, on 3 November 2016 the Executive sought further clarification from the Level 2 provider as follows:

- “i. Please advise how often you call each number to assess the expected waiting time and provide documentary evidence to support your answer.*
- ii. Please confirm the waiting time for each status (Good, Average and Bad).”*

On 7 November 2016, the Level 2 provider had supplied the following response:

“i. We call each number daily - unless we see something on their social media (we have a social stream set up to show all updates on Slack) to warrant checking the number again during the day. For example, reported outages for a phone company may mean longer waiting times, so we call the number to check once every couple of hours until the issue is resolved.

ii. This figure is subjective to whomever conducts the calls each day. it's certainly something that we appreciate you shading light on. As a result we will now create a more concrete structure for what wait times constitute what waiting statuses."

The Executive submitted that the Level 2 provider's response indicated that it relied upon social media updates and daily calls to the commercial or public organisations when determining the expected waiting time. Furthermore, the Level 2 provider had stated that the numbers were only tested on a more regular basis if issues were identified with a particular line.

The Executive submitted that the nature and frequency of the testing conducted by the Level 2 provider was insufficient to provide an accurate estimation of the expected waiting times for calls throughout the day. The Executive further submitted that the call waiting time assigned to each status was not based upon a specific timeframe and was also subject to the individual person testing the number on the day.

In light of the above, the Executive asserted that the statuses assigned to the waiting times were based upon insufficient information and were therefore capable of creating a misleading impression to consumers about likely call waiting times. The Executive asserted that it was likely that consumers had used the Service with the expectation that call wait times would be good or average, when this might not necessarily have been the case. The Executive submitted that, although it had observed "good" or "average" call waiting time statuses during its monitoring, it had not observed a website landing page with a "poor" call waiting time status.

The Executive asserted that consumers were either misled or were likely to have been misled by the inaccurate descriptions of the expected call waiting times and that, as a result, a breach of Rule 2.3.2 of the Code had occurred.

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal considered the Code and all the evidence before it. In respect of the first ground advanced by the Executive, namely that the website landing page did not make it clear that it was not the actual website for the relevant public or commercial organisation, the Tribunal was satisfied that the website landing page was misleading to consumers. In reaching its conclusion, the Tribunal took into account the general appearance of the website, which the Tribunal noted closely resembled the website of the organisation the consumer was trying to contact. The Tribunal also took into account the fact that the website did not make it clear to consumers that it was in fact the website of a third party company.

In respect of the second ground advanced by the Executive, namely that the expected waiting times advertised on the website landing pages were not based upon adequate factual information, the Tribunal was satisfied that the call waiting times could be misleading to consumers.

In reaching this conclusion, the Tribunal carefully considered the information supplied by the Level 2 provider to the Executive in response to the Executive's request that the

Level 2 provider explain how it estimated call waiting times. The view of the Tribunal was that the method used by the Level 2 provider to estimate call waiting times was wholly inadequate. Furthermore, the Tribunal considered that the Level 2 provider's references on the websites to "wait times" and its use of the phrase "Helpline is open" were misleading as they incorrectly implied that the Level 2 provider had direct access to the relevant organisation's records.

For the reasons set out above, the Tribunal was satisfied, on the balance of probabilities, that the promotional websites were misleading to consumers.

Accordingly, the Tribunal upheld a breach of Rule 2.3.2 of the Code.

Decision: UPHELD

Alleged breach 4

Paragraph 3.4.14(a)– "Level 2 providers must, within two working days of the service becoming accessible to consumers, provide to the PSA 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 had acted in breach of paragraph 3.4.14(a) of the Code as, during a period of time when the Service was operational, it had failed to provide the PSA with relevant details (including the premium rate numbers on which the Service operated) sufficient to identify the Service to consumers.

The Executive stated that it was a Code requirement for Level 2 providers to supply relevant details to identify services to consumers. The PSA Registration Scheme was in place to facilitate providers to supply these details, including details of which premium rate numbers it operated on. The details would then appear on the 'Number Checker' section of the PSA website, www.psauthority.org.uk. The Number Checker allowed consumers to enter a phone number which they might not recognise on their phone bill, in order to find out information regarding that number.

