Tribunal meeting number 215

Case reference: 128442

Level 2 provider: Golden Brand Inc. Seychelles

Type of service: Adult video subscription service

Level 1 provider: Veoo Limited, UK

Network operator: All Mobile network operators

This case was brought against the Level 2 provider under Paragraphs 2.3.3, 4.2.4 and 3.4.8 of the Code of Practice

Background

The investigation concerned an adult video subscription service operating on shared shortcode 89945 under the brand name 'Hot Selfie babes' (the "**Service**").

The Level 2 provider for the Service was Golden Brand Inc. (the **'Level 2 provider'**). The Level 2 provider had been registered with the Phone-paid Services Authority ("**PSA**") since 27 July 2015. The Level 1 provider for Service shortcode 89945 was Veoo Limited ("**Veoo**").

The Service was stated to be an adult video subscription service charged at £4.50 per month.

It had been confirmed by the Level 2 provide in correspondence relating to a previous investigation that the Service commenced operation on 1 November 2014.

The Service had been the subject of an earlier adjudication of a Tribunal dated 26 May 2016 (case reference 85964). The Tribunal on that occasion had determined that the Level 2 provider did not hold robust evidence which established consumers' consent to be charged for the Service, and that consumers had been charged without their consent.

The Tribunal of 26 May 2016, upheld breaches of the PSA Code of Practice, 13th Edition, rule 2.3.3 (consent to charge), paragraph 4.2.4 (provision of false information), paragraph 3.12.5 (spend reminders) and paragraph 3.4.1 (failure to register with the Phone-paid Services Authority). It considered the case to be **very serious** and imposed the following sanctions against the Level 2 provider:

- a formal reprimand;
- a fine of £50,000 and;
- a requirement that the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund. Refunds should be directly credited to the users'

mobile accounts and the Level 2 provider must provide evidence to PSA that the refunds have been made.

In its representations to the Tribunal of 26 May 2016, the Level 2 provider stated that "*We confirm our service is no longer operating in the UK market and we have no intention of providing services moving forwards in such a difficult commercial and regulatory environment*. With no Service in operation, the Tribunal did not impose a remedy the breach sanction.

The Tribunal also recommended payment of the administrative charge totaling £9,770.71.

The Level 2 provider was formally notified of the Tribunal's decision on 8 June 2016.

The Level 2 provider sought a review of the Tribunal's decision. The application for review was deemed to have no merit and was accordingly refused by a legally qualified adjudicator of the Code Compliance Panel ("CCP") on 11 July 2016.

As a result of the Universal refunds sanction imposed, the Executive corresponded with the Level 2 provider in order to assess the progress of the refunds process. In an email dated 8 November 2016, the Level 2 provider requested access to £92,000 of withheld revenues to allow it to issue refunds. The Level 2 provider failed to provide sufficient documentary evidence to support its statement that it required the release of £92,000 to comply with the Universal refund sanction. On 24 November, the Level 2 provider stated that its "bank account is empty", providing the Executive with the front page of a redacted bank statement showing a balance of £120.75.

On 2 December 2016, the Level 2 provider stated that it only had one bank account.

On 14 December 2016, the Executive issued the following request to the Level 2 provider:

"Please will you confirm what steps, if any, Golden Brand has taken to address the Tribunal's findings of 26 May 2016 in respect of breaches of the Code. Namely, what steps have been taken to ensure that you hold robust, verifiable evidence of consent to charge in respect of all subscribers to the service and what steps have been taken to ensure that spend reminders are sent."

On 20 December 2016, the Level 2 provider stated:

"Since GB was not instructed to re-opt-in it's customer base by the Tribunal, it has not done so. If you require GB to stop it's service and re-opt-in it's customer base then please appeal the verdict of the Tribunal in June, since this was a lawful judgment by which we and your Authority are currently bound." [sic]

On 22 December 2016, the Executive stated in a letter to the Level 2 provider that:

"At the Tribunal, Golden Brand asserted that it was no longer operating the service and that it had no further plans to do so. The Tribunal did not impose a "remedy the breach" sanction in respect of the service. However, all providers who operate a service are obliged to operate it in compliance with the

Code of Practice. This obligation does not cease following a Tribunal hearing and where a service continues to operate in a manner which is not compliant with the Code of Practice, PSA are not barred from taking further regulatory action where necessary."

"In respect of your question "How many complaints have you received since the tribunal decision?" Golden Brand has been sent several letters by the PSA Contact Assessment Team outlining the complaints received from consumers since the Tribunal date, to which Golden Brand has failed to respond."

