

Tribunal meeting number: 255
Case reference: 141951
Level 2 provider: Umbrella Support Limited
Type of service: Caller Connection Service/Directory Enquiry Line to HM Passport Office
Level 1 provider: N/A
Network operator: 24 Seven Communications Limited

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

Background and investigation

The case concerned a call connection service (the “**Service**”) operating on premium rate numbers (“**PRN**”) 09055952952 (“**PRN 1**”) and 09055958958 (“**PRN 2**”).

The Level 2 provider for the Service was Premier Ventures Ltd formally known as Umbrella Support Limited (which is what it will be referred to within this document) and Raptor Telecom Limited. Its trading name was UK Services & Support (the “**Level 2 provider**”). The Level 2 provider had been registered with the Phone-paid Services Authority (the “**PSA**”) since the 18 July 2011.

The Network operator for the Service was 24 Seven Communications Limited (“**24 Seven**”). 24 Seven had been registered with the PSA since the 03 of May 2011.

The Service was a call connection service that offered a connection to HM Passport Office. The Service cost £1.50 for the first minute and £1.50 for each additional minute plus network access charges.

The Level 2 provider hosted 3 websites to advertise the Service, these websites were; www.britishpassportservices.co.uk (“**Website 1**”), www.ukpassportoffices (“**Website 2**”) and www.ukpassportservices.co.uk (“**Website 3**”). The websites were found through Google engine searches. Website 1 was displayed as the 8th link in a Google search for “*British passport office*”, Website 2 was displayed as the 1st link in a Google search for “*ukpassportoffices*” (with no spaces) and Website 3 was displayed as the 9th link in a Google search for “*british passport office*”.

The Level 2 provider initially stated that the Service commenced operation in 2014, however 24 Seven confirmed that the Service had actually begun operating on 04 August 2015.

The Level 2 provider was asked to give an account of how the Service was intended to operate. The Level 2 provider explained that the caller was given a number via phone line, live chat message or email along with full PSA complaint disclaimer. Those that called were played the

same PSA disclaimer again and were then were transferred to HM Passport Office as per their request.

In response to Executive requests as to how consumers came across the Service website, the Level 2 provider explained that consumers could find the number via a web search using search terms such as “done for you passport company”, “passport assistance”, “advice for my passport”. When arriving on the home page of www.BritishPassportServices.co.uk, the header, footer and first paragraph as well as other prominent places on the website advised the consumer of the Level 2 provider’s identity. The Level 2 provider added that the 09 number was not given out on the website, and that consumers had to listen to the 0203 number to obtain the number from a cold search engine search. This ensured that consumers were aware of the charges and the fact that the service was operated by a third party.

The Executive monitored the operation of the Service and its promotions via the promotional websites and a telephone line.

The search term “british passport office” was inputted by the Executive into Google which brought up many results. The 8th search result in the list transferred the Executive to one of the Level 2 provider’s websites. The first web address was called www.britishpassportservices.co.uk (Website 1).

On Website 1, at the top right-hand corner of the homepage, there was a 0203 600 1984 telephone number (telephone number), prominently displayed on the page with no explanation as to what the number was for. Above it was a statement indicating that the telephone number was “open Mon to Fri (8am to 6pm)”.

Open Mon to Fri (8am to 6pm)

0203 600 1984

Following the title of the website and the telephone number, there was a row of tabs linking to other pages, after which the number appeared again, this time with a small title describing it as a passport advice line. Further down the page, information about the specific services the Level 2 provider supplied was described under the title “British passport Assistance”. When the Executive dialled the telephone number provided, a recorded message was heard, the message stated:

“This number is no longer in use.

You can contact Her Majesty’s passport office through our customer connection service on, 09055952952. That number again is 09055952952.

Calls to this number cost £1.50 for the first minute and then £1.50 for each additional minute.

Callers must be 18 years or over and have the bill payers’ permission to make this call.

This service is not affiliated with the government or Her Majesty’s passport office.

This caller connection service is provided by Britishpassportservices.co.uk.

Please visit the website for the full contact details.

Once again to be connected to a passport office agent please redial on to 09055952952.

Thank you for your call goodbye”.

At the end of the message the call did not disconnect but the message was repeated, and the caller was not transferred to the PRN stated within the message.

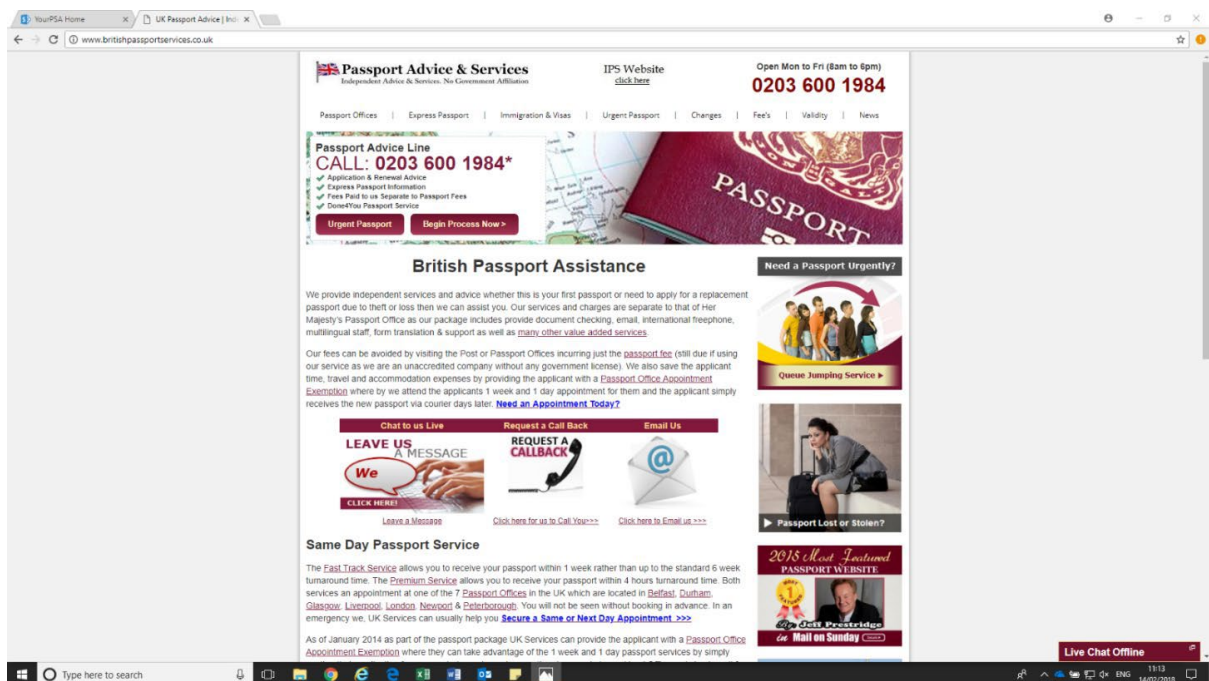
When the Executive dialled the 09055952952 premium rate number (PRN 1) a recorded message stated:

“Before we connect you to her majesty’s passport office, we need to make you aware that in addition to your networks access charge calls to this number cost £1.50 for connection and then £1.50 for each additional minute.