The Executive referred the Tribunal to information supplied by the Level 2 provider, in which it stated that the Service commenced operation on 16 December 2015. Despite the Service having commenced operation on this date, according to the Executive's registration database, the Level 2 provider had not registered the majority of its Service numbers until almost six months later.

The Executive submitted that, according to the PSA registration database, the Level 2 provider had first registered the number 09030280009 on 15 January 2016. The number 09030280080, and number ranges 09030280040 – 09030280048 and 09030280082 – 09030280099 were registered on 12 May 2016. Information supplied by the Network operator to the Executive had demonstrated that the number 09030280080 and the number range 09030280082 – 09030280099 were all in use before they were registered with the PSA. One other number (09030280081) had never been registered with the PSA, despite it generating revenue.

The Executive submitted that, where services are not registered, consumers were unable to access information relating to the Service. This in turn impaired the PSA's regulatory function.

The Executive asserted that the failure by the Level 2 provider to supply the requisite information to the PSA by registering the Service numbers was a breach of paragraph 3.4.14(a) of the Code

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal considered the Code and all the evidence before it.

The Tribunal carefully considered the screenshots of the registration database provided by the Executive, together with the information supplied by the Level 2 provider regarding the date upon which the Service had commenced operation.

The Tribunal was satisfied that the screenshots provided clear evidence of the dates upon which the Service numbers were registered, noting that the registrations did not occur until some months after the Service had commenced operation. However, the conclusion of the Tribunal was that the failure to register the numbers spanned an average period of 3 months (rather than the 6 months advanced by the Executive).

On this basis, and for the reasons sets out above, the Tribunal was satisfied on a balance of probabilities that the Level 2 provider had not registered the relevant Service numbers with the PSA within 2 days of the Service commencing operation, as required.

Accordingly, the Tribunal upheld a breach of Paragraph 3.4.14(a) of the Code.

Decision: UPHELD

Alleged breach 5

Paragraph 3.11.3 – “Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the Special conditions. A breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code.”

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special condition applicable to Information, Connection and/or Signposting Services (ICSS) had not been adhered to.

The Executive relied upon the evidence from monitoring conducted by the Executive, complainant accounts and the content of the Notice of Special Conditions for Information, Connection and/or Signposting Services (“ICSS Special Conditions”).

Paragraph 3.11.1 of the Code states:

“Where the PSA is satisfied there is or is likely to be a risk of:

a significant level of consumer harm; or

unreasonable offence to the general public, arising from a particular category of

Premium rate service ("a high risk service"),

it may impose conditions ("special conditions") for the purpose of ensuring compliance with the Code's outcomes. The conditions which may be imposed are the conditions set out in Annex Two and any related conditions which are necessary for the proper functioning of those conditions."

The Notice of Special Conditions for Information, Connection and/or Signposting Services published in accordance with paragraph 3.11.4 of the Code defines Information, Connection and/or Signposting Services (ICSS) as follows:

"Premium rate services, excluding full national directory enquiry services, that provide connection to specific organisations, businesses and/or services located or provided in the UK; and/or which provide information, advice, and/or assistance relating to such specific organisations, businesses and/or services."

The definition creates two distinct categories of ICSS; services that provide connection to organisations sought by consumers and those that provide information, advice and assistance on organisations. The two categories are defined as follows:

"Type 1 - 'Call connection' services. Type 1 services offer connection to a small number of organisations, rather than the full range that a national Directory Enquiry (DQ) service provides. In some cases Type 1 services may, in addition to connection, offer the number the consumer is seeking.

Type 2 - 'Signposting' and 'Helpline' or advice or assistance services (which may or may not include the consumer providing account details relating to an unrelated online account they hold, so that the ICSS provider can interact with the account on their behalf). Type 2 services usually offer consumers the number of one or a small number of organisations (but not onward connection to that number), operator-led assistance, or provide generic, pre-recorded advice via an Interactive Voice Response (IVR) system."

