

Tribunal meeting number: 254  
Case reference: 154913  
Level 2 provider: Webdata Ltd  
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 'Lotto Alerts' on shortcode 85088 ("**the Service**").

The Level 2 provider for the Service was Webdata Ltd (the "**Level 2 provider**"). The Level 2 provider registered with the Phone-paid Services Authority (the "**PSA**") on 20 May 2018. The Level 2 provider's registration with the PSA expired on 19 May 2019. The Level 2 provider remains unregistered 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 lottery alert service providing consumers with access to lottery results. 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 which provided the following information:

*"Lotto-Alerts*

*Imagine winning the lottery but not knowing about it – and losing out on £££millions. With Lotto Alerts you are always the know, as we will notify you of the weekly results direct to your phone. Never risk missing out on a big win!"*

In addition to the above description, the Level 2 provider supplied the following consumer Service flow:

User flow

- 1) User arrives at Lotto 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 is verified by a third-party verifier
- 6) user is subscribed to receive Lottery results weekly for a monthly fee of £4.50 until they send STOP to 85088.



Join now for just £4.50 per month and receive lottery results to your phone every week and access to online results

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 85088, calling 0203 318 7281, or emailing help@lotto-alerts.com

Service provided by WebData Ltd



We have jsut sent you a free SMS containing a 4 digit PIN.

Please enter the PIN below

ENTER PIN 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 85088, calling 0203 318 7281, or emailing help@lotto-alerts.com

Service provided by WebData Ltd



Payment successful

You will receive a receipt via SMS

CONTINUE

### Summary of complaints

The Executive had received 99 complaints from members of the public concerning the Service since 29 June 2018.

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

*I have no idea how this company has charged me or what the charge is for. I just happened to check my phone bill and saw the charge for £4.50. I have never had any dealings or knowledge of this company. It is a scam  
I have so far been charged £4.50 on 30 June 2018 [sic]*

*I have not signed up for their services and have no idea as to how it was signed up.  
Their website is <http://www.lotto-alerts.com/contact>  
23 June & 26 August  
£4.50 twice = £9.00 in total*

*The text charges me £4.50 for a text to receive lotto results. I have never signed up for this service and now been charged three charges of £4.50 over the last three months. I have been charged £13.50 in total.  
The website is [www.lottoalerts.com](http://www.lottoalerts.com)*

*I've been charged £4.50 for a "Premium shortcode" according to Three for a lotto related company which I never signed up for. Three said they cannot provide a refund for it.*

### **Interim measures in place**

On 04 January 2019, the Code Adjudication Panel ("CAP") imposed interim measures, namely a withhold of Service revenue up to £261,000.

### **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
- Rule 2.3.2 – Misleading
- Rule 2.6.1 – Complaint-handling

The Level 2 provider did respond to the Executive's Warning Notice. Liquidators acting on behalf of the Level 2 provider wrote to the Executive on 16 August 2019 attaching a statement that had been provided by the directors of the Company.

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 16 August 2019 and found that there had been good service and the date and location of the hearing had been properly conveyed.

### **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 fifteen 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 third-party 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 08 April 2019, the Executive directed the Joint Liquidators to supply evidence of consent to charge all complainants who had contacted the PSA regarding Service charges. On 02 May, the Joint Liquidators supplied a list of URLs purporting to link to the Verifier’s portal in the same format as supplied by the Level 1 provider. For the same reasons listed above in relation to the information supplied by the Level 1 provider, 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 accounts provided by complainants.

## **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 twenty-four responses. Twenty-three of the twenty-four complainants who responded stated that they had not viewed or interacted with the Service promotional material. In relation to the receipt of PIN messages and entering the PIN onto the Service website, none of the respondents advised that they received a PIN or entered a PIN onto the Service website.

In light of complainants alleging that Service charges were unsolicited, and more specifically the responses from respondents 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, on a balance of probabilities, 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. In the statement provided by the Joint Liquidators, the Level 2 provider denied the breach and stated the following:

*“As noted by the investigator we have provided in the Service Information Document details of the steps we take a new user through to ensure we have the correct consent to charge that user. Evidence of this consent is captured by a third party verification partner.*

*We were asked to provide evidence of the consent to charge all complainants. We duly provided this evidence by way of sending the unique URL links associated with each complainant's mobile number as provided by our verification partner.*

*It is our view that a complainant wishing to seek a refund or register a complaint is unlikely to admit to the regulator that they followed through a robust pin entry process to access the service. It is for this reason we rely on a third party verification partner to evidence this action by a user.*

*Since it is clear from the evidence already provided that Webdata has used a third party verification provider, we are unclear how PSA have reached the conclusion that the opt-ins provided are not sufficiently “robust”, and robust to what standard, to who's [sic] standard?*

*We see to remind that there is no “approved” status for third party verification provider. Neither does the PSA publish a list of approved providers, nor recommend those not to use.*

*If it is merely the case that PSA believe the complainant over the Level 2 provider, then what is the purpose of employing a third party verification provider at all?*

3. The Tribunal considered the Code, the Consent to Charge Guidance, and all the evidence before it, including the written submissions from the Level 2 provider.

