

Tribunal meeting number: 252  
Case reference: 154674  
Level 2 provider: IT Zone Limited  
Type of service: Subscription alert service  
Level 1 provider: Veoo Ltd  
Network operator: Hutchison 3G UK Limited and Telefonica UK Limited

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14<sup>th</sup> Edition of the Code of Practice.

### **Background and investigation**

This case concerned a subscription alert service operating under the brand name 'StarSign Alerts' on shortcode 60770 ("**the Service**").

The Level 2 provider for the Service was IT Zone Limited (the "**Level 2 provider**"). The Level 2 provider registered with the Phone-paid Services Authority (the "**PSA**") on 15 August 2016. The Level 2 provider is currently registered with the PSA.

The Level 1 provider in respect of the Service was Veoo Ltd (the "**Level 1 provider**").

The Service was stated to be a starsign alert service providing consumers with access to horoscopes. The service charges were £4.50 per message with up to two messages received per month.

In response to the Executive's requests for text message logs for complainants, the Level 2 provider supplied information on the Service including the following consumer Service flow:

- 1) user arrives at Starsign Alerts Website from a co-registration site or via Google Direct advertising (keyword driven)
- 2) user inputs MSISDN
- 3) user receives a unique PIN
- 4) user registers by PIN entry
- 5) PIN entry is verified by the third-party verifier
- 6) user is subscribed to receive Starsign Alerts weekly for a monthly fee of £4.50 until they send STOP to 60770.



# STARSIGN ALERTS

We've just sent you a free text message via SMS

with a 4 digit PIN.

ENTER PIN

SUBSCRIBE NOW

By clicking on 'Subscribe Now' you agree to pay £4.50 per month, charged directly to your phone bill, until you cancel the service by either texting 'STOP' to 60770, calling 0203 318 2637, or emailing [help@starsignalerts.com](mailto:help@starsignalerts.com)  
Service provided by IT Zone Ltd

# STARSIGN ALERTS

Join now for just £4.50 per month and get Horoscopes sent to your phone every week and access to online horoscope

+447 ENTER MOBILE NUMBER

SUBSCRIBE NOW

By clicking on 'Subscribe Now' you agree to pay £4.50 per month, charged directly to your phone bill, until you cancel the service by either texting 'STOP' to 60770, calling 0203 318 2637, or emailing [help@starsignalerts.com](mailto:help@starsignalerts.com)  
Service provided by IT Zone Ltd

●●●○ EE 4G 9:42 AM 75%

[← Messages](#) **60770** [Details](#)

FreeMsg: You are subscribed to Starsignalerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 60770.  
help@starsignalerts.com  
0203 318 2637

To access your latest horoscope and check your fate this week, visit our site at  
  
[www.starsignalerts.com/login](http://www.starsignalerts.com/login)  
help@starsignalerts.com

[Send](#)

●●●○ EE 4G 9:43 AM 75%

[← Messages](#) **60770** [Details](#)

FreeMsg: Reminder: You are subscribed to Starsignalerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 60770.  
help@starsignalerts.com  
0203 318 2637

[Send](#)

## Summary of complaints

The Executive had received 26 complaints from members of the public concerning the Service since 27 June 2018.

Complainants had alleged that the Service charges were unsolicited. A sample of complainant accounts is provided below:

*Received the above in text message, along with a charge of £4.50!  
Hadn't even signed up for anything.  
This is utter daylight robbery having never even subscribed to it, or received any confirmation or unsubscribe info in a text prior to this one. We had knowledge of this whatsoever.  
The only way we knew we'd been charged is that our mobile network said we'd consumed 80% of our billing cap, which alerted us to it.*

*Hi, I have been charged £4.50 by this number despite never signing up for their service, nor ever actually receiving any texts from them. The charge on my bill is the only interaction I have ever had with them. This is clearly a scam...*

*I have been charged £4.50 per month by the service 'star sign alerts' to access horoscopes. I have never subscribed or signed up for this service or opened the URL [www.starsignalerts.com/login](http://www.starsignalerts.com/login) sent in the text messages. The total amount billed is £13.50 for July, August and September 2018. I did not give this company the permission to incur these charges as I haven't directly given my number or details to them. They did not notify me that they would be charging for the premium text message sent or that I will be charged monthly for a service I am unaware of every signing up for.*

*Hello.  
The first time I was charged by 'Strarsign [sic] Alerts' £4.50 on 30 July 2018. From that date they have charged me every month. In total £13.50. I have never subscribed for any service at that website.*

## Interim measures in place

On 23 January 2019, the Code Adjudication Panel ("CAP") imposed interim measures, namely a withhold of Service revenue up to £260,000.