This phone line is caller connection service not affiliated with the government or the identity and passport service and that to use this service you must be 18 years or older and have the bill payer’s permission. You are now being connected to the governments passport office”.

Additionally, on Website 1, the Executive found that the 09055958958 premium rate number (PRN 2) was also being advertised.

On the homepage, under the heading “British passport Assistance”, the Executive clicked on highlighted text at the end of a paragraph which read “Need an appointment today?”. Please see promotional screenshot below:



This diverted the Executive to a page with the title “Application & Renewal Assistance”, where three boxes were presented asking whether the Executive required either a 1-day, 7-day or 3-6 weeks package.

The Executive selected the 1-day package, which led the Executive to a page giving information about the fast track process, together with a price breakdown of what the services

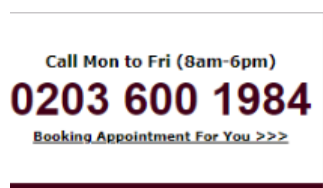
entailed. The Executive clicked on the “proceed” link near the top of the page, which transferred the Executive to a page that displayed in a red font the words “This online service is currently unavailable”, and below these words, the following statement:

“You can book a fast track or premium HM Passport Office appointment by calling: Call:09055958958” (PRN 2)

The Executive also noticed that there was a live chat option advertised on the homepage and attempted to contact the Service provider through the live chat function. The tab was located in the bottom right corner on the homepage of the website.

When the Executive clicked on the tab which read “Live Chat Offline” a message appeared in the box stating, “Sorry, at this time we are offline. Please leave a message and we will get back to you within 48hrs”. The box contained a space to input a name and a message. The Executive captured the time stamp as 12.11pm during its monitoring of this aspect of Website 1.

The second website address was www.ukpassportoffices.co.uk (Website 2). The Executive found this website while conducting a Google search using the term “ukpassportoffices” (no spaces), Website 2 was the first result on the search page. The telephone number was also advertised prominently on the website homepage. At the top right corner of the page the telephone number was advertised with the words “Booking appointment for you” written in a smaller font beneath it (please see promotional screenshot below).



After the row of tabulated links near the top of the page, the telephone number was again

advertised in a box (like that on Website 1) with the title “UK Passport Advice Line” written above it. Under the telephone number there was a list of functions the Level 2 provider performed which included a statement regarding the fees for the services “our fees separate to passport fees”.

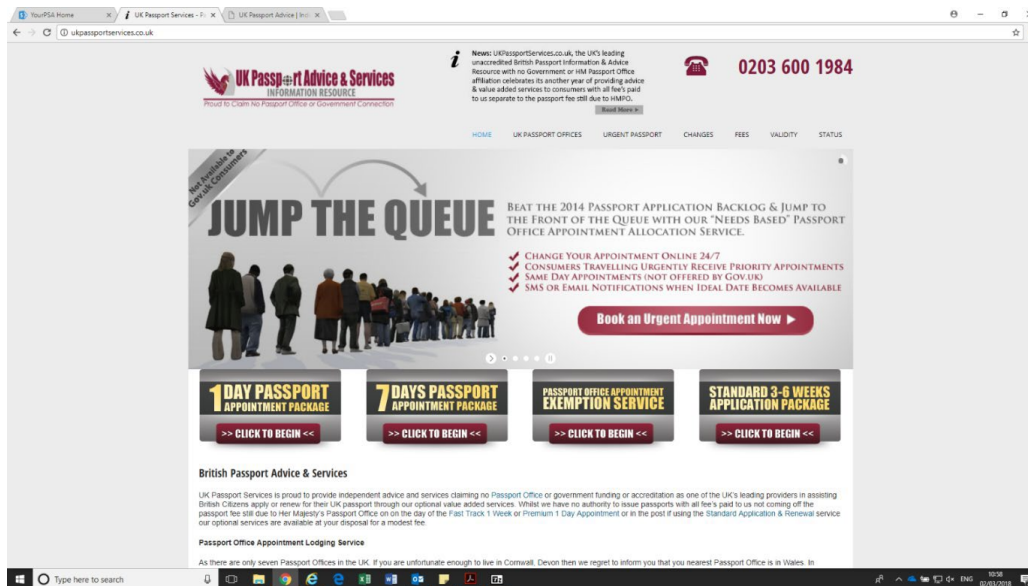


There were two tabs within the box, one of which stated the words “Begin Online Now”, the Executive clicked on this tab and was transferred to another page with the heading “Passport Application & Renewal Assistance”.

The page contained three boxes with the highlighted words “Begin process” under each box, similar to Website 1. The Executive selected the 1-day passport appointment package and was diverted to a page that did not contain any further information, but advised that “This is not valid form URL”. This message also appeared after selecting the other two presented boxes prior to the blank page.

Website 2 also provided the option to have a live chat with the provider of the Service but when the Executive attempted to engage in dialogue with the Level 2 provider, it was greeted with a message saying “Sorry, at this time we are offline. Please leave a message and we will get back to you within 48hrs”.

The third website was www.ukpassportservices.co.uk (Website 3). The Executive discovered Website 3 displayed as the 9th result on a Google search using the term “british passport services”. The telephone number was again advertised prominently on the website at the top right corner of the page but was nowhere else on the homepage. However, there were no hours of operation or any other information around the number (see screenshot below).



0203 600 1984

Unlike Websites 1 and 2, the boxes gave the option to obtain an appointment in different time frames. The Executive selected the first box to request the “1-day passport appointment package” and was led to a page titled “booking an appointment”. Another 3 boxes were displayed under the heading “when do you need the appointment?”. The Executive selected the first box for an “urgently! Today or Tomorrow” appointment. Once selected, the Executive was diverted to a page that was predominantly blank, with the statement “This is not valid form URL” on the left top corner of the page, much like the statement provided on website 2.

Website 3 did not supply the option to have a live chat with the provider.

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, 14th Edition (the “Code”) were raised:

- Rule 2.2.2 – Transparency
- Paragraph 2.2.7 – Pricing
- Rule 2.3.2 – Misleading
- Rule 2.6.1 – Complaint handling
- Paragraph 3.4.8 – Registration renewal
- Paragraph 3.11.3 (Special Conditions ICCS 2)
- Paragraph 3.11.3 (Special Conditions ICCS 3)

On 13 November 2019, the Tribunal reached a decision in respect of the breaches.

Preliminary issue – Service

In response to questioning by the Tribunal, the Executive confirmed that that the Warning Notice had been delivered to the Level 2 provider via post and email. The Executive confirmed that the email address used for service of the documents was still active. The Level 2 provider had been in contact with the Executive throughout the days leading up to the Tribunal hearing.

The Tribunal was satisfied that the necessary documents had been properly served by email and by post.

Other preliminary matters

Proceeding in absence

Shortly before the hearing, but before deliberations had begun on this case, the Executive received additional correspondence from the Level 2 provider which referred to the Level 2 provider potentially wishing to make oral representations to the Tribunal.