The Tribunal was of the view that the evidence of the complainants was sufficiently credible and reliable that it was sufficient in itself to uphold the breach of Rule 2.3.3. The Tribunal noted that unconnected individuals were all saying the same thing, namely, that they had not received or entered a PIN. The Tribunal was not persuaded by the Level 2 provider’s suggestion that complainants wishing to seek a refund or pursue a complaint would deliberately conceal the fact that they had followed a robust pin entry process to access the Service. The Tribunal was of the view that the complainants had not received PINs and that the complainant accounts were therefore persuasive. The Tribunal further commented that providing URL links was not sufficiently robust evidence of consent to charge coupled with the strong complainant evidence. The Tribunal was of the view that the complainant accounts were persuasive and were suggestive of a potential issue with the opt-in process for consumers and that the third party verification information did not reflect the experiences of consumers.

Accordingly, the Tribunal upheld a breach of Rule 2.3.3 of the Code.

Decision: UPHELD

## **Alleged breach 2**

### **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, examples provided below:





Join now for just £4.50 per month and receive lottery results to your phone every week and access to online results

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 85088, calling 0203 318 7281, or emailing [help@lotto-alerts.com](mailto:help@lotto-alerts.com)

Service provided by WebData Ltd





We have jsut sent you a free SMS  
containing a 4 digit PIN.

Please enter the PIN below

ENTER PIN 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 85088, calling 0203 318 7281, or emailing [help@lotto-alerts.com](mailto:help@lotto-alerts.com)

Service provided by WebData Ltd

The Executive also noted that spend reminder messages in Service text message logs stated:

*"FreeMsg: You are subscribed to Lottoalerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 85088. [help@lotto-alerts.com](mailto:help@lotto-alerts.com) 0203 318 7281"*

*"FreeMsg: Reminder: You are subscribed to Lotto-alerts.com charged at £4.50 per msg/max 2 per month until you send STOP to 85088. [help@lotto-alerts.com](mailto:help@lotto-alerts.com) 0203 318 7281"*

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 from promotional material supplied by the Level 1 provider to the Executive that it listed the price point as *"you will be charged £4.50 per text message. You may receive up to 2 text alerts per month..."*. In addition, the Executive noted that when visiting the third-party verifier's portal, a purported screen shot of the Service opt-in page was displayed and pricing was given as *"...you will be charged £4.50 per text message. You may receive up to 2 text alerts per month..."*

The Executive submitted that it preferred to rely on the Level 2 provider's promotional material rather than promotional material displayed on the verifier's portal for the following reasons:

- i) One example promotional material supplied by the Level 1 provider did incorrectly state the Service price as *"£4.50 per month"*;
- ii) The Executive had concerns regarding the validity of the information supplied by the verifier, as noted above in the Executive's submissions in respect of the alleged breach of Rule 2.3.3; and

- iii) The Level 2 provider consistently provided promotional material to the Executive in response to requests for complainant message logs during the complaint period (June 2018 – March 2019) which stated the incorrect price point of £4.50 per month.

In light of the above, the Executive considered that promotional material contained an incorrect price point for the Service and therefore, on the balance of probabilities, at least some consumers were misled about the total monthly Service charge.

- 2. The Level 2 provider denied the breach and provided the following written submissions:

*"The investigator suggests that, 'on a balance of probabilities, at least some consumers were misled about the total monthly service charge'. We strongly deny that any consumer was misled in this way.*

*The investigator states that 'one example promotional material supplied by the Level 1 provider did incorrectly state the service price'. Also he states that we, the level 2 provider consistently provided promotional material to the executive in response to complainant message logs. Whilst example promotional material was provided in this way, it was just that, example promotional material. No claims were made that these were the specific promotional materials viewed by a particular complainant. The information provided by the verification partner is the accurate information relating to what a specific customer would have seen at the time of consenting to be charged. We have seen no evidence of a user, complainant or otherwise, being misled about the total monthly service charge.*

*It should also be pointed out that WebData have always operated a so-called "no quibble" refund policy. No consumer of lotto-alerts has ever been denied a full refund in the event of being dissatisfied with the charges or any other aspect of the service (mitigating factor)."*