## Apparent breaches of the Code

The Executive sent a Warning Notice to the Level 2 provider in which the following breaches of the PSA's Code of Practice, 14<sup>th</sup> Edition (the "Code") were raised:

- Rule 2.3.3 – Consent to charge
- Paragraph 4.2.3 – Failure to provide information
- Rule 2.3.1 – Fair and equitable treatment
- Rule 2.3.2 – Misleading
- Paragraph 3.4.14(a) – Service registration

The Level 2 provider did not respond to the Executive's Warning Notice. Liquidators acting on behalf of the Level 2 provider advised the Executive on 10 October 2019 that "the company in liquidation is not in a position to make further representations as regards your correspondence".

On 11 October 2019, the Tribunal reached a decision on the breaches.

### **Preliminary issue – Service**

The Tribunal was satisfied that the sending of the documents had been properly served by email and by post. The Tribunal noted the contents of the email sent by the liquidators on 10 October 2019 and found that there had been good service and the date and location of the hearing had been properly conveyed.

### **Other preliminary matters**

The Tribunal had some questions for the Executive and called the investigator to provide further explanation about the case. The Tribunal firstly wanted to understand how the Executive had reached the revenue figure. The Executive explained that this information had come from the Level 1 provider, but the formula used by the Level 1 provider resulted in figures that did not tally up because the Level 1 provider had used an incorrect number of columns. The Executive had noticed the discrepancy and adjusted the figures accordingly.

The Tribunal then asked the Executive to provide further information about its checks of the Service when investigating the apparent breach of Rule 2.3.1. The Executive explained that it had gone to the URL contained within the example message logs that had been provided by the Level 2 provider. When the Executive visited the website, it received the following message:

"Method Not Allowed  
The method is not allowed for the requested URL."

The Executive clarified that it could not sign up to the Service itself because the Level 1 provider had suspended the Service, terminating all new Service signups and the ongoing billing. The Executive further submitted that it considered that on a balance of probabilities, the purported method of accessing the Service had failed to provide consumers with access to the Service, given the Executive's inability to gain access to the URLs, together with the complainant accounts.

The Tribunal wished to understand more about the third-party verification information that had been provided and asked what the Executive's interpretation of that data was. The Executive informed the Tribunal that the information had been sent by the Level 1 provider because the Level 2 provider was not responding at all to the Executive's directions for information. The Executive explained that the Consent to Charge Guidance outlined what robust verification to consent to charge might look like and that an Excel spreadsheet, which was provided in this case, was insufficient. The Executive explained that Level 2 providers must be able to provide evidence which establishes consent to charge and it had directed the Level 2 provider in this case to explain why the Excel sheet of records proved robust verification to consent to charge, but the Level 2 provider had not done so. The Executive advised the Tribunal that the data that had been supplied was purporting to show that there was a PIN associated with the MSISDN, but this was not properly verifiable evidence on its own and that is why the Executive had requested more information from the Level 2 provider.

The Executive reiterated that it was for Level 2 providers to provide evidence establishing robust verification of consent to charge and this had not been done.

## **Alleged breach 1**

### **Rule 2.2.3**

*“Consumers must not be charged for 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 2.2.3 of the Code because:
  - the Level 2 provider had failed to provide evidence that established consent had been obtained to charge complainants; and
  - complainants advised that they did not enter a PIN onto the Service website, indicating that no consent to charge was held by the Level 2 provider.

The Executive relied on complaints that stated unsolicited Service charges had been incurred; responses to the Executive’s survey; and the content of the PSA’s Guidance on Consent to Charge (the “**Consent to Charge Guidance**”).

#### **Reason one – The Level 2 provider had failed to provide evidence that established consent had been obtained to charge complainants**

The Executive understood from the information supplied by the Level 2 provider about the Service that in order to subscribe to the Service, consumers were required to enter their mobile telephone number into the Service website and would then be issued a PIN by SMS which must then be entered into the Service website prior to the issuing of Service charges.

Following receipt of complaints alleging that Service charges were unsolicited; the Executive contacted the Level 2 provider on 03 October 2018 requesting evidence of consent to charge for 14 complainants’ mobile telephone numbers. Despite an acknowledgement from the Level 2 provider on 10 October that it had received the request, the evidence of consent to charge was not supplied to the Executive.

On 15 November 2018, the Level 1 provider was directed to provide evidence of the due diligence, risk assessment and risk control (“**DDRAC**”) it had performed on the Level 2 provider and the Service. On 03 December 2018, the Level 1 provider responded to the Executive’s direction supplying the DDRAC it had conducted on the Level 2 provider and the Service. Within its response, the Level 1 provider supplied an Excel spreadsheet with URLs purporting to link to the Verifier’s portal. In the absence of any explanatory information from either the Level 2 provider or the Level 1 provider how the information in the spreadsheet represented evidence of consent to charge, the Executive submitted that the purported links to the Verifier’s portal did not represent evidence of consent to charge complainants and that the Executive preferred to rely on the complainant’s accounts.