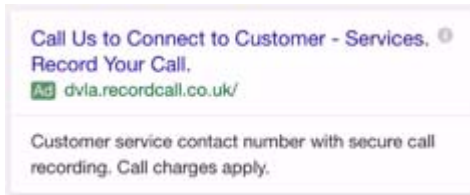
The Executive asserted that the Service fell within the Type 1 category for ICSS as it provided call connection to public or commercial organisations.

The Executive further asserted that Special Condition ICSS 1 had been breached by the Level 2 provider. Special Condition ICSS 1 states:

"Web-based promotions should not use internet marketing or optimisation techniques (such as metadescriptions or metatags) which mislead a consumer into believing (a) that their service is the actual service the consumer is seeking; or (b) that they are providing advice or information that is not already available from a public or commercial organisation (unless they genuinely are providing advice or information that is not available in this way). In addition, web-based promotions should contain metadescriptions which make the nature of the service clear and do not mislead the consumer into believing that they are the helpline or information the consumer is seeking. The Search Engine Marketing (SEM) should therefore clearly display a phrase which accurately describes the true nature of the service operated

and promoted using the website to which the SEM links, such as “Premium rate connection service” or “Call connection service” within the result displayed for a Type 1 ICSS; and for example “Premium rate assistance service” or “Information assistance service” for a Type 2 ICSS. Such a phrase must be positioned to ensure it is clearly on-screen when the consumer views the search engine results. For the avoidance of doubt alternative phrases may be used where they meet the above SEM description requirement.”

The Executive had monitored the Service and had observed the below sponsored advertising on the Google search results page:



The Executive submitted that the Level 2 provider had not adhered to Special Condition ICSS 1. Special condition ICSS 1 states that:

“web-based promotions should contain metadescriptions which make the nature of the service clear and do not mislead the consumer into believing that they are the helpline or information the consumer is seeking.”

The Executive asserted that the use of language in the sponsored advertising such as “Customer service contact number...” could have misled consumers into believing that the Service was linked to the actual public organisation.

It was further submitted by the Executive that the sponsored advertising for the Service did not provide an accurate description of the Service, as was required by Special Condition ICSS 1 which states that:

“The Search Engine Marketing (SEM) should therefore clearly display a phrase which accurately describes the true nature of the service operated and promoted using the website to which the SEM links, such as “Premium rate connection service” or “Call connection service” within the result displayed for a Type 1 ICSS”.

The Executive asserted that a breach of paragraph 3.11.3 of the Code had occurred as the Special condition ICSS 1 had not been adhered to by the Level 2 provider.

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal considered the Code and the evidence before it and in particular the Executive’s monitoring evidence in respect of the sponsored advertising for the Service. The Tribunal considered that the meta-descriptions and words used in the sponsored advertising such as “Customer Service Contact Number” was misleading to consumers as it created the impression that they were calling the customer services

department of the organisation in question, rather than a chargeable call connection service.

For the reasons set out above, the Tribunal was satisfied, on the balance of probabilities, that the Google advert and meta-descriptions in respect of the Service did not comply with Special Condition ICSS 1.

Accordingly, the Tribunal upheld a breach of Paragraph 3.11.3 of the Code.

Decision: UPHELD

Alleged breach 6

Paragraph 3.11.3 – “Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the Special conditions. A breach of any special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code”.

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special condition applicable to Information, Connection and/or Signposting Services (ICSS), namely Special Condition ICSS 5 had not been adhered to

The Executive relied upon the Level 2 provider correspondence, complainant accounts, Service monitoring, and the content of the Notice of Special Conditions for Information, Connection and/or Signposting Services.

The Executive referred to the following complainant accounts:

“I clicked on a link using my smartphone and dialled the number. The link had the EE insignia.”

“This took me to a web page I presumed was Sky (sky.recordcall.co.uk), as it had the sky logo on it, and also had a telephone number on it, which I clicked to call (09030280096).”

The Executive submitted that the promotional material supplied by the Level 2 provider and the Executive’s own monitoring evidence demonstrated that Special Condition ICSS 5 has not been met by the Level 2 provider.