- 3. The Tribunal considered the Code and all the evidence before it, including the written submissions from the Level 2 provider. The Tribunal was not persuaded by the Level 2 provider's submissions that consumers were not misled or likely to be misled about the total monthly Service charge. The Tribunal considered the complainant evidence and noted the following in particular:

*"I have been receiving unsolicited texts from 85088, lotto-alerts.com, since June, 8 in total. I've only just found out they have cost me £4.50 per message (£36 total). These messages were totally unsolicited as I don't play the lotto online.. or off for that matter. I have been receiving 1 per month, except this month (November) I have received 3 so far, 4<sup>th</sup>, 5<sup>th</sup> & 15<sup>th</sup>. I would seem their THEFT is getting bolder. I need to stop these messages and recover my STOLEN money. [sic]"*

*"Just received my monthly bill with a £4.50 charge for a 85088 service which have neither texted, or received a text or in any other way accepted or signed up to their service. I have also been told from 3 that there is also an additional £9 charge showing already for next month taking the total to £13.50. I know nothing about this service and have every text message from June 2018 on my phone and there are none from this number."*

*"I have had so far five incoming messages sept/oct/ twice in nov and dec so far at a cost of £4.50 each, i never see these as i had previously blocked the number it was only when i went into a 3 store today the issue was discovered, i have now text stop to the number now as advised by the shop assistant, and am now seeking a reimbursement from the company that was sending these messages. [sic]"*

*"I have noticed 7 texts received to my phone from 85088 charged at £4.50 per text. I have not ever signed up for such a service. The dates the texts received are as follows:*

*27.6.18*

*27.7.18*

*27.8.18*

*27.9.18*

*26.10.18*

*1.11.18*

*13.11.18*

*Total amount charged £31.50."*

*"A premium message charge of £4.50/message is being added to my monthly bill without my consent. I have never subscribed to such service (Lotto-results).*

*November 2018: 4x £4.50, Oct 18: 1x £4.50, Aug 18: £4.50, July 18: £4.50, June 18: £4 x £4.50*

*Total amount charged: £54...[sic]."*

The Tribunal was of the view that there was clear and cogent evidence that consumers had been misled about the total monthly Service charge, given the disparity in monthly charges with some consumers being billed up to four times per month.

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

Decision: UPHELD

### **Alleged breach 3**

#### **Rule 2.6.1**

*"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 asserted that the Level 2 provider had breached Rule 2.6.1 of the Code because complainants had stated that they were unable to quickly and easily contact the Level 2 provider to complain about the Service.

The Executive relied on complaints received and the PSA's Complaint-handling Guidance.

The Executive noted from promotional material supplied by the Level 2 provider that a customer service telephone number and email address were supplied. The Executive also noted that thirty-three complainants had stated that they had experienced difficulties in contacting the Level 2 provider to complain about the receipt of

unsolicited Service charges and to receive redress. A sample of complainant accounts was provided as follows:

*"It is impossible to contact the company behind this text"*

*"I have never subscribe online but I don't know why they keep charging me Try to call them but they never answer"[sic]*

*"They don't answer the help line or phone back"*

*"consumer has sent them an email but has not received any response, consumer has tried ringing their number but has not had a response"*

*"Lotto said there's nothing they can and it comes down to Three to arrange refund"[sic]*

*"The company has said they have removed me from the list but I did ask for a refund and they have not come back to me"*

*"I've tried to contact the company but have had no success."*

The Executive noted that:

- i) in response to the Executive's complainant survey there were respondents that stated a refund had been provided; and
- ii) the Joint Liquidator had provided a spreadsheet of refunds issued to PSA complainants, and later a further spreadsheet of refunds issued to a wider group of complainants.

Notwithstanding the above points, the Executive considered that it was clear from the complainant accounts that on a balance of probabilities at least some complainants did not have their complaints resolved quickly and easily as required by the Code. In light of this, the Executive asserted that the Level 2 provider had breached rule 2.6.1 of the Code for failing to ensure consumers of its Service were able to have their complaints resolved quickly and easily.