On 01 May 2019, the Executive directed the Level 2 provider to supply evidence of consent to charge all complainants who had contacted the PSA regarding Service charges. Despite downloading the electronic copy of the direction and successful delivery of the posted copy of the direction, the Level 2 provider failed to supply the required consent to

charge information (or respond at all to the Executive) as required under rule 2.3.3 of the Code.

### **Reason two – Complainants advised that they did not enter a PIN onto the Service website**

The Executive noted from the Level 2 provider’s submissions that in order to consent to Service charges and subscribe to the Service, consumers must be issued a PIN after entering their mobile telephone number onto the Service website and in turn enter the PIN onto the Service website when prompted.

The Executive noted an absence of references to receipt of PIN messages in the complainant accounts. Noting this, the Executive contacted all the PSA complainants requesting further information. In response to the survey, the Executive received five responses. Four out of the five complainants who responded stated that they had not viewed or interacted with the Service promotional material. All five complainants stated that they did not receive a PIN or enter a PIN onto the Service website.

In light of complainants alleging that Service charges were unsolicited, and more specifically that five complainants had stated that they did not enter a PIN onto the Service website, together with the absence of any evidence of consent to charge from the Level 2 provider, the Executive submitted that no consent to charge was held by the Level 2 provider.

The Executive asserted that the Level 2 provider had breached rule 2.3.3 of the Code for (i) not providing evidence of consent when requested to do so following receipt of complaints and (ii) that on the balance of probabilities consent to issue Service charges to complainants was not held at all by the Level 2 provider.

2. The Level 2 provider did not respond to the Warning Notice. Liquidators who had been appointed for the Level 2 provider had advised the Executive that “the company in liquidation is not in a position to make further representations as regards your correspondence”.
3. The Tribunal considered the Code, the Consent to Charge Guidance, and all the evidence before it including the oral representations made by the Executive at the outset of the hearing. The Executive had explained to the Tribunal that the Consent to Charge Guidance outlined what robust verification to consent to charge might look like, and that an Excel spreadsheet, which was provided in this case, was inadequate.

The Tribunal was of the view that the evidence was clearly explained and presented in a well-understood format by the Executive. It found that the Executive’s submissions could be relied upon as credible for the reasons that the Executive had given. Accordingly, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had breached both limbs of Rule 2.3.3 and upheld a breach of Rule 2.3.3 of the Code.

Decision: UPHELD

## Alleged breach 2

### Paragraph 4.2.3 of the Code

*“Where a direction is made pursuant to paragraph 4.2.1 a party must not fail to disclose to the PSA, when requested, any information that is reasonably likely to have a regulatory benefit in an investigation.”*

1. The Executive asserted that the Level 2 provider had breached paragraph 4.2.3 of the Code for failing to provide Service information when directed to do so.

On 01 May 2019, the Executive issued a direction to the Level 2 provider requesting the following information about the Service:

*“1. The Executive has previously been advised by IT Zone that the opt-in to the Service was via the issuing of a PIN to consumers mobile handsets, which was in turn entered onto a website. Please provided [sic] properly verifiable evidence that the following mobile numbers had consented to the Service charges. By ‘properly verifiable’ we mean a clear audit trail that categorically cannot have been initiated by anything else than a consumer legitimately consenting and cannot have been interfered with since the record was created...*

*...2. We note that IT Zone has previously stated that refunds of Service charges have been provided to consumers. Please supply documentary evidence that refunds were provided to complainants.”*

The Executive considered the above information to be of regulatory benefit in the investigation as, given that complainants alleged that the Service charges were unsolicited, the Executive considered it important that the Level 2 provider should provide information evidencing that it held consent to charge complainants.

In addition, in light of the fact that the Level 2 provider had stated within its text message logs that it had refunded complainants, the Executive considered it important that the Level 2 provider should provide evidence substantiating its statements that refunds had been supplied.

The Level 2 provider was directed to provide the above information by 5pm on 08 May 2019. Despite the Executive receiving confirmation that the electronic direction was downloaded by the Level 2 provider and that the hard copy of the direction was successfully delivered by UPS, the Level 2 provider failed to respond.

The Executive wrote to the Level 2 provider on 20 May 2019 advising that a response to the Executive’s direction dated 01 May 2019 had not been received and that the Executive was now considering raising a breach of the Code. Despite the Executive receiving confirmation that the electronic copy of the Executive’s letter was successfully delivered, the Level 2 provider failed to respond.