Special condition ICSS 5 states:

‘Promotions must not use descriptions, colour or typeface which is, or may be, perceived to imitate the organisation the consumer is looking for. Promotions must not imply that advice and/or information is unique to an ICSS when the same advice and/or information are available from a public or commercial organisation.’

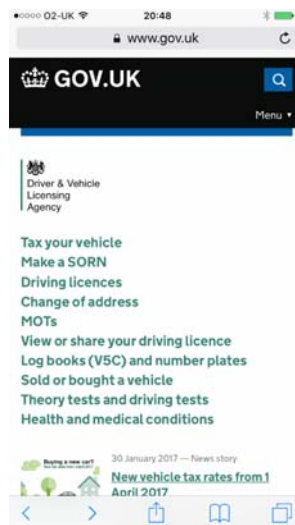
The Executive asserted that the website landing pages for the Service used an identical typeface to the one used on the website for the actual commercial or public organisation. In addition, the call to action button (which included the Service number) followed a very similar colour scheme to that which was used on the website for the actual commercial or public organisation.

The Executive relied upon the following screenshots taken from its monitoring of the Service:

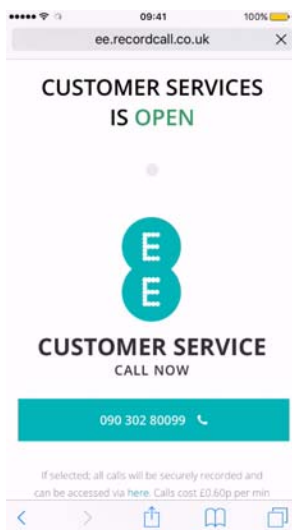
Service website landing page



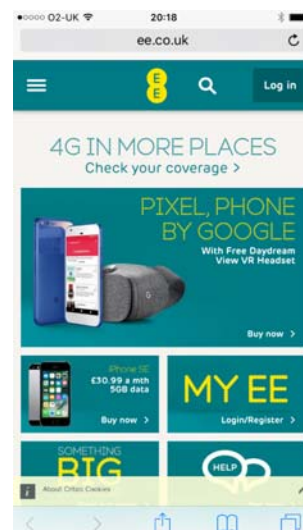
Actual website landing page



Service website landing page



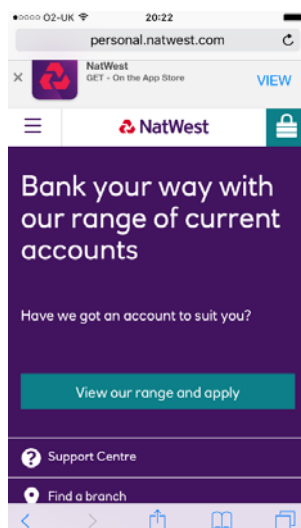
Actual website landing page



Service website landing page



Actual website landing page



For the reasons set out above, the Executive asserted that the Level 2 provider had acted in breach of Special condition ICSS 5. Accordingly, the Executive submitted that the Level 2 provider had acted in breach of Paragraph 3.11.3 of the Code.

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal carefully considered the Code and the evidence before it, and in particular the screenshots supplied by the Executive. The Tribunal noted from the screenshots that the branding and logos used by the Level 2 provider were extremely similar to the branding and logos of the relevant organisations. For this reason, the Tribunal was satisfied, on the balance of probabilities, that the Level 2 provider had used promotional material for the Service which imitated the relevant organisations, in contravention of Special condition ICSS 5.

Accordingly, the Tribunal upheld a breach of Paragraph 3.11.3 of the Code.

Decision: UPHELD

Alleged breach 7

Paragraph 3.11.3 – “Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the Special conditions. A breach of any Special condition in respect of a high risk service imposed under paragraph 3.11.1 shall be a breach of the Code”.

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special condition applicable to Information, Connection and/or Signposting Services (ICSS), namely Special condition ICSS 11 had not been adhered to.

The Executive relied upon the Level 2 provider correspondence, complainant accounts, Service monitoring, and the content of the Notice of Special Conditions for Information, Connection and/or Signposting Services.