"It has also come to our attention that Golden Brand has not been registered with the PSA as a provider since 26 July 2016 and that the service is not registered."

On 29 December 2016, the Level 2 provider cited that it was double jeopardy to fine Golden Brand again for all the same issues:

"We are currently free to continue billing out our base there is nothing I read in the tribunal decision to prevent this. You are free to do whatever you please, however GB will seek to use the defense [sic] above to block you repeating the same proceedings and getting a double conviction. We can re-register the company on your database, I wasn't aware our subscription had lapsed, but then again we were fined for not being registered already, so my argument above still apply".

The Executive noted that the Service was in operation for the entire duration of the previous investigation, and continued to operate as of the date of the previous Tribunal hearing and thereafter. This was in direct contrast to the Level 2 provider's statement in its breach letter response, dated 5 May 2016, that "*We confirm our service is no longer operating in the UK market and we have no intention of providing services moving forwards in such a difficult commercial and regulatory environment."*

The Executive had received 16 complaints concerning the Service following the Tribunal of 26 May 2016. The complainants variously allege that the Service charges are unsolicited. A sample of complainant accounts have been provided below:

"I have been charged from the above companies' numbers for services that I did not purchase. The information on the bill is: 29 Jun 08:36 Premium text received 700074108 Not included - £10.00 And: 26 Jun 00:12 Premium text received 700046086 Not included - £4.50"

"Hello, I have noticed I have been charged 3.75 every month for at least 1 year starting in January 2016 for a service I have not requested. I have not noticed as I have bought numerous apps for my phone and presumed this was included in my bill. I contacted the company golden brands to explain that I haven't used their service once but they advised me to contact yourselves. The number on my bill is 400046086. I was told I was eligible for £63 but this was then declined. My mobile number is 07974203102. My network is EE. The original number lead me to a company whose email address is: uk.care@veoo.com. they unsubscribed me and contacted golden brands directly Kind regards Wilfred payne Have you contacted the Service Provider: Yes"

Interim measures

On 18 May 2017 the Code Adjudication Panel ("CAP") considered an application by the Executive for the imposition of interim measures. Accordingly, in respect of the Service, the CAP agreed to impose a Service suspension and a withhold on the Service revenue.

On 19 May 2017, the Level 2 provider was notified of the decision and given an opportunity to apply for a review of these measures. No application for review was submitted.

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).

The Executive sent a Warning Notice to the Level 2 provider. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the "Code"):

- Code 13 and 14 rule 2.3.3 – Consent to charge
- Code 13 para 4.2.4 – Provision of false / misleading information
- Code 14 para 3.4.8 – Registration renewal

On 20 September 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 and the Level 2 provider's responses, correspondence sent subsequent to the service of the Warning Notice and the Level 2 provider's response, supporting information, and the previous complaint resolution procedure);
- Correspondence between the Executive and the Level 1 provider;
- The minutes of the 26 May 2016 Tribunal for the original adjudication against the Level 2 provider;
- The Level 2 provider's breach letter response to the original case;
- A copy of the Level 2 provider's registration with the PSA;
- PSA Guidance on "Consent to Charge" (Code 14);
- Revenue statistics for the Service;

Submissions and Conclusions

Alleged Breach 1

Rule 2.3.3 (Code 13 and 14)

"Consumers must not be charged for premium rate services [PRS] 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 PSA Code of Practice, 13th and 14th Edition as the Level 2 provider had charged consumers without their consent and did not provide evidence to establish consumers' consent to be charged.

   The Executive relied on correspondence exchanged with the Level 2 provider and Level 1 provider, complainant accounts, PSA's General Guidance Note 'Consent to Charge' in support of the PSA Code of Practice, 14th Edition (the "Code 14 Guidance") and the adjudication against the Level 2 provider by the CCP at Tribunal on 26 May 2016.

   Code 14 Guidance states:

   "2. What is robust verification of consent to charge?
   2.1 Robust verification of consent to charge means that the right of the provider to generate a charge to the consumer's communication bill is properly verifiable. By 'properly verifiable', we mean a clear audit trail that categorically cannot have been initiated by anything else other than a consumer legitimately consenting, and cannot have been interfered with since the record was created.

   For Premium SMS charges
   2.2 The Phone-paid Services Authority considers that a fully robust way to evidence consent for a PSMS charge is for the consumer to initiate the transaction with a Mobile Originating message (or 'MO') to a shortcode. In this way, the billing Mobile Network Operator's ('MNO') record is sufficiently robust to verify the charge."