The Tribunal considered the correspondence and was content that the Level 2 provider had been given ample opportunity by the Executive to make representations to the Tribunal if it so wished, including by telephone on the day of the hearing. The Tribunal was satisfied that the most recent correspondence from the Level 2 provider dated 12 November 2019 made clear that the Level 2 provider did not wish to make representations to the Tribunal. The Tribunal therefore proceeded in the Level 2 provider's absence.

Complaints

In response to questioning by the Tribunal, the Executive confirmed that no complaints had been received regarding the Service. The Executives stated that it believed the lack of complaints was due to a lack of information being provided to the public to enable them to contact PSA about premium rate services. The Executive stated that only recently had consumers become more aware that they could inform PSA about their experiences.

Alleged breach 1

Rule 2.2.2 of the Code

“Promotional material must contain the name (or brand if part of the name) and the contact details of the Level 2 provider of the relevant PRS except where otherwise obvious. If the contact details include a telephone number, it must be a UK number and not at premium rate.”

1. The Executive stated that the Level 2 provider had breached rule 2.2.2 of the Code because the Level 2 Provider omitted to include its registered name or brand name on the voice promotion and on Website 3 and by failing to provide adequate contact information to enable a consumer to get in touch with the Level 2 provider of the Service on the voice promotion for the Service.

The Executive was of the view that the recorded message on the telephone number and the three websites hosted by the Level 2 provider were all promotions for the Service in question.

The Executive stated that the websites and the recorded message (voice promotion) which had been placed on the geographic telephone number 0203 600 1984 all served as promotions for the Service because they collectively advertised the Service provided through the PRNs.

The Executive further stated that, in accordance with rule 2.2.2 of the Code, the recorded message and the websites, must include the name or brand name of the provider and its contact details.

The Executive observed that the telephone number was displayed as the number to dial to engage with the Service on all three websites. When dialled, the caller was informed that the number was no longer in use before being given a premium rate number to dial HM passport office.

On the voice promotion, the Executive noted that the name supplied for the provider of the Service was "Britishpassportservices.co.uk", which was the web address for Website 1. This web address was neither the registered name nor the brand name of the Level 2 provider, according to the information registered by the Level 2 provider with the PSA.

Furthermore, the Executive discovered that on Websites 1 and 2 the provider of the service was stated to be "UK Services & Support Ltd", which was not the registered name for the Level 2 provider on either the PSA's registration system or on Companies House. The Executive further noted that on Website 3, similarly to the voice promotion, the provider of the Service was stated as "UKPassportServices.co.uk" which was the web address for Website 3, but not the registered name of the Level 2 provider.

As a result, the Executive had queried with the Level 2 provider why its registered name was not provided on the voice promotion or on any of the website promotions for the Service.

Level 2 provider had responded as follows:

"UK Services" was mentioned on numerous occasions, and that this was a trading name of Umbrella Support Ltd. Furthermore, the BPS website operated by UK Services & Support Ltd was a subsidiary to Umbrella Support Ltd". (sic)

The Executive investigated this response and discovered that the brand name "UK Services & Support Ltd" was in fact included on the PSA system as a trading name for Umbrella Support Limited. Notwithstanding this response, the Executive was of the view that, in respect of the voice promotion and Website 3 promotion, neither the

registered company name “Umbrella Support Ltd” nor the brand name “UK Services & Support Ltd” of the Level 2 provider were stated in either promotion. For these reasons, the Executive asserted that the Level 2 provider was in breach of Rule 2.2.2 of the Code.

The Executive stated that rule 2.2.2 of the Code also required that promotional material for a service should contain contact information for the provider of the Service. The Executive found that the contact information provided on the voice promotion was, in essence, an instruction to visit Website 1 “*Britishpassportservices.co.uk*” for full contact details. No direct contact information for the Level 2 provider had been supplied to consumers within this promotion of the Service. It was therefore the Executive’s view that the Level 2 provider had not supplied consumers with the contact information required on the voice promotion to enable consumers to contact the Level 2 provider.

2. The Level 2 provider denied the breach. It stated that the phone lines did provide a “brand name”, which was stated in the recorded message “customer caller connection service”, which also stated it was provided by *britishpassportservices.co.uk*. The Level 2 provider stated that this name provided everything that consumers needed to know in order to recognise the identity of the service and to make an enquiry or complaint about the service.

The Level 2 provider further stated that there were easy means of consumers getting in touch, such as email, post, web form etc, should consumers have any questions. The Level 2 provider argued that the Executive had not submitted any evidence that this structure had misled anyone or that any user of the service had experienced any difficulty getting in touch. The Level 2 provider submitted that, despite the Code rule existing to prevent consumer harm, not “a single individual or pound of consumer harm” (sic) had been identified as a result. Consequently, the Level 2 provider was of the view that this alleged breach could not have caused £175,000 of damage.

3. The Tribunal considered the Code and all the evidence before it. For the reasons advanced by the Executive, The Tribunal was satisfied on a balance of probabilities that a breach of rule 2.2.2 of the Code had occurred.

The Tribunal carefully considered the representations made by the Level 2 provider but noted that neither “customer caller connection service” or “*BritishPassportServices.co.uk*” was the name of the company supplying the service. The Tribunal was also of the view that the Level 2 provider did not have a brand name.

In light of the above, the Tribunal was satisfied on a balance of probabilities that adequate contact details had not been supplied to consumers, as required by the Code.

Accordingly, the Tribunal upheld a breach of rule 2.2.2 of the Code.

Decision: Upheld

Alleged breach 2

Rule 2.2.7 of the Code

“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, short code or other means of access to the service.”

1. The Executive stated that the Level 2 provider had breached rule 2.2.7 of the Code by failing to supply the cost of dialling PRN 1 in a manner that proximate to the placement of PRN 1 within the voice promotion and by failing to display the pricing information for PRN 2 in the written promotion on Website 1 clearly, visibly and proximate to the PRN.

The Executive stated that the voice promotion failed to state the charges for dialling PRN1 immediately after the PRN was mentioned in the recording. Instead of stating the cost straight after the PRN, the provider re-stated the PRN a second time.

The Executive had discovered that the time lapse between the mention of PRN 1 and the pricing information being disclosed, was 10 seconds after the first time the PRN was mentioned. The Executive asserted that, during this time it was likely that a consumer would have written down the PRN and ended the call without hearing the cost of attached to dialling the number.

The Executive therefore submitted that, the Level 2 provider had not supplied pricing information proximate to the mention of PRN 1 within the voice promotion, which the Executive considered to be the call to action point of the promotion in that it provided the means for a consumer to be able to access the Service being promoted.

The Executive had noted during its monitoring of Website 1, that PRN 2 was being advertised on the website. During this monitoring the Executive was led to a page that stated in red, *“This online service is currently unavailable”*. Underneath this sentence was another which stated, *“You can book a fast track or premium HM Passport office appointment by calling”*. The number displayed was PRN 2.