The Executive referred the Tribunal to the below complainant accounts:

“Consumer said that when she called it did not give pricing details”

“At no time during the call did they say they weren't Sky and that I would be charged.”

The Executive submitted that its own internal monitoring of the Service demonstrated that the Level 2 provider had not adhered to Special Condition ICSS 11 which states:

“Consumers must receive an alert at the start of the call before onward connection stating the following (in any order):

- (i) the price per minute;*
- (ii) that the ICSS provider is not [insert the end organisation's name] or that the ICSS provider is [insert ICSS provider name]; and*
- (iii) the name of the end-organisation consumers will be connected to or given the option of connecting to.”*

The Executive's monitoring showed that a pre-recorded information message was played before connection to the public or commercial organisation. However, the recorded message did not include any of the information listed in Special Condition ICSS 11.

For the reasons sets out above, the Executive asserted that a breach of paragraph 3.11.3 of the Code has occurred as Special condition ICSS 11 has not been adhered to by the Level 2 provider.

2. The Level 2 provider did not make representations in respect of the breach.
3. The Tribunal considered the Code and all the evidence before it, and in particular the Executive's monitoring in respect of the pre-recorded IVR message.

The Tribunal was satisfied that the pre-recorded message did not contain the price per minute, nor did it identify the Level 2 service provider or indicate to the consumer that they were not calling the end organisation directly. The Tribunal was also satisfied that the pre-recorded message did not give the name of the end-organisation consumers were either to be connected to or given the option of connecting to. The Tribunal considered that the absence of this information made it likely that any consumers entering the Service would not have understood the nature of the Service or the pricing for the Service.

For the reasons set out above, the Tribunal was satisfied, on the balance of probabilities, that the Level 2 provider had not adhered to Special condition ICSS 11.

Accordingly, the Tribunal upheld a breach of paragraph 3.11.3 of the Code.

Decision: UPHELD

SANCTIONS

Representations on sanctions made by the Executive

The Executive submitted that the following sanctions were appropriate:

a formal reprimand;

a fine of £860,000;

a requirement that the Level 2 provider remedy the breach by addressing the issues around transparency and pricing number registration, and the ICSS Special conditions;

a requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority before charging any new consumers; 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 PSA that such refunds have been made.

based on a preliminary assessment of breaches 1 and 4 as “serious” and breaches 2,3,5,6 and 7 as “very serious”.

Initial overall assessment

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

Rule 2.2.1 – Transparency and Pricing

The initial assessment of the breach of rule 2.2.1 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The case had a clear and highly detrimental impact on consumers; and

The nature of the breach meant the service would have severely damaged consumer confidence in premium rate services and;

Consumers had incurred an unnecessary cost and the Service was of seemingly limited value to consumers, noting that even if consumers did wish to access a call recording, it was only available for 60 minutes

Rule 2.2.7 – Pricing Information

The initial assessment of the breach of rule 2.2.7 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The case had a clear and highly detrimental impact on consumers; and

The nature of the breach meant the service would have severely damaged consumer confidence in premium rate services; and

Consumers incurred an unnecessary cost or the Service had the potential to cause them to incur such costs as consumers may not have been aware of the cost for using the Service;

Rule 2.3.2 – Misleading

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

The case had a clear and highly detrimental impact on consumers; and

The nature of the breach meant the service would have severely damaged consumer confidence in premium rate services; and

Consumers had incurred an unnecessary cost or the Service had the potential to cause them to incur such costs as consumers may not have been aware of the true nature of the Service;

The Service had been operated in such a way that demonstrated fundamental non-compliance with the Code in respect of a high revenue and high exposure Service.

Paragraph 3.4.14(a). – Failure to Register

The initial assessment of the breach of paragraph 4.2.2 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The breach had a detrimental impact on consumers, noting that the PSA Registration Scheme exists in order to assist consumers who have incurred an unknown or unnecessary charge; and

The nature of the breach was likely to damage consumer confidence in premium rate services by undermining the PSA's regulatory requirements in respect of Service registration; and

The breach demonstrated fundamental non-compliance with the Code.