2. The Level 2 provider had not provided any representations or response to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Level 2 provider had failed to provide key information about the Service and it



was satisfied that it had been given plenty of opportunity to disclose this information to the Executive. Further, the Tribunal was satisfied that the information requested was reasonably likely to have a regulatory benefit to the investigation. Accordingly, the Tribunal upheld a breach of paragraph 4.2.3 of the Code.

Decision: UPHELD

### **Alleged breach 3**

#### **Rule 2.3.1 of the Code**

*“Consumers of PRS must be treated fairly and equitably.”*

1. The Executive asserted that the Level 2 provider had breached rule 2.3.1 of the Code because subscribers to the Service were charged but not provided with access to the Service.

The Executive relied on its own monitoring and information supplied by the Level 2 provider, which included Service text message logs for complainants’ mobile numbers. The purported method of accessing the Service was provided within text messages issued to subscribers.

On 05 December 2018, the Executive visited the website referred to within the text messages issued to subscribers and upon arrival viewed the following message:

“Method Not Allowed  
The method is not allowed for the requested URL.”

The Executive checked the information supplied by the Level 2 provider for an alternative method to the above website link, but none had been provided.

The Executive asserted that the evidence indicated on a balance of probabilities that all subscribers incurred Service charges purportedly in order to access a horoscope service but there was no means to access the Service or its content. The Executive submitted that this failure to provide a way to allow all Service subscribers to access the horoscopes amounted to the unfair and inequitable treatment of the subscribers to the Service.

In response to questioning by the Tribunal, the Executive clarified that it could not sign up to the Service itself because the Level 1 provider had suspended the Service, terminating all new Service signups and the ongoing billing. The Executive submitted that the purported method of accessing the Service had failed to provide consumers with access to the Service, in light of the Executive’s inability to gain access to the URLs, together with the complainant accounts.

2. The Level 2 provider did not provide a response to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal determined that the Service had not treated consumers fairly and equitably, as access to the Service and its content had not been given via the website link provided within

the message logs or in any other way. The Tribunal was satisfied and persuaded by the Executive’s submissions and accordingly it upheld a breach of rule 2.3.1 of the Code.

Decision: UPHELD

### Alleged breach 4

#### Rule 2.3.2 of the Code

“PRS must not mislead or be likely to mislead in any way.”

1. The Executive asserted that the Level 2 provider had breached rule 2.3.2 of the Code because Service promotional material misled consumers by providing incorrect pricing information.

The Executive relied on the Service promotional material and Service text message logs. The promotional material listed the Service price point as £4.50 per month.



## STARSIGN ALERTS

Join now for just £4.50 per month and get Horoscopes sent to your phone every week and access to online horoscope

+447 ENTER MOBILE NUMBER

SUBSCRIBE NOW

By clicking on 'Subscribe Now' you agree to pay £4.50 per month, charged directly to your phone bill, until you cancel the service by either texting 'STOP' to 60770.

calling 0203 318 2637, or emailing help@starsignalerts.com

Service provided by IT Zone Ltd

# STAR★SIGN ALERTS

We've just sent you a free text message via SMS

with a 4 digit PIN.

ENTER PIN

SUBSCRIBE NOW

By clicking on 'Subscribe Now' you agree to pay £4.50 per month, charged directly to your phone bill, until you cancel the service by either texting 'STOP' to 60770 calling 0203 318 2637, or emailing [help@starsignalerts.com](mailto:help@starsignalerts.com)

Service provided by IT Zone Ltd

However, the spend reminder messages in Service text message logs stated:

*"FreeMsg: You are subscribed to Starsignalerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 60770. [help@starsignalerts.com](mailto:help@starsignalerts.com) 0203 318 2637"*

*"FreeMsg: Reminder: You are subscribed to Starsignalerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 60770. [help@starsignalerts.com](mailto:help@starsignalerts.com) 0203 318 2637"*

In addition to the discrepancy between the Service promotional material and the spend reminder messages, the Executive noted from text message logs that there were examples of complainants receiving two chargeable Service messages in a month at a total cost of £9 per month, and not the advertised cost of £4.50 per month.

The Executive noted that the third-party verifier's portal displayed a purported screen shot of the Service opt-in page with containing the following pricing information: "...you will be charged £4.50 per text message. You may receive up to 2 text alerts per month...". Notwithstanding this, the Executive asserted that it preferred to rely on the Level 2 provider's promotional material, rather than promotional material displayed on the Verifier's portal.

The Executive asserted that the Level 2 provider had not provided any explanation for the discrepancy between the promotional material and the spend reminder messages and considered that at least some consumers were misled about the total monthly Service charge.