The Executive stated that the PRN 2 was shown in a prominent colour and emboldened, whereas the pricing information for the number was provided at the end of the first line of the paragraph of text displayed underneath the PRN and was in a much smaller font size to PRN 2. The Executive submitted that the pricing information for the Service had been provided in a way that was not clearly legible to consumers due to the font size being much smaller in comparison to that of PRN 2 displayed on the page and was also not proximate to PRN 2 because the pricing was within a body of text rather than straight after the PRN or directly beneath it.

In response to questioning by the Tribunal, the Executive clarified that the voice promotion did not immediately state the charges after the PRN was given in the recording. Instead, it re-stated the PRN a second time, before the price for the call was given.

In regard to PRN presented on the website, the Executive stated that the PRN was provided in a prominent colour and in bold. This was in contrast to the pricing information, which was provided at the end of the first line of a paragraph of text, which itself was displayed underneath the PRN in a much smaller font size.

The Executive relied on the PSA's Guidance on Promoting Premium Rate Services and stated that the pricing information was not prominent or proximate. This was due to the font size of the pricing information being much smaller in comparison that PRN 2 displayed on the page and which was contained within a body of text rather than straight after the PRN or directly beneath it.

2. The Level 2 provider denied the breach. The Level 2 provider accepted that the recorded message did repeat the phone number, but that straight afterwards it had stated the cost per call and per minute. The Level 2 provider did not agree with the Executive's thesis that this practice was sinister or misleading. It further stated that the Executive had not supported its assumption, that callers may have hung up before hearing the pricing, with any evidence or complaints from the consumers.

In respect of the website promotion of the service, the Level 2 provider did not agree with the Executive's reference to the pricing information as "small text". In its view, the information provided on the website was standard size, easy to read and in a black font which was a commonly used font that desktop, mobile and laptop users could easily see.

The Level 2 provider added that the text was not at the bottom of the page, nor was it "below the fold" requiring users to scroll down a busy webpage in order to secure the information they needed before deciding whether to make a call.

The Level 2 provider submitted a screenshot from an unrelated company's website which, in its opinion, contained much smaller pricing information under the highlighted number, yet had not been the subject of any action by the PSA.

3. The Tribunal considered the Code and all the evidence before it. In particular, the Tribunal considered the PSA's Guidance on Promoting PRS at paragraph 3.8, which states that 'proximate' can be defined as "*being next to or very near*" the call to action for the service and which also states that "*the most common example of pricing being proximate is when it is provided immediately before or above the call to action (...)*".

The Tribunal was satisfied on a balance of probabilities that information as to the cost of the service, both in the voice and web promotions, had failed to meet the required

outcome, as it had not been provided in a proximate and prominent manner, as required by the Code.

The Tribunal considered the Level 2 provider's representations in respect of the voice promotion but did not agree with its contention that it was sufficient for the cost to be supplied only after the PRN had been stated. The Tribunal considered that the PSA's Guidance made clear that proximate pricing information should be provided before the call to action, to enable the Code outcome to be met. The Tribunal acknowledged that the Executive had not submitted evidence that callers had hung up before hearing the cost of the call. Nonetheless, the Tribunal was satisfied that this was the likely outcome, particularly in light of the fact that it would not have been clear to consumers that they were about to purchase or engage with a premium rate service.

The Tribunal further noted that it had been open to the Level 2 provider to include words to the effect of "*you can call the following premium rate number*" before giving the PRN, to ensure that consumers were aware that there was going to be a cost to dialing the PRN given. It was significant that the Level 2 provider had failed to take this step or any other steps to ensure that consumers did not hang up and call the PRN, before hearing the cost.

The Tribunal was also satisfied that the cost of the service on the promotional website was not sufficiently prominent or proximate, noting that the PRN was much more prominent than the cost, which was provided in a less prominent font and was contained within a larger body of text.

Accordingly, for the reasons advanced by the Executive, the Tribunal was satisfied on a balance of probabilities that the cost of the service was not sufficiently prominent or proximate. Accordingly, the Tribunal upheld a breach of rule 2.2.7 of the Code.

Decision: Upheld

Alleged breach 3

Rule 2.3.2 of the Code

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

1. The Executive stated that the Level 2 provider had breached rule 2.3.2 of the Code by purporting to provide services which the official HM passport office did not provide and, in turn, misleading consumers into using its services in the belief that it provides these services which, in fact, it does not.

While monitoring the service, the Executive followed the different website links to monitor the Level 2 provider's "done for you services". The Executive was consistently transferred to a web page instructing it to dial PRN 2, due to the services being supplied by the Level 2 provider being currently unavailable.

Having considered the wording of the message presented on the page, the Executive contemplated the possibility that the unavailable status of the services could have been a one-off occurrence and that the services were merely unavailable at that time on that day. To establish whether this was the case, the Executive repeated the process on further occasions. The Executive visited Website 1 six times between the months of March 2018 and September 2018 and found that on every occasion, the same page was displayed advising that the service was currently unavailable.

The Executive therefore submitted that the unavailable status of the service was not a one-off occurrence, but that the services advertised by the Level 2 provider were unobtainable. The Executive stated that the Level 2 provider had also included PRN 2 on the webpage, instructing consumers to call the number to book a fast track or premium service with the actual HM Passport Office appointment directly. The Executive stated that this demonstrated that the Level 2 provider did not provide any “done for you services” for the consumer, despite the promotion stating that these services were available. The Executive was therefore of the view that the promotions likely to mislead consumers into using its services, by purporting to provide services which were not available at the official passport office.

Additionally, the Executive observed that on Website 2 and 3, the Level 2 provider advertised that it offered consumers urgent appointments, call back services, express passport processes and a queue-jumping facility. However, when these links were selected, the Executive was directed to an empty page which stated: “This is not valid form URL”.

As with Website 1, the Executive visited the website on more than one occasion to establish whether the message on the page would change, but it did not do so. The Executive therefore asserted that, as with website 1, the services the Level 2 provider claimed to supply through websites 2 and 3 were unobtainable to consumers seeking to utilise them and were therefore misleading to consumers who wished to utilise the services advertised.

While monitoring the service, the Executive observed that several of the services Umbrella Support Limited claimed to provide through its websites were unavailable, such as the urgent appointment packages, express passport lodging service, the queue-jumping services and the live chat service.

Consequently, the Executive made enquiries of the Level 2 provider about the current condition of the Level 2 provider’s websites, together with the availability of the various services it claimed to provide.

In response to the Executive’s queries, the Level 2 provider responded as follows:

“These were suspended due to financial issues with the company, staff had to be made redundant due to change in HMPOs policy, these done for you services are the prime pupose of these third party websites were created and so we are looking to re-activate them very soon and move away from the caller connection model as it is

proving to be a less popular service as time goes on. Probably due to significant progress being made in arthritis treatment {SIC}.”

The Executive enquired about the use of the telephone number advertised on the Level 2 provider's websites and the fact that the voice promotion on the number directed consumers to dial PRN 1. The Executive asked the Level 2 provider to confirm how long it had employed this practice in relation to the number.