Paragraph 3.11.3 – Breach of Special condition ICSS 1

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

The breach had a highly detrimental impact on consumers; and

The nature of the breach and scale of the harm and potential harm caused to consumers was likely to severely damage consumer confidence in premium rate services; and

Consumers had incurred an unnecessary cost; and

The breach demonstrated fundamental non-compliance with Code and the Special conditions in relation to ICSS.

Paragraph 3.11.3 – Breach of Special condition ICSS 5

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

The breach had a highly detrimental impact on consumers; and

The nature of the breach and scale of the harm and potential harm caused to consumers was likely to severely damage consumer confidence in premium rate services; and

Consumers had incurred an unnecessary cost; and

The breach demonstrated fundamental non-compliance with Code and the Special conditions in relation to ICSS.

Paragraph 3.11.3 – Breach of Special condition ICSS 11

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

The breach had a highly detrimental impact on consumers; and

The nature of the breach and scale of the harm and potential harm caused to consumers was likely to severely damage consumer confidence in premium rate services; and

Consumers had incurred an unnecessary cost; and

The breach demonstrated fundamental non-compliance with Code and the Special conditions in relation to ICSS.

Final overall assessment

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

The Tribunal found the following aggravating factor:

The Level 2 provider had been notified by the Executive of the ICSS Special Conditions and the issues identified with the Service. Despite this, the Level 2 provider had not addressed those issues.

The Tribunal considered the partial and limited remedial steps taken by the Level 2 provider to be inadequate and therefore the Tribunal gave little weight to this as a mitigating factor.

The Level 2 provider's evidenced revenue in relation to the Service in the period from September 2016 to December 2016 was in the range of Band 1 (£1,000,000 plus).

The Tribunal noted that the Service had resulted in a high degree of harm to large numbers of consumers who had used the service. The Tribunal also noted that the Level 2 provider had industrialised the process by rolling out the Service over a large number of premium rate numbers during the relatively short time the Service was in operation.

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**. In determining the final overall assessment for the case, the Tribunal took into account the fact that the Special conditions were very prescriptive and made it clear to providers who wished to run an ICSS service as to what was required in order to run it compliantly. The Level 2 provider had disregarded several of these requirements, with the result that high levels of revenue had been generated and widespread harm had been caused to consumers due to the highly misleading consumer journey they had experienced.

Sanctions imposed

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

- a formal reprimand;
- a total fine of £850,000 comprised of:

£100,000 fine in respect of breach of rule 2.2.1 (transparency and pricing);

£250,000 fine in respect of breach of rule 2.2.7 (pricing prominence);

£75,000 fine in respect of breach of rule 2.3.2 (misleading);

£50,000 fine in respect of breach of paragraph 3.4.14(a) (registration)

£125,000 fine in respect of breach of paragraph 3.11.3 (Special condition ICSS 1);

£125,000 fine in respect of breach of paragraph 3.11.3 (Special condition ICSS 5);

£125,000 fine in respect of breach of paragraph 3.11.3 (Special condition ICSS 11)

- a requirement that the Level 2 provider obtain compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority;
- a bar on access to the Service until compliance advice is sought by the Level 2 provider and implemented to the satisfaction of the Phone-paid Services Authority;
- 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 the PSA that such refunds have been made.

In reaching the above fine amounts, the Tribunal had regard to the principles of proportionality and totality and took into account the breadth and seriousness of the breaches found proved together with the widespread nature of the actual and potential consumer harm occasioned by the breaches.

The Tribunal acknowledged that there was some overlap in the harm occasioned by the breaches of rules 2.2.1, and 2.3.2 of the Code, which was reflected in the fine amounts imposed in respect of the breaches, which would otherwise have been higher. It also acknowledged the overlap in harm occasioned by the breaches of paragraph 3.11.3 (ICSS Special conditions) which was reflected in the fines imposed in respect of each of those breaches which, had they occurred in isolation, would likely have attracted the maximum penalty.

In light of these factors, the Tribunal was satisfied that a total fine in the amount of £850,000 was proportionate in all the circumstances of the case.

Administrative charge recommendation

100%