   Following the Tribunal of 26 May 2016, the PSA received a further 16 complaints alleging receipt of unsolicited Service charges. Despite the finding of the previous Tribunal that the Level 2 provider did not hold evidence of consumer's consent to be charged, the Level 2 provider had confirmed in correspondence with the Executive that it took no steps to re-opt-in consumers of the Service:

   "Since GB was not instructed to re-opt-in it's customer base by the Tribunal, it has not done so. If you require GB to stop it's service and re-opt-in it's customer base then please appeal the verdict of the Tribunal in June, since this was a lawful judgment by which we and your Authority are currently bound."

   Subsequent to that correspondence, the Level 2 provider had failed to respond to the Executive's directions requesting the evidence it holds of consent to charge for these consumers. Existing customers were still being billed post-adjudication as evidenced by complaints and message logs provided by Veoo, and no evidence of consent to charge had been provided.

   The Executive sent a direction for information to the Level 2 provider on 5 June 2017 requesting message logs and evidence of consent to charge for the all the complainants:

"Please provide text message logs showing the full interaction between the Service and the following mobile telephone numbers, including evidence of when and how each mobile number was opted-in to receive the service under investigation."

By the date of the Tribunal, the Level 2 provider had provided no evidence that it held consent to charge the complainants, as required by rule 2.3.3 of the Code, where an allegation of unsolicited service charges had been made.

For the reasons set out above the Executive asserted that the Level 2 provider had provided no evidence which established consent to charge consumers. 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 breach. It stated that it was being tried again for the same alleged breach it was found guilty of in May 2016 and that this amounted to double jeopardy. It argued that this was the same "breach" since it was the same user database, and that no users were added during 2016 or 2017.

   The Level 2 provider noted that the 26th May Tribunal had not imposed a requirement that access to the service be barred, or a requirement to re-opt-in its user base and had not sought to impose any sanction to remedy the breach. It asserted that, as a result of this, it continued to provide the service, contingent upon meeting the universal refund sanction, which it was unable to meet due to what it described as a "clear blockade on financial cooperation from the PSA Executive."

   The Level 2 provider further stated that the Executive had sent the first ever direction for information on Consent to Charge on 5th June 2017, but that it did not reply to this direction as it did not expect to be treated fairly by an organization that had shown no appetite to cooperate with it to help it meet the original refund sanction from the May 2016 Tribunal.

   It argued that there had been no new, separate or isolated breach of Rule 2.3.3. The Level 2 provider therefore asked the Tribunal not to impose an additional penalty.

3. The Tribunal considered the Code and all of the evidence before it, including the correspondence from the Level 2 provider and the Executive's direction to the Level 2 provider to supply text message logs and evidence of consent to charge from all of the complainants.

   The Tribunal noted that the previous Tribunal had made a finding that the Level 2 provider did not hold evidence of consent to charge. Since the previous Tribunal date, the Level 2 provider had been given an opportunity to explain what steps it had taken to ensure that it held robust evidence of consent and had also been directed to supply this information in June 2017. The Level 2 provider did not dispute that it had failed to provide evidence of consent to charge during the current investigation and the Tribunal was therefore satisfied that it did not hold robust evidence of consent to charge consumers .

The Tribunal noted the Level 2 provider's submissions that the current case related, in essence, to a breach that had already been adjudicated by the previous Tribunal, and that the previous Tribunal had not required it to re opt-in its subscriber base. However, the Tribunal concluded that the current case did not relate to the same breach, as it related to conduct that occurred after the previous adjudication, which resulted in consumers continuing to be charged. The clear view of the Tribunal was that the Level 2 provider was, at all times, required to adhere to the Code, regardless of whether there had been a specific direction to remedy the breach of Rule 2.3.3 by the earlier Tribunal. In addition, the Tribunal was of the view that it was likely that the earlier Tribunal had not imposed a sanction requiring the Level 2 provider to remedy the breach due to the Level 2 provider's own incorrect assertion that it intended to cease operation of the Service.

For the reasons outlined above, the Tribunal was satisfied that the Level 2 provider did not hold robust evidence that consumers had given their consent to charge. Accordingly, the Tribunal upheld a breach of rule 2.3.3 of the Code.

