

Case Report

Background

The Parties

The Level 2 provider in this case was Interact2media Pte Ltd (the “**Level 2 provider**”), who were based in Singapore and have been registered with the Phone-paid Services