2. The Level 2 provider did not provide a response to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that there was no explanation from the Level 2 provider whatsoever about the discrepancy in the cost information that had been submitted by them. The Tribunal

further noted that complainants had stated that they had been billed £4.50 some months and £9 at other months. The Tribunal noted that the double charging appeared to occur after the Level 2 provider was put on notice about the PSA's investigation. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

## Alleged breach 5

### Paragraph 3.4.14(a) of the Code

*"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 breached paragraph 3.4.14(a) of the Code because the Service was not registered on the PSA Registration Scheme within two working days of the Service becoming accessible to consumers.

The Executive relied on correspondence from the Level 1 provider, consumer complainant message logs and the PSA Registration Scheme entry for the Service.

In response to a direction for information, the Level 1 provider confirmed that the Service commenced operation on 22 June 2018. In addition, the Executive noted that the PSA started receiving consumer complaints about Service charges in June 2018 and that complainant message logs show Service charges occurring in June 2018.

The Executive noted from the Service entry on the PSA Registration Scheme that the Level 2 provider registered the Service on 04 July 2018, eight working days (12 calendar days) after the Service commenced and not within two working days as required by the Code.

The Executive submitted that consumers who used the PSA Number Checker would therefore not be able to check which provider had charged them, in the circumstances where they were unclear as to why they had been charged and by whom in the period 22 June 2018 – 04 July 2018.

The Executive considered that the Level 2 provider acted negligently in failing to register the Service within the required two working days, but acknowledged that the Level 2 provider did register the Service after the PSA contacted it following the receipt of complaints.

2. The Level 2 provider did not provide any representations in respect of the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered the Executive's submissions that consumers would be unable to check which provider had charged them when using the PSA Number Checker and noted that one of the complainants had said exactly that in their complaint when the number

60770 did not show up on the PSA database and thus this concern had been borne out in fact. The Tribunal found the breach of paragraph 3.4.14(a) proved.

Decision: UPHELD

## Sanctions

### Initial assessment of sanctions

The Executive's initial assessment, before any potential uplift or downgrade in light of aggravating or mitigating features, was that the following sanctions were appropriate based on a preliminary assessment of the breaches as "very serious":

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges, whichever is the later
- 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
- a fine of £900,000 broken down as follows:
  - Rule 2.3.3 - £250,000
  - Paragraph 4.2.3 - £250,000
  - Rule 2.3.1 - £250,000
  - Rule 2.3.2 - £100,000
  - Paragraph 3.4.14(a) - £50,000.

The Tribunal agreed with the Executive's initial assessment of sanctions.

The Tribunal's initial assessment of the breaches of the Code was that they were, overall, **Very Serious**. In making this assessment, the Tribunal found the following:

### Rule 2.2.3

- this breach was **Very Serious**
- the nature of the alleged breach would have damaged consumer confidence in premium rate services
- the Service had very limited or no scope or ability to provide the purported value to consumers
- consumers have incurred a very high or wholly unnecessary cost
- the breach was of a significant or lengthy duration
- the breach demonstrated a fundamental disregard for the requirements of the Code.

### Paragraph 4.2.3

- this breach was **Very Serious**
- the Tribunal considered that the information requested from the Level 2 provider was clear and was plainly related to the investigation. The Level 2 provider did not respond to the Executive or offer any explanation for failing to provide the information it had requested. The Tribunal was of the view that this was a deliberate failure on the part of the Level 2 provider.
- the Tribunal further believed that the Level 2 provider's failure to disclose information that had a regulatory benefit in regards to the investigation demonstrated a fundamental disregard for the requirements of the Code and completely undermined the regulatory system and if such conduct was allowed to persist it would most likely render the regulatory system ineffective.

### Rule 2.3.1

- this breach was **Very Serious**
- the Tribunal considered that the nature of the breach was likely to severely damage consumer confidence in premium rate services
- the Tribunal was also of the view that the Service was incapable of providing the purported, or any, value to consumers.

### Rule 2.3.2

- this breach was **Serious**
- the Tribunal considered that the breach was committed intentionally and not recklessly as had been submitted by the Executive
- the Tribunal further considered that the Service had the potential to generate higher revenues as a result of the breaches and noted that some complainants were charged double
- the Tribunal also considered that the Service would have damaged consumer confidence in premium rate services.

### Paragraph 3.4.14(a)

- this breach was **Significant**
- the Tribunal agreed with the Executive that the breach had a detrimental impact on consumers, given that the PSA Registration Scheme exists to assist consumers who have incurred an unknown or unnecessary charge.

## Proportionality Assessment

### Assessment of mitigating and aggravating factors

#### Mitigation

The Executive submitted that there were no mitigating factors. The Executive noted that the Level 2 provider had stated that it had provided refunds to complainants, but the Level 2 provider had failed to provide evidence of refunds that it had actually paid out.