Decision: UPHELD

Alleged Breach 2

Rule 4.2.4 (Code 13)

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

1. The Executive submitted that the Level 2 provider had breached rule 4.2.4 of the Code as information supplied by the Level 2 provider was false.

   The Executive referred to the Level 2 provider's submissions made during the Tribunal of 26 May 2016:

   "We confirm our service is no longer operating in the UK market and we have no intention of providing services moving forwards in such a difficult commercial and regulatory environment."

   The Executive had identified that, despite the Level 2 provider's submissions to the earlier Tribunal that it had ceased operating in the UK, the Service had in fact continued to operate and bill complainants in the period running up to and including the Tribunal of 26 May 2016 and also after the date of Tribunal, as evidenced by message logs supplied by the Level 1 provider.

   On 14 December 2016, the Executive wrote to the Level 2 provider as follows:

   "*In addition, it has recently come to our attention that the service is still in operation, despite Golden Brand having specifically indicated in its response to the breach letter dated 5 May*

2016 as a mitigating factor 'We confirm our service is no longer operating in the UK market and we have no intention of providing services moving forwards in such a difficult commercial and regulatory environment'. Moreover, complaints are still being received in respect of the service.

Please will you confirm what steps, if any, Golden Brand has taken to address the Tribunal's findings of 26 May 2016 in respect of breaches of the Code. Namely, what steps have been taken to ensure that you hold robust, verifiable evidence of consent to charge in respect of all subscribers to the service and what steps have been taken to ensure that spend reminders are sent."

On 20 December 2016 the Level 2 provider responded:

"The tribunal made no recommendation for the service to be switched off or users re-opted in."

"GB has indeed not re-marketed its services and not activated a single new consumer during 2016 and has no plans to do so, as stated in the letter. Please note the point you raise above was not included as a mitigating factor in the Tribunal's comments, it is misleading for you to refer to it as a mitigating factor."

"Since GB was not instructed to re-opt-in it's customer base by the Tribunal, it has not done so. If you require GB to stop it's service and re-opt-in it's customer base then please appeal the verdict of the Tribunal in June, since this was a lawful judgment by which we and your Authority are currently bound." [sic]

On 22 December 2016 the Executive wrote to the Level 2 provider as follows:

"At the Tribunal, Golden Brand asserted that it was no longer operating the service and that it had no further plans to do so. The Tribunal did not impose a "remedy the breach" sanction in respect of the service. However, all providers who operate a service are obliged to operate it in compliance with the Code of Practice. This obligation does not cease following a Tribunal hearing and where a service continues to operate in a manner which is not compliant with the Code of Practice, PSA are not barred from taking further regulatory action where necessary."

On 29 December 2016 the Level 2 provider responded:

"We are currently free to continue billing out our base there is nothing I read in the tribunal decision to prevent this. You are free to do whatever you please, however GB will seek to use the defense above to block you repeating the same proceedings and getting a double conviction."

On 16 January 2017 the Level 1 provider confirmed that "*Goldenbrand [sic] billed every month between Jan 16-Dec 16*".

In light of the contents of this correspondence, the Executive submitted that the Level 2 provider had intentionally misled the earlier Tribunal by inaccurately claiming that the "*service is no longer operating in the UK market*".

The Executive further submitted that the intentional misleading of the earlier Tribunal was aggravated by the fact that the Level 2 provider continued thereafter to operate the Service in a manner which was not compliant with the Code of Practice, resulting in

the PSA receiving 16 complaints concerning the Service post the Tribunal of 26 May 2016 and for which the Level 2 provider failed to respond to requests for evidence of consent to charge.

The Executive submitted that, for the reasons stated above, the Level 2 provider had provided false or misleading information to the PSA and that, accordingly, the Level 2 provider has breached paragraph 4.2.4 of the Code.

2. The Level 2 provider denied the breach. It stated that the 26th May Tribunal had imposed no bar of service or requirement for it to re-opt-in its user base. It was a weak argument of the Executive to suggest that this was because of a one-line comment in the "mitigating circumstances" section of a Warning Notice response furnished on 6 May 2016.

   The Level 2 provider clarified that what it meant by this statement was that "we have no intention of providing services moving forwards", in that it had no intention of marketing its services. It confirmed that marketing was indeed withdrawn in Winter 2015 and that it was illogical to suppose that it would not want to continue with its existing subscriber base.

   The Level 2 provider stated that, with hindsight, it could have drafted the wording of that sentence better and more clearly to differentiate between new marketing and its existing customers.