2. The Level 2 provider provided the following written submissions:

*"We, as the Level 2 provider always and consistently provided an easy and effective channel to our users should they wish to complain or query the service in any way. The investigator correctly notes that both a customer service telephone number and email address were made available to users of the service."*

*"It is simply not the case that consumers of the service were not able to have their complaints resolved quickly and easily. If a user called the customer service line and was unable to speak with a live agent at the time of their call, then an option to leave a message and arrange a call back was always provided. Such messages were always responded to within 24 hours, but more typically within 2 hours."*

*"Complainant accounts as noted by the investigator such as, 'They don't answer the help line or phone back' is neither accurate nor reflective of the comprehensive customer support platform provided. Indeed the help-line is fully automated, and is*

*answered 24/7. Users are able to STOP the service automatically, and leave a message at any time.*

*All callers **leaving a message** are called back.*

*We feel the evidence we provided relating to refunds made to complainants, and indeed other users of the service during its operation prove **beyond doubt** that complainants were indeed able to contact us and have their complaints resolved quickly and easily."*

3. The Tribunal considered the Code and all the evidence before it, including the Level 2 provider's written submissions. The Tribunal was satisfied that some consumers had clearly obtained refunds, but this was not the case across the board. The Tribunal was content that there was credible evidence that many consumers did not experience positive or quick and easy complaint handling and that some consumers did not obtain redress quickly and easily.

The Tribunal was satisfied that a sizeable number of consumers had experienced difficulties in having their complaints resolved. For the reasons outlined by the Executive, the Tribunal was satisfied that the Level 2 provider had failed to resolve complaints quickly, easily and fairly. Accordingly, the Tribunal upheld a breach of rule 2.6.1 of the Code.

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 £400,000 broken down as follows:
  - Rule 2.3.3 - £250,000
  - Rule 2.3.2 - £100,000
  - Rule 2.6.1 - £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.

### 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 up to four times per month.
- the Tribunal also considered that the Service would have damaged consumer confidence in premium rate services.

### Rule 2.6.1

- this breach was **Significant**
- the Tribunal agreed with the Executive that the breach was likely to have caused, or had the potential to cause, a drop in consumer confidence in premium rate services and that the breach may not be an isolated incident and may indicate a wider problem.

## Proportionality Assessment

### Assessment of mitigating and aggravating factors

#### Mitigation

The Executive submitted that some complainants had received a refund from the Level 2 provider and that this was a mitigating feature.

The Level 2 provider had provided a written response and stated that it was a mitigating factor that "*no consumer of lotto-alerts has ever been denied a full refund in the event of being dissatisfied with the charges or any other aspect of the service*".

The Tribunal considered that it was a mitigating factor that some consumers (both PSA complainants and a wider group of complainants) had received refunds from the Level 2 provider.

### **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 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 20 November 2018.

The Executive submitted that it was an aggravating factor that the 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 specifically in relation to the aggravating factors but did make it clear that it did not accept any of the breaches.

The Tribunal agreed with the Executive's submissions as to the aggravating factors going to the case as a whole. The Tribunal considered that there was evidence that charges for some Service users had increased to £9 per month or more.

### **Financial benefit/ Need for deterrence**

The Executive asserted that the Level 2 provider generated an estimated £84,509.20 (out of a total Service revenue of £210,460.50) 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 submitted in its written response that it had not received any income whatsoever from the operation of lotto-alerts. It stated that since no commercial gain had been made, it was the duty of the PSA to set penalties at a reasonable and fair level to act as a deterrent, but not to be unduly punitive or to put Service Providers wholesale out of business.

The Tribunal considered the representations made by the Level 2 provider but 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 £400,000, 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.



The Tribunal agreed with the Executive that it was necessary to mark the very serious nature of the breaches, given the scale of the harm and the large numbers of consumers affected. The Tribunal considered it necessary to impose sanctions that were sufficient to prevent a reoccurrence of such breaches by the Level 2 provider, or by the wider industry. Whilst the Tribunal acknowledged that the Level 2 provider had not received any revenue, it nevertheless noted that a significant amount of revenue had been generated as a result of the breaches and the Level 2 provider's conduct, which had resulted in widespread consumer harm.