The Level 2 provider did not make representations.

The Tribunal commented that it was not assisted by the fact that the Level 2 provider had not made any response to the Warning Notice. The Panel noted that one complainant had informed the Executive that it had received a refund of £4.50 from StarSign Alerts, the other complainants who had responded to the Executive's questionnaire either had not received a refund or believed they had done so, but could not recollect the details from whom they received it from or did not specify where the refund had come from. The Tribunal did not consider this to be a mitigating factor.

In contrast to the Executive, the Tribunal did consider it was a mitigating factor that the Level 2 provider registered the Service after the PSA contacted it following receipt of complaints about the Service.

#### Aggravation

The Executive submitted that it was an aggravating factor that the Level 2 provider had failed to follow the Consent to Charge Guidance.

The Executive submitted that it was also an aggravating factor that the breaches continued after the Level 2 provider became aware of them until the Service was suspended by the Level 1 provider on 03 December 2018.

The Executive further submitted that it was an aggravating factor that charges for some Service users increased to £9 per month. The Executive asserted that given that the Level 2 provider was on notice from October 2018 of the Executive's concerns, the increased Service charges in November 2018 was an attempt by the Level 2 provider to maximise Service revenue prior to the Service's termination.

The Level 2 provider did not make representations.

The Tribunal agreed with the aggravating factors as set out in the Executive's submissions. The Tribunal was particularly concerned that the Level 2 provider had apparently started to charge consumers double once it had been put on notice about the Executive's concerns. Although the Tribunal considered that there was a lack of cooperation by the Level 2 provider throughout the investigation, it agreed with the Executive that the Level 2 provider's failure to fully cooperate with the investigation, and in particular its failure to respond to the Executive's directions for information, was part and parcel of the breach of paragraph 4.2.3.

## Financial benefit/ Need for deterrence

The Executive asserted that the Level 2 provider generated an estimated £40,677.18 (out of a total Service revenue of £135,616.50) from the breaches in the case and argued that there was a need to remove this financial benefit in order to achieve the sanctioning objective of credible deterrence. The Executive acknowledged that no Service revenue was paid out to the Level 2 provider.

The Level 2 provider did not make any submission in relation to the financial benefit, as it did not respond to the Warning Notice.

The Tribunal decided that it was necessary to remove the financial benefit made as a result of the breaches and that there was also a need to prevent the reoccurrence of such breaches by the Level 2 provider or the wider industry. The Tribunal acknowledged that the fine amount in its initial assessment, namely £900,000, exceeded the revenue proved to have flowed from the breaches and took into account that any fine would have a financial impact on the Level 2 provider. Nonetheless, the Tribunal believed that there was a need to remove the entire revenue and impose an appropriate fine that was both reasonable and proportionate for reasons of credible deterrence.

## Sanctions adjustment

The Executive stated that, although there was a very high severity breach, it had considered the Level 2 provider's revenue and the fact that the Level 2 provider had yet to receive that revenue, and believed that the fine amount should be adjusted and decreased to £250,000 in the interests of proportionality.

The Tribunal agreed with the Executive that the fine amount should be reduced to ensure that it was proportionate. It considered that a fine of £250,000 was proportionate and justified, given the need to remove the financial benefit and deter similar misconduct. The Tribunal was satisfied that the amount of the fine was necessary to achieve the sanctioning objective of achieving credible deterrence.

The Tribunal concluded that the seriousness of the case should be regarded overall as **Very Serious**.

## Final overall assessment

### Sanctions imposed

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

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, starting from the date of publication of



the Tribunal decision, or until payment of the fine and the administrative charges, whichever is the later

- 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
- a fine of £250,000.

**Administrative charge recommendation: 100%**

## Application for interim measures pursuant to Code of Practice paragraph 4.6

Case reference: 154674  
Level 2 provider: IT Zone Limited  
Type of service: Subscription alert service  
Service name: Star Sign Alerts  
Level 1 provider: Veoo Ltd  
Network operator: All mobile network operators  
Cost: £4.50 per message

1. This is an application by the Phone-paid Services Authority's ("PSA") Executive seeking a direction in accordance with paragraphs 4.5.1(b) and 4.6.2 and 4.6.5(c) of the PSA Code of Practice (14<sup>th</sup> edition) ("the Code") that up to **£260,000** of the Service revenue should be withheld.