The Level 2 provider responded by stating that:

“It’s hard to precise on this but I would think January 2016 was the first time the line converted from a live helpline to my agents in the office to this little recorded message” (sic)

From the responses given by the Level 2 provider the Executive concluded that the ‘done for you services’ were not functional, yet were still being advertised on its websites, giving the initial impression that these services were still available to consumers, when they no longer were.

The Executive observed that on Website 1 the Level 2 provider was still advertising the number as a live advice line. On Website 1, near the end of the homepage, there was a box advising that “For Live British Passport Advice & Information Call us on 0203 600 1984”.

The Executive was of the view that the Level 2 provider's continued advertisement of the number as a live advice line, when it had not been since 2016, was likely to mislead consumers into dialling the number under the notion that they would have the opportunity to speak to someone, when in fact they were actually being given the voice promotion for the Service.

The Executive therefore submitted that the Level 2 provider had breached Rule 2.3.2 of the Code by misleading consumers into believing that it provided services that the Official passport office website did not, when this was not in fact correct.

In response to questioning by the Tribunal, the Executive confirmed that it did not hold any evidence to demonstrate whether an advice line service had previously been offered.

2. The Level 2 provider denied the breach.

It stated that the company had little control over how websites appear in Google, including what snippets of text it chose to display from the content of the website and what sub-links they showed. The Level 2 provider suggested that these were concerns that ought to be raised with the company behind the search engine.

The Level 2 provider stated that its view was that the title of the website “Independent Support & Services” and the description provided “Independent, no Government

accreditation or affiliation” as appeared in the Google search, made it clear that it was a third party website. The Level 2 provider further submitted that the Executive had not provided any evidence of complaints, misled consumers or harm to the industry regarding this concern.

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

The Tribunal noted the representations of the Level 2 provider but considered that the Level 2 provider’s representations did not actually address the breach or the specific concerns the Executive had raised.

The view of the Tribunal was that the Level 2 provider’s suggestion, that the Executive should raise its concerns with the provider of the search engine, was not relevant. The issue to be decided was essentially whether or not the service delivered what it offered to consumers.

The Tribunal was satisfied, on a balance of probabilities and for the reasons advanced by the Executive, that the service did not deliver what it offered to consumers in its promotions. The Tribunal was therefore satisfied that consumers were likely to have been misled into using the service.

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

Decision: Upheld

Alleged breach 4

Rule 2.6.1 of the Code

“Level 2 providers must ensure that consumers of their services are able to have complaints resolved quickly, easily and fairly and that any redress is provided quickly and easily”

1. The Executive stated that the Level 2 provider had breached rule 2.6.1 of the Code because Level 2 provider had failed to provide consumers with a quick, easy and fair complaint process to have their complaints or queries resolved effectively.

During its investigation into the service the Executive discovered that the Level 2 provider was advertising the number promoting the Service, as the contact number to speak to the provider of the Service.

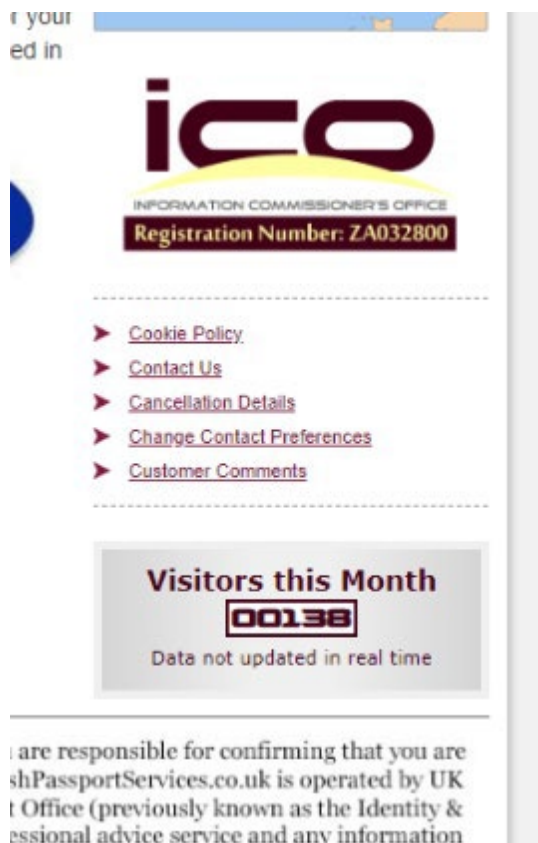
On Website 1, the Executive observed that at the bottom of the homepage there was a sectioned off paragraph containing information regarding the provider of the Service in small print. At the end of the paragraph the address for the provider, its company number and VAT had been included. At the bottom of the page, the telephone number, an overseas number an email address and a fax number had been supplied. The number

provided was the 0203 600 1984 number, which was the same number displayed at the top of the page and was the number that promoted the Service.

The Executive noted that when this number was dialled it directed consumers to dial PRN 1 to speak to the passport office, but it did not give an option to speak to the provider of the Service. The Executive ensured that it stayed on the line until the very end of the promotion and found that, after the promotion finished, there was a pause after which the call did not disconnect, but the promotion was repeated again.

The Executive's view was that the number should not have been described as the contact number for the provider and that, due to this, a consumer would be unable to have their complaint heard or resolved; quickly, easily or fairly by the Level 2 provider.

Additionally, the Executive observed that there was also a list of links on the webpage. The second link in the list was titled "Contact us" (please see promotional screenshot below).



The Executive clicked on this link and was transferred to a page titled "Contact us", where it discovered that the number was also provided alongside the word "Tel:" (for telephone), therefore giving the impression that the number was the direct contact number to speak to the provider.

The Executive asked the Level 2 provider to explain how consumers could contact the provider with any queries or issues regarding the Service. The Level 2 provider responded as follows:

“Our postage address, email is on the bottom of every site. Any customer unhappy with our phone line and the service it provides is sent a full no quibble refund. We have even setup a dedicated page for those wishing to get in touch with us: <http://www.britishpassportservices.co.uk/contact-us.html>.”

The Executive then asked the Level 2 provider to confirm the consumer contact number for the Level 2 provider, and to confirm whether the number appeared on the website.

The Level 2 provider responded as follows:

“Those who email or write in receive our office number, we find customers find those means quickest and so we just have the 0203 number on our website at this time” {SIC}.

From the Level 2 providers response, the Executive understood that the information provided on Website 1 within the “Contact us” link, were the details displayed for consumers to be able to contact the provider, which included the number. In addition, the Executive noted that, although the Level 2 provider stated that the method by which a consumer could contact it was through post or email, it did not mention the contact number on the website, even though the number was contained in the same section of Website 1 that the Level 2 provider had referred the Executive to.

The Executive observed that the postal address was not highlighted or stated as being the principle method for a consumer to contact the provider, noting that it was only given as an option. The Executive also noted that the number was the first contact detail listed in the information provided, thereby giving the impression that it was the paramount way of contacting the Level 2 provider.