   The Level 2 provider stated that it was sorry if this had caused confusion, but it doubted that the one-line statement buried in a huge document was ever relied upon by the May 2016 Tribunal in drafting their findings and issuing the sanctions. Indeed, there was no evidence to suggest that it was relied upon. The Level 2 provider suggested that this one sentence only came to prominence and only came to be relied upon many months later, in November 2016, when the investigator [NAME REDACTED] was fishing through the files to mount the second action against the Level 2 provider.

3. The Tribunal considered the Code and all the evidence before it, including the correspondence between the Executive and the Level 2 provider as well as the submissions of the Level 2 provider to the Tribunal of 26 May 2016.

   The Tribunal was satisfied that the Level 2 provider had clearly and unequivocally stated to the earlier Tribunal that it would cease to operate in the UK market. The Tribunal was also satisfied that it was likely that this statement was relied upon by the earlier Tribunal, noting that no direction to remedy the breach was made.

   The Tribunal rejected the Level 2 provider's submission that the statement had been ambiguous and that in making the statement the Level 2 provider had meant that it did not intend to market the services.

   The Tribunal considered that the statement was clearly false and clearly misleading, as customers were continuing to be charged at the relevant time. The Tribunal also noted

that the Service had been run for some time in breach of the PSA registration requirements.

For the reasons outlined above, the Tribunal was satisfied that the Level 2 provider had knowingly provided false and misleading information to the PSA. Accordingly, the Tribunal upheld a breach of rule 4.2.4 of the Code.

Decision: UPHELD

Alleged Breach 3

Rule 3.4.8 (Code 14)

"Registration must be renewed annually or at intervals determined by the PSA"

1. The Executive submitted that the Level 2 provider failed to renew its registration with the PSA and therefore operated in breach of paragraph 3.4.8 of the Code. The PSA Registration Scheme database showed that the registration for the Level 2 provider lapsed on 26 July 2016.

   The PSA registration sent automated registration reminder e-mails on 26 June 2016, 12 July 2016 and 25 July 2016 to the Level 2 provider to advise that it was required to renew its registration with the PSA by 26 July 2016, or inform the PSA if they were no longer operating a premium rate service.

   On 27 July 2016, the PSA sent an automated registration e-mail to the Level 2 provider to advise that its registration has expired and that it must renew its registration if it still operated in the UK premium rate market.

   On 22 December 2016, the Executive wrote to the Level 2 provider as follows:

   "It has also come to our attention that Golden Brand has not been registered with the PSA as a provider since 26 July 2016 and that the service is not registered. We ask that you provide us with any comments you wish to make in relation to this in your response to this email."

   On 29 December 2016, the Level 2 provider responded:

   "We can re-register the company on your database, I wasn't aware our subscription had lapsed, but then again we were fined for not being registered already, so my argument above still apply."

   On 16 January 2017, the Level 1 provider Veoo, confirmed that *"Goldenbrand billed every month between Jan 16-Dec 16"*.

The Executive therefore submitted that the Level 2 provider continued to operate premium rate services until 19 May 2017 without being registered on the PSA registration scheme. Accordingly, the Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.8 of the Code.

2. The Level 2 provider admitted the breach. It stated that it admitted the lapse, but wished the Tribunal to note that it had been found in breach of this paragraph of the Code already at the May 2016 Tribunal and had already been fined in respect of this breach. The Level 2 provider accepted that it ought to have re-registered the company on the PSA Registration Scheme in July 2016 and should therefore be found in breach.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that this breach was admitted and was satisfied that the Level 2 provider had failed to renew its registration with the PSA. Accordingly, the Tribunal upheld a breach of paragraph 3.4.8 of the Code.

Decision: UPHELD

SANCTIONS

Executive's representations on sanctions

The Executive submitted that the following sanctions were appropriate:

- a formal reprimand;
- a fine of £75,000; and
- a prohibition from providing any premium rate service for a period of five years from the date of publication of the Tribunal's decision or date upon which the universal refund ordered by the Tribunal of 26 May 2016 is complied with, whichever is the later;

based on a preliminary assessment of breaches 1 and 2 as "very serious" and breach 3 as "serious".

Level 2 provider's representations on sanctions

With regard to the Executive's recommendation of a fine, the Level 2 provider made the following representations:

- Regarding the breach concerning Rule 2.3.3 - Fairness / Consent to Charge, it had already been tried and found guilty in May 2016 and it was therefore not legally appropriate for a penalty to be applied in relation to this breach again.