### Background:

2. The Tribunal has paid full regard to the material supplied by the Executive. The Tribunal noted in particular:
  - a) there have been 21 complaints received about the Star sign Alerts service ("the Service") from members of the public alleging that the charges for the Service were unsolicited and they had not given their consent to be charged
  - b) the nature of the apparent breaches referred to by the Executive
  - c) the information in the Track 2 Withhold Assessment.
3. The Tribunal was content that the Interim Warning notice and Track 2 Withhold Assessment had been properly served on the Level 2 provider. The Level 2 provider made a brief response in an email dated 21 January 2019, which the Tribunal has considered and taken into account.
4. The Tribunal has considered paragraphs 4.5.1(b), 4.6.1 - 4.6.5 of the Code and the Supporting Procedures, including the factors set out at paragraph 80 and paragraph 91 of the Supporting Procedures.
5. The Tribunal notes that the burden of proof remains on the Executive throughout and that it is for the Executive to satisfy the Tribunal that the grounds for the application are

made out, and in particular that the Level 2 provider cannot and/or will not comply with any financial sanction that may be imposed by a future Tribunal.

6. Having considered the evidence before it, the Tribunal has made the following determinations:

### The apparent breaches

7. It appears, at this stage (and subject to evidence, arguments or information being later supplied and/or tested), that there have been breaches of rules 2.3.3, 2.3.1 and paragraph 4.2.3 of the Code by the Level 2 provider.
8. In reaching this decision, the Tribunal has considered the Executive's representations in the Interim Warning Notice and the Withhold Assessment.
9. The Level 2 provider stated the following in its response at 07:42 on 21 January 2019:

*"The case for the PSA in this Warning Notice was only presented to us with 3 working days notice. It Zone has not had formal opportunity to present it's defence to the allegations raised." [sic]*

10. The Tribunal considers that there is a good arguable case that there has been an apparent breach of rule 2.3.3 of the Code. It notes, in particular, the 21 consumer complaints about the Service as well as the failure of the Level 2 provider to supply evidence of consent to charge which is sufficiently robust to meet the requirements set out in the PSA's Guidance on Privacy and Consent to Charge. The Executive had sent 14 complainant mobile numbers to the Level 2 provider and requested that it provide evidence of consent to charge these complainants. The Level 2 provider did not provide any such evidence. The Tribunal noted that the Level 1 provider had supplied a spreadsheet containing 1478 mobile numbers which it stated had been sent for verification as part of its "due diligence, risk assessment and risk control" but only one of the 14 complainant mobile numbers appeared on this list. The Level 2 provider has stated that it has not had enough time to present its defence to the allegations raised, however, the Tribunal notes that the Level 2 provider was asked for evidence of consent to charge the complainants in the letter from the Executive dated 3 October 2018 but did not respond. The Tribunal considers that there is sufficient evidence of an apparent breach of rule 2.2.3 of the Code.
11. The Tribunal finds that there is a good arguable case that there has been an apparent breach of rule 2.3.1 of the Code. It notes the Executive's case, and supporting evidence, that it had visited [www.starsignalerts.com/login](http://www.starsignalerts.com/login) and been presented with an error message stating "Method Not Allowed". The Level 2 provider did not make any specific submissions in relation to this apparent breach. The Tribunal finds that there is sufficient evidence that consumers have been charged without being given a means of accessing the Service, in breach of rule 2.3.1.

12. The Tribunal considers that there has been an apparent breach of paragraph 4.2.3 of the Code. The Tribunal has reviewed the 4.2.1 direction issued to the Level 2 provider on 15 November 2018 and notes the deadline for responding was 22 November 2018. The Tribunal considers that the Executive's direction was reasonable and finds that there is evidence that the Level 2 provider failed to comply with it. The Tribunal therefore finds that there is a good arguable case the Level 2 provider has breached paragraph 4.2.3 of the Code.

### **Inability/unwillingness to comply with a sanction**

13. The Executive's application for a withhold is made on the basis that there is a risk that the Level 2 provider would be unable and unwilling to pay a financial sanction if one is imposed following a final adjudication.

14. The Tribunal has taken into account the information and representations contained within the Interim Warning Notice and the Withhold Assessment.

15. The Tribunal has also taken into account what the Level 2 provider stated in its brief response, including:

*"A large withhold of revenue (e.g. £250,000) would immediately cripple IT Zone's finances.*

*The advice received from our accountant faced with such a large potential penalty and without the means to pay all of it, would be to enter liquidation. This will not achieve regulatory objectives or enable IT Zone to continue to provide customer care facilities (including refunds) as it is doing now...*

*...In any event, IT Zone has not yet received a single payment from Veoo Ltd for the "starsignalerts" service operating since June 2018."*

The Tribunal notes that beyond these assertions contained in its email of 21 January 2019, no supporting material or evidence has been provided by the Level 2 provider.