The Executive further observed that the number was also displayed as the contact number for the Level 2 provider on Websites 2 and 3, both of which were located after clicking on the ‘Contact us’ link on each website.

It was the Executive’s case that the Level 2 provider had supplied the number in a way that portrayed it as being the direct line for consumers to contact the Level 2 provider on, when in fact it was the voice promotion for the Service. The Level 2 provider had not displayed any other telephone number on the websites for consumers except for the number, therefore consumers were unable to speak to anyone regarding any issues they might have had with the Service.

In conclusion, the Executive asserted that the Level 2 provider had breached Rule 2.6.1 of the Code by displaying the number used to promote the Service as a contact number

for the Level 2 provider, when consumers were unable to use this number to speak to the provider directly. The Executive asserted that the Level 2 provider's action was likely to inhibit consumers from having their complaints dealt with easily, quickly and fairly.

2. The Level 2 provider denied the breach. It stated that there was no easier way than email to deal with a complaint. It had provided the email address that complaints could be sent to 24 hours a day and which was free from anywhere in the world.

The Level 2 provider submitted that, as the marketing of the service was entirely online, the people who came across the website and service would be those who were computer/internet savvy and who would therefore know how to write an email. The Level 2 provider also stated that it provided a valid postal address that applicants could use to write a letter of complaint.

Level 2 provider stated that not a single complaint had arisen via post or email since the line had been active, which mirrored the Executive's complete lack of complaints. The Level 2 provider did not agree with the Executive's assumption that complainants had struggled to lodge a complaint or request a refund, noting that this was supported by zero evidence. In the view of the Level 2 provider, the breach did not cause £200,000 of damage.

3. The Tribunal considered the Code and all the evidence before it, including the representations made by the Level 2 provider.

The Tribunal was satisfied that the contact telephone number provided in the promotion did not provide any route for a consumer to speak with the Level 2 provider and to file a complaint. A consumer dialling the number would hear the promotion but would be unable to raise any concerns with the Level 2 provider. The Tribunal considered that, in providing the promotional number for the service as the contact number, the Level 2 provider had prevented consumers from having their complaints dealt with quickly, easily and fairly via this route. The Tribunal considered that it was also very unlikely that a consumer would write to the postal address provided, although noted that an email address was provided.

For the reasons outlined above, the Tribunal was satisfied, on a balance of probabilities and for the reasons advanced by the Executive, that consumers were unlikely to have been able to have their complaints dealt with quickly, easily or fairly.

Accordingly, the Tribunal upheld a breach of rule 2.6.1 of the Code.

Decision: Upheld

Alleged breach 5

Paragraph 3.4.8 of the Code

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

1. The Executive stated that the Level 2 provider had breached paragraph 3.4.8 of the Code because Level 2 provider failed to renew its registration with the PSA.

The Executive discovered on 8 August 2019 that the Level 2 provider’s registration status had changed from “Registered – paid” to “Not registered – not renewed” on the PSA Level 2 provider database. The Executive stated that it was the general responsibility of the Level 2 provider to renew its registration with the PSA annually or at intervals stipulated by the PSA. Furthermore, the Executive observed that the Level 2 provider had received numerous reminder emails between 17 June 2019, which was a month before registration expired, and 16 July 2019, which was a day before the registration expired. The Level 2 provider had also been sent an email on 18 July 2019 informing it that its registration had now expired and that if it continued to provide PRS it would be in breach of the Code. The Level 2 provider did not reply to any of the reminder emails sent. Having ascertained that the registration had expired, the Executive checked to see whether the PRNs associated with the Service were still in operation, which they were. The Executive therefore submitted that the Level 2 provider had continued to operate PRS without being registered on the PSA Registration Scheme, in breach of paragraph 3.4.8 of the Code.

2. The Level 2 provider denied the breach.

It stated that there were minor delays in paying the PSA its annual fee. Furthermore, the email reminders relied upon by the Executive did not show the email address they were going to. The Level 2 provider stated that it was the responsibility of the PSA to confirm that the reminder emails were received by the Level 2 provider. The Level 2 provider further submitted that no phone calls, no letter in the post, no text messages requesting the renewal fee were ever sent, besides a few email reminders. The Level 2 provider added that when the annual fee was paid, it back dated, meaning that if the PSA registration expired on 1st July but payment for the renewal was made on 15 July, the 12 months period started on 01 July, and so there was no benefit to pay later.

The Level 2 provider submitted that the alleged breach was no more than an attempt by the PSA to penalise a company for late payment of an invoice. As there was no evidenced consumer harm, or regulator or industry embarrassment, the £50,000 penalty recommended by the Executive in its view was unfair and excessive and demonstrated that the PSA was unfamiliar with unfair and excessive contractual terms and legislation such as the Unfair Contract Terms Act 1977 which provides boundaries for ridiculous penalty clauses.

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

The Tribunal considered the representations of the Level 2 provider but did not agree with those representations, noting that the onus was on a provider at all times to ensure that it was operating its services in compliance with the Code. The Tribunal's view was that the Code placed a strict obligation on a provider to register with the PSA as required. Whether email reminders were in fact received by the Level 2 provider was not relevant to the issue of whether the breach had occurred. The Tribunal did accept however that the failure to register had only occurred for a relatively short amount of time.

For the reasons outlined above, the Tribunal was satisfied on a balance of probabilities that the Level 2 provider's registration had not been renewed, as required by the Code.

Accordingly, the Tribunal upheld a breach of paragraph 3.4.6 of the Code.

Decision: Upheld

Alleged breach 6

Paragraph 3.11.3 of the Code, Special conditions ICSS 2

“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”.

Special conditions

ICSS 2

Services must not promote using websites with addresses which mislead a consumer into believing the website is associated with the organisation they are seeking.

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

While monitoring the Service, the Executive observed that the web addresses used by the Level 2 provider were closely related to the function of HM Passport Office. The Executive submitted that the fact that they were closely related could be misleading to consumers and could lead them to believe that the websites hosted by the Level 2 provider were associated with the official HM Passport Office.

The Executive noted that the web addresses all contained specific words which related to the description of HM Passport Office and its functions. For example, Website 1 had a web address which included the words 'British', 'passport' and 'services', which, when put together, gave the impression that the website was associated with the HM

Passport Office. Likewise, the web address for Website 2 included the words 'UK', 'passport' and 'offices' which were also closely related to the official passport office. Similarly, the web address for Website 3 contained the words 'UK', 'passport' and 'service', which together gave the impression that the website was associated with the HM Passport Office and its functions.

In light of the above, the Executive asserted that the combination of words used to make up the web addresses for all three websites could misled consumers to believing that the websites hosted by the Level 2 provider were for the official HM Passport Office website or were closely related.

The Executive therefore submitted that the Level 2 provider had breached Paragraph 3.11.3 of the Code, as Special condition ICSS 2 has not been adhered to, and consequently consumers were likely misled due to the impression that the Level 2 providers' sites were connected to the authentic site for the HM Passport Office.