### **Sanctions adjustment**

The Executive stated that, although there was a very high breach severity, 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:	154913
Level 2 provider:	Webdata Ltd
Type of service:	Subscription alert service
Service name:	Lotto 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 **£261,000** 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 79 complaints received about the Lotto Alerts service ("the Service") from members of the public alleging that they had been signed up to it without their consent
  - b) the nature of the apparent breaches referred to by the Executive
  - c) the information in the Track 2 Withhold Assessment.
3. The Level 2 provider did not make any substantive response to the Interim Warning Notice or the Track 2 Withhold Assessment. The Tribunal was content that these documents had been properly served on the Level 2 provider and that it had been given an appropriate opportunity to respond.
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 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 rule 2.3.3 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. The Level 2 provider did not make any representations on this issue.
9. The Tribunal considers that there is a good arguable case that there has been a breach of rule 2.3.3 of the Code. It notes, in particular, the 79 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 15 complainant mobile numbers to the Level 2 provider and requested that it provide evidence of consent to charge these 15 complainants. The Level 2 provider failed to provide any such evidence. The Tribunal considers that there is, therefore, evidence that the Level 2 provider has breached rule 2.2.3 of the Code.
10. 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 considers that the information directed to be supplied by the Level 2 provider was reasonable and relevant to the Executive's assessment of whether interim measures are necessary. The Tribunal notes that the Level 2 provider did not respond to this direction by the deadline and did not request an extension for supplying the information requested. On 13 December the Level 2 provider responded stating that it had not received any UK service revenue and supplied a bank statement to evidence this. The Tribunal does not consider this to be a sufficient response to the 4.2.1 direction as the majority of the items requested have not been supplied. The Tribunal finds that there is a good arguable case the Level 2 provider had breached paragraph 4.2.3 of the Code.

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

11. 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.

12. The Tribunal has taken into account the information and representations contained within the Interim Warning Notice and the Withhold Assessment. The Level 2 provider did not make any response in relation to this issue.
13. The Tribunal is satisfied that the Level 2 provider would be both unable and unwilling 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 had informed the Executive that it had not been paid any of the revenue for the operation of its premium rate Service
    - ii. the bank statement submitted by the Level 2 provider showed its balance as being €5,081.98 as of 30 November 2018, far less than any likely financial sanction that would be imposed by a Tribunal in a case of this nature
    - iii. the credit report for the Level 2 provider states that its credit limit is £500
    - iv. there was no evidence of the Level 2 provider having any alternative revenue streams.
  - b. Having considered the Level 2's conduct in the course of the Executive's enquiries and investigation into the Service, the Tribunal determines that it would be unwilling to comply with a likely financial sanction. It notes in particular:
    - i. the Level 2 provider failed to respond to the Executive's informal enquiry, dated 3 October 2018, which put the Level 2 provider on notice of its concerns and requested information about the Service
    - ii. the Level 2 provider failed to respond to the Executive's 4.2.1 direction within the deadline
    - iii. when a response was ultimately received from the Level 2 provider, it was incomplete and did not give an adequate explanation for the failure to respond within the appropriate timeframe
    - iv. the Tribunal was of the view that, in light of the above, the Level 2 provider had shown a wilful disregard for its obligations under the Code and that this demonstrated a likely unwillingness to comply with a financial sanction that may be imposed by a future Tribunal.
  - d) The Tribunal notes that the Level 2 provider has engaged in some correspondence with the Executive. However, the Tribunal considered that the slow and reluctant engagement of the Level 2 provider is not an indication of a willingness to comply with a likely financial sanction. The Level 2 provider has stated, in correspondence with the Executive, that it had issued refunds to complainants. However, it did not supply any evidence to substantiate this and again, the Tribunal does not consider that this indicates a willingness to comply with a financial sanction if one is imposed.

- e) 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 co-operate in paying any financial sanctions which may be imposed in due course.

### **Withhold amount**

- f) The Tribunal has considered the Executive's assessment of the likely future final sanctions, together with the 79 complaints generated by the Service to date and the gross Level 2 provider revenue of £66,642.48.
- g) The Tribunal has considered the breaches on which it concluded that there was a good arguable case. It has determined that the apparent breaches of rule 2.3.3 and paragraph 4.2.3 are very serious.
- h) The Tribunal considers that a future Tribunal would be likely to impose the following initial fines:
  - (1) Rule 2.3.3: £250,000
  - (2) Paragraph 4.2.3: £175,000
- i) The Tribunal considers that the initial fines would likely be reduced for proportionality at the final sanctions stage to £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 that there would potentially be an impact on the Level 2 provider's business as a result of a withhold being imposed, however, it also bears in mind that the Service has already been suspended by the Level 1 provider so this impact would be somewhat reduced.
- j) The Tribunal is of the view that there would also likely be an administrative charge of £10,000 and general refunds of £924.30
- k) The Tribunal therefore considers that the measures set out below are necessary and proportionate in the circumstances of this case. The Tribunal has considered the likely impact of a withhold on the Level 2 provider. However, it is satisfied that this potential impact is proportionate and justified, when balanced against the very serious nature of the breach of rule 2.3.3, the resulting consumer harm and the need to achieve the sanctioning objectives.

14. Accordingly, in respect of the Service the Tribunal hereby directs that:

- a) the PSA is authorised to direct a withhold of up to £261,000

- 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.

**Ian Walden**  
**Tribunal Chair**  
**4.1.2019**