16. The Tribunal is satisfied that there is evidence demonstrating that the Level 2 provider would be unable to comply with any likely financial sanctions.

a. The Tribunal finds that the Level 2 provider has insufficient available funds to comply with any likely financial sanction on the grounds that:

i. It has informed the Executive, in its email of 21 January 2019, that it had not been paid any of the revenue for the operation of its premium rate Service since June 2018;

- ii. Even if the revenue for the operation of the Service were paid over by the Level 1 provider, it would not be sufficient to cover the likely financial sanctions;
- iii. There is no evidence of the Level 2 provider having any material, alternative revenue streams;
- iv. The Level 2 provider informed the Tribunal in its email of 21 January 2019 that if a large withhold were imposed, it would have to enter liquidation. The Tribunal was therefore satisfied that the Level 2 provider would be unable to pay a likely fine in this case.

17. Having considered the Level 2 provider's conduct in the course of the Executive's enquiries and investigation into the Service, the Tribunal determines that there is evidence demonstrating that it would also be unwilling to comply with a likely financial sanction. It notes in particular:

- i. The Level 2 provider did not respond to the Executive's informal enquiry, dated 3 October 2018, which put the Level 2 provider on notice of its concerns and requested important information about the Service.
- ii. The Level 2 provider failed to respond to the Executive's 4.2.1 direction and there has been a continued failure to supply financial information for the purposes of the Executive's consideration of a withhold. The Tribunal is of the view that the Level 2 provider has failed to cooperate with the PSA to a level significant enough to indicate that it would be unwilling to comply with a likely financial sanction.

18. The Tribunal notes that the Level 2 provider has suggested a withhold should be capped "*between £100,000 and £150,000, until the full facts can be determined at a Tribunal*". The Tribunal does not consider that this demonstrates or suggests that it would be willing or able to pay a fine as there is no evidence of it having any funds or other revenue streams. The Level 2 provider has stated, in correspondence with the Executive, that it is issuing refunds to complainants. However, it has not supplied any evidence to substantiate this and again the Tribunal does not consider that it indicates a willingness to comply with a financial sanction if one is imposed.

19. The Tribunal's overall assessment is that the evidence in the round is sufficient to satisfy the Tribunal on the balance of probabilities that the Level 2 provider will be unable and unwilling to pay any financial sanctions which may be imposed in due course.

### **Withhold amount**

- a. The Tribunal has considered the Executive's assessment of the likely future final sanctions, together with the 21 complaints generated by the Service to date and the gross Level 2 provider revenue of £30,462.92.
- b. In relation to the withhold amount, the Level 2 provider made the following representations:

*“The total revenue generated by IT Zone is under £100,000, and we would respectfully suggest that any withhold should be capped between £100,000 and £150,000...”*

- c. The Tribunal has considered the breaches on which it has concluded that there was a good arguable case. It has determined that the apparent breaches of rule 2.3.3 and 2.3.1 and 4.2.3 are all very serious.
  - d. The Tribunal considers that a future Tribunal would be likely to impose the following initial fines:
    - 1. Rule 2.3.3: £250,000
    - 2. Rule 2.3.1: £250,000
    - 3. Paragraph 4.2.3: £250,000
  - e. The Tribunal considers that the initial fines would likely be reduced for proportionality at the final sanctions stage to a total of £250,000. When considering proportionality, the Tribunal has taken into account the Service revenue and the conduct of the Level 2 provider over the course of the proceedings. The Tribunal notes the Level 2 provider’s submission that a large withhold would have a severe impact on the business but considers that the figure of £250,000 for a likely fine is proportionate and justified when viewed in the context of the apparent consumer harm, the nature and seriousness of the breaches and, in particular, the sanctioning aim of appropriate deterrence.
  - f. The Tribunal is of the view that there would also likely be an administrative charge of £10,000 and that the Executive’s estimation of general refunds, given the number of complaints and charges incurred as of today’s date, of £245.70, is reasonable.
20. The Tribunal is of the view that the risk of non-compliance cannot be remedied without the imposition of this level of withhold, particularly given its findings on the Level 2 provider’s complying with any future financial sanction.
21. Accordingly, in respect of the Service the Tribunal hereby directs that:
- a) The PSA is authorised to direct a withhold of up to £260,000;
  - b) The sums directed to be withheld may be allocated and re-allocated between any Network operators or Level 1 providers for the Service as the Executive sees fit from time to time, provided that the total sum withheld by all providers does not exceed the maximum sum authorised in this decision.

- c) The Executive is given discretion to vary the total directed to be withheld downwards in the event that it is provided with alternative security which is, in its view, sufficient to ensure that such refunds, administrative charges and/or financial penalties as it estimates a CAT may impose in due course are paid.
  
- d) Such interim measures are to be revoked upon the case being re-allocated to Track 1 or otherwise discontinued without sanction

**Mohammed Khamisa QC**  
**Tribunal Chair**  
**23.1.2019**