2. The Level 2 provider denied the breach. The Level 2 provider stated that consumers would know that government bodies such as HM Passport Office operated on a Gov.uk prefix, reserved for government bodies. The Level 2 provider further stated that that the Executive had ignored the fact that in the screen shots showed an http address and not an HTTPS address, which was why the screenshots showed the "!" icon and the phrase "Not Secure". The Level 2 provider argued that the Executive had not drawn attention to this as it severely weakened its case.

The Level 2 provider further stated that all allegations relating to what "consumers may think" were pure opinion and not based on complaints, case law or anything else.

The Level 2 provider relied upon research by the company IPSOS Mori, which had conducted real research with real consumers regarding how they interacted with third party websites and what they found to be either clear or misleading. The Level 2 provider stated that the IPSOS Mori report demonstrated that the Executive's view was not in line with the average consumer in the UK. The Level 2 provider further stated that the report showed that just a quick glance of a website by a consumer, that was very similar to the Level 2 provider's website (and with no time to read the exact text given), would result in 8 out of 10 consumers knowing that it was not the website for the HM Passport Office. It could also be safely assumed that the remaining 2 out of 10 consumers would know when reading the smallest amount of text.

The Level 2 provider submitted that, using the analogy of the website the Executive had highlighted, 10 out of 10 consumers would have known that a website was not the HM Passport Office when calling the 0203 number and when being told by a recorded message that they were not calling the HMPO. This meant that 100 percent of consumers would know that the follow up 0905 number was not the government's number.

The Level 2 provider stated that these were just a few examples of how the Executive had reached the wrong conclusion regarding the behaviour and level of intelligence of the “average consumer”. The Level 2 provider submitted that it could only conclude that the research was not referenced in the Executive’s case as it “torpedos” any allegations that the websites were misleading.

3. The Tribunal considered the Code, the Special Conditions and all the evidence before it, including the representations of the Level 2 provider and the research report referenced within those representations.

The Tribunal carefully considered the URLs of the promotional websites. The view of the Tribunal was that the URLs and the words used, when considered in isolation, did lend themselves to looking official. On this basis, the Tribunal was satisfied that the URLs were misleading, as they were likely to have misled consumers into believing that the website was associated with HM Passport Office.

The Tribunal noted that the misleading impression created by the website addresses could have been lessened had the Level 2 provider added words such as “unaffiliated” or “independent” to the URLs.

The Tribunal was satisfied on a balance of probabilities that the services had been promoted using websites with addresses that could mislead a consumer into believing that the websites were associated with the organization in question.

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

Alleged breach 7

Paragraph 3.11.3 of the Code, Special Conditions ICSS 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.”

Special conditions

ICSS 3

Promotional material must clearly and prominently state (where this is factually the case) that the information (including the number), advice or assistance provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists.

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

While monitoring Websites 1, 2 and 3, the Executive observed that the Level 2 provider had not prominently displayed or clearly supplied information that notified consumers that they could acquire the service directly from the HM Passport Office's official website. The Executive noted that the way in which the Level 2 provider explained in its promotions that it was not affiliated with HM Passport Office was very convoluted and unclear.

On Website 2 the Level 2 provider had displayed a statement at the top centre of the homepage advising consumers of who it was, what they did and who it was not affiliated with. The Executive submitted that the statement was 'wordy' and confusing in the way it was articulated and did not clearly communicate that the Level 2 provider was not affiliated with the HM Passport Office.

The Executive explained that, although the Level 2 provider had also referred to the official passport website in a paragraph located in the first half of the homepage, this text was in a smaller font size and embedded within further information about the Level 2 provider's services. The result was that the information was unclear and was not prominent in directing consumers to the official website.

The Executive further noted that on Website 2 a link to the HM Passport Offices official website was not supplied, as the Level 2 provider had only referred to the website, without supplying a link.

The Executive stated that in respect of Website 3, although the Level 2 provider inserted a statement at the top centre of the page stating that it was an unaccredited British passport information and advice resource, and that it was not affiliated with the HM Governments passport office, this had been done in a confusing way. The information was written in a font size that was smaller than other information provided on the page, and which was not easily legible.

Similarly to Website 2, the Level 2 provider had not provided any links to the HM Passport Office website on Website 3, although it had referred to it in text further down the homepage. The Executive therefore argued that the Level 2 provider had failed to observe the requirements of Special Condition ICSS 3, which required that a provider must clearly state that the services it provides can be obtained directly from the organisation in question at no or lower cost.

The Executive submitted that the Level 2 provider had failed to adequately explain to consumers that the Service it provided could be acquired through the official HM Passport Office website at no or little cost. The information that had been provided by Level 2 provider was not articulated in a clear, legible or prominent way. It also failed to

include links to the official website on both Websites 2 and 3, which was a requirement of Special Condition ICSS 3.

2. The Level 2 provider denied the breach but did not supply any additional representations.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal was considered that clear evidence had been supplied by the Executive that the information and statements required by the Special Condition ICSS 3 were not present in the promotions.

For the reasons advanced by the Executive, the Tribunal was satisfied on a balance of probabilities that the promotional material failed to clearly and prominently state that the information, including the number, was available directly from HM Passport Office at no or lower cost. The Tribunal was also satisfied that there was clear evidence that links to the HM Passport Office website had not been provided.

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

Assessment of breach severity

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 2.2.2

This breach was **Serious**.

The Tribunal considered that the breach was likely to damage consumer confidence in premium rate services and that the failure to include an accurate company name was likely to create difficulties for consumers.

The Tribunal considered that the breach had been committed recklessly, noting that the Level 2 provider had acknowledged that it was aware of Code requirements.

Rule 2.2.7

This breach was **Serious**.

The Tribunal considered that the breach had occurred over a significant duration and that the service had the potential to generate higher revenues as a result of the breach.

The Tribunal considered that the breach had been committed recklessly.

Rule 2.3.2

This breach was **Very Serious**.

The Tribunal considered that the breach caused consumers to incur a higher or wholly unnecessary cost and that the service was incapable of providing its purported value, noting in

particular that the service did not, for example, provide a helpline or a direct connection to the fast track passport service.

The Tribunal considered that the breach had been intentional.

Rule 2.6.1

This breach was **Very Serious**

The Tribunal considered that, although some information was supplied to consumers, the breach had the potential to cause a lack of confidence in premium rate services, noting that the contact number supplied to consumers resulted in the consumer calling the number for the service promotion.

The Tribunal considered that the breach had been committed recklessly.

Paragraph 3.4.8

This breach was **Significant**

Although the breach was of a limited duration, the Tribunal considered the breach to be significant, in light of the importance of the PSA registration system both for consumers and for industry.

The Tribunal considered that the breach had been committed recklessly.

Paragraph 3.11.3 (SC ICCS 2)

This breach was **Very Serious**.

The Tribunal considered that the breach had been committed intentionally and had the potential to severely damage consumer confidence in premium rate services.

Paragraph 3.11.3 (SC ICCS 3)

This breach was **Very Serious**.

The Tribunal considered that the breach demonstrated a fundamental disregard for the requirements of the Code and had been committed intentionally.