- Regarding the breach concerning Paragraph 4.3.4 - Provision of misleading information, it ought to have clarified that it meant there would be *no new marketing* of

the service whatsoever. A reasonable penalty in relation to this misstatement was appropriate on balance.

- Regarding the breach concerning Paragraph 3.4.8 - Registration. It accepted that a penalty for the lapsed registration was suitable on the basis that it accepted that it could have re-registered but failed to do so.

- In the round, a maximum £50,000 new fine in respect of these two breaches would be at a suitable level.

With regard to the Executive's recommendation of a prohibition, the Level 2 provider made the following submissions:

- It was not a registered provider and could not provide services of any kind without such registration. It would not be seeking to re-register or to provide any service of any kind. It had suffered immense financial harm through this incident, and was now faced with imminent closure as a direct result. A prohibition order against the Company in the circumstances was too harsh.

- A prohibition would be unprecedented when the fine has been paid in full.

- Such a draconian sanction should only be reserved for the worst offenders, those who encounter significant levels of consumer complaint and harm and that do not comply with the sanctions provided (by payment of fine or otherwise).

- It had clearly outlined that the only sanctions to which it was committed by the May 2016 Tribunal was to issue a Universal Refund, accept a Reprimand and pay a fine and it had documented clearly why its reasonable efforts in facilitating the refund were frustrated by the Executive.

- It had brought to the Tribunal's attention that there was no mention in this case of it being accused of breaching the universal refund sanction by a failure to comply with it. On this basis, it could not be found to have breached any previous sanction and therefore a prohibition order was simply not appropriate, fair or legal in the circumstances.

Initial overall assessment

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

Rule 2.3.3 – Consent to charge

The initial assessment of the breach 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 lack of consent to charge had been considered by the earlier Tribunal of 26 May 2016 to be "very serious". The continued conduct by the Level 2 provider since then could not therefore be considered less serious.
- The case had a clear and highly detrimental impact on consumers.
- The nature of the breach and/or the scale of harm caused to consumers was likely to severely damage consumer confidence in premium rate services.

Rule 4.2.4 – Provision of false / misleading information

The initial assessment of the breach of 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 false and misleading information given to earlier Tribunal by the Level 2 provider had an impact on the sanction imposed at that earlier Tribunal.
- The nature of the breach was likely to severely damage consumer confidence in premium rate services.
- The conduct demonstrated a fundamental disregard for the requirements of the Code.

Rule 3.4.8 – Registration renewal

The initial assessment of the breach of 3.4.8 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The nature of the breach was likely to severely damage consumer confidence in premium rate services.
- The failure of the Level 2 provider to renew its registration with the PSA was deliberate and repeated.
- The conduct demonstrated a fundamental disregard for the requirements of the Code.

Final overall assessment

In determining the final overall assessment for the case, the Tribunal took into account the aggravating factors in the case, which had already been reflected in the very serious ratings attributed to the breaches. Additionally, it was noted that the Level 2 provider had been given a further direction to evidence its consent to charge consumers in June 2017 but did not act upon this.

The only mitigating factor identified by the Tribunal was the admission by the Level 2 provider to the breach of rule 3.4.8.

The Level 2 provider made the following comments in relation to the aggravating features identified by the Executive:

- The May 2016 Tribunal's ruling did not state that existing users must be removed until it can be demonstrated that robust consent is held, unlike wording used in many similar Tribunals held at the time. Indeed it had provided no requirement to remedy the breach.

  It was confident that it held a suitable quality of opt-in information on its legacy user-base and since it was not instructed to switch off its user base, it instead focused on trying to meet the universal refund sanction.

- The lapse of registration point was already admitted.

The Level 2 provider's evidenced revenue in relation to the Service in the period post the Tribunal of 26 May 2016 was in the range of Band 4 (£100,000-249,999).

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

Sanctions imposed

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

- a formal reprimand;
- a fine of £100,000;
- a requirement that the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund and the Level 2 provider must provide evidence to the PSA that the refunds have been made.
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years from the date of publication of this decisions, or payment of the fine in full, whichever is the later.

In imposing the above sanctions, the Tribunal sought to adequately reflect the serious aggravating features in the case, namely the repeated and deliberate non-compliance with the Code following an earlier Tribunal adjudication in respect of the same issues, together with the serious misrepresentation made to the earlier Tribunal. The Tribunal considered that the sanctions imposed were the minimum necessary in order to have a deterrent effect.

Administrative charge recommendation: **100%**