The Tribunal's view was that the breach had the potential to severely damage consumer confidence in premium rate services and to have a detrimental impact on consumers.

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 requirement that the Level 2 provider seeks compliance advice regarding the Service promotion by ensuring that it addresses issues around: transparency, pricing, misleading promotions and the special conditions. Such advice must be implemented to the satisfaction of the PSA before any new customers are charged.
- 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 compliance advice has been implemented to the satisfaction of PSA and payment of the fine and the administrative charges in full, 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 £1,350,000.00 broken down as follows:
 - Rule 2.2.2 - £175,000
 - Rule 2.2.7 - £175,000
 - Rule 2.3.2 - £250,000
 - Rule 2.6.1 - £200,000
 - Paragraph 3.4.8 - £50,000
 - Paragraph 3.11.3, ICSS 2 - £250,000
 - Paragraph 3.11.3, ICSS 3 - £250,000.

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

Proportionality assessment

Assessment of mitigating and aggravating factors

Mitigation

The Executive submitted that the Level 2 provider had stated that it had provided no quibble refunds to complainants, although noted that the Level 2 provider had failed to supply any evidence of refunds to corroborate its statement.

The Tribunal considered that the issuing of refunds to consumers was a mitigating factor.

Aggravation

The Executive submitted that it was an aggravating factor that the Level 2 provider had failed to follow the Guidance or take alternative steps which, had they been followed, would have avoided breaches occurring.

In addition to this, prior to the above breaches occurring, the PSA gave relevant compliance updates and published adjudications on its website in relation to this service type.

The Executive submitted that it was also an aggravating factor that the breaches continued after the Level 2 provider became aware of them and that the Level 2 provider did not make any changes to the promotion or the operation of the service after it was notified of the Executive's concerns.

The Executive further stated that it was an aggravating factor that the Level 2 provider had been resolute in the argument that the PRNs related to the Service were for the convenience of consumers with arthritis, as the numbers within the PRN are better placed and easier for consumers with arthritis to dial, and that the Level 2 provider seemingly took a nonchalant view regarding the Executive's concerns about the service.

The Tribunal agreed with the aggravating factors advanced by the Executive, with the exception of this final submission, which the Tribunal considered did not amount to an aggravating factor as it essentially comprised of the Level 2 provider's representations and its account in respect of the breaches.

Financial benefit/ Need for deterrence

The Executive argued that the Level 2 provider had generated an estimated £72,431.75 (out of a total Service revenue of £88,258.57) which directly flowed from the breaches in the case, as had consumers been aware of the charges for the service and had they been aware that they were not calling the organisation in question directly, it was unlikely that they would have used the service.

In response to questioning by the Tribunal, the Executive acknowledged that there was always a possibility that some consumers would have spotted the cost of the service on the promotional websites, but the Executive believed that it was likely that, after first glance, consumers would not have known that they were going to be charged. The Executive further stated that the Level 2 provider had presented the service as an advice service line, when in fact it was not. Therefore, even if consumers were aware of the cost, the service did not provide an advice line, as had been stated in the promotions.

The Executive provided the Tribunal with an updated revenue figure which accounted for additional revenue generated as of the date of the hearing.

The Executive argued that, in light of the seriousness of the breaches, and the need to deter conduct of this nature, there was a need to remove this financial benefit accrued from the breaches, through the imposition of a substantial fine.

The Level 2 provider stated that there had been no consumers complaints or evidence of consumer harm, as outlined in its responses to the breaches. The Level 2 provider therefore did not accept that the revenue flowed from the breaches.

The Tribunal was satisfied that the revenue did flow from the breaches, for the reasons advanced by the Executive, noting in particular that the combination of breaches would have resulted in consumers either not understanding the cost of the service or in consumers not being provided with the service they were expecting.

Issue of delay

The Level 2 provider stated that the investigation had been flawed, unlawful and unfair. It explained that the alleged breaches were probably identified by the Executive within as little as 1 hour of monitoring the website and phone line in September 2017. The Level 2 provider was of the view that the Executive could have notified it of its concerns and advised it of what needed to be done in September 2017.

Rather than doing so, the Executive had waited 2 years, during which time more consumers were using the service and revenue was increasing daily.

The Level 2 provider indicated that it had found responses from the Executive during the investigation to be very flippant, and little to no assistance or advice was given. The Executive had also given no indication that the answers the Level 2 provider had supplied were unsatisfactory, or that the Executive considered that the PSA code was being severely breached on an ongoing basis.

The Level 2 provider further stated that the Executive had stopped all monitoring of the service, website and marketing in September 2018, yet chose to extend the investigation to September 2019, presuming there were not any changes in the service and its marketing, when in fact this was not the case.

The Level 2 provider reiterated that it denied all breaches alleged.

In response to questioning by the Tribunal regarding the apparent delay between September 2018 and September 2019, the Executive stated that during this period of the time all of the relevant documentation was completed but had to go through appropriate stages of internal review and approval. The Executive confirmed that, during this process, the Level 2 provider was regularly updated and notified of the ongoing investigation.

In response to further questions from the Tribunal regarding the causes of the delay, the Executive stated that the case had been placed in a queue for an investigator after allocation for investigation. During the relevant time, the Executive had been completing work on other cases. It had therefore been unable to continually work on the current case. In the Executive's view, there had not been a delay, as the case was going through a standard process of completing evidence and review.

The Tribunal noted the explanation given by the Executive but disagreed with the Executive's argument that there had effectively been no delay. The view of the Tribunal was that there had been an unacceptable level of delay in bringing the case to Tribunal and that the reasons given by the Executive for this delay were insufficient. The Tribunal considered that there had been a degree of unfairness caused to the Level 2 provider by the delay, noting in particular that the service had continued to operate non-compliantly during this time and had generated further

revenue, which was revenue the Executive was relying upon in respect of the financial sanctions recommendations it was making.

Sanctions adjustment

The Executive stated that the recommended initial fine amount far exceeded the revenue generated and that the recommended fine, in combination with the recommended non-financial sanctions, would be likely have a significant impact upon the Level 2 provider. In light of this the Executive submitted that the recommended fine amount should be adjusted downwards in the interests of proportionality, to a total fine of £250,000.

The Tribunal agreed that it was appropriate to adjust the initial recommended fine downwards, for the reasons advanced by the Executive. However, the Tribunal also considered that, in light of its findings in respect of the issue of delay in the Executive bringing the matter before the Tribunal, it was appropriate to make a further adjustment to the fine sanction. This was to reflect the fact the service had continued to operate and generate additional revenue, at least in part due to this delay. The Tribunal considered that it was reasonable and proportionate to reduce the fine by a further £50,000 so that the final fine sanctions was £200,000.

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 requirement that the Level 2 provider seeks compliance advice regarding the Service promotions by ensuring that it addresses issues around transparency, pricing, misleading promotions and the Special conditions for ICCS services. Such compliance advice must be implemented to the satisfaction of PSA before customers are charged.
- 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 compliance advice has been implemented to the satisfaction of PSA and payment of the fine and the administrative charges in full, 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 £200,000.

Administrative charge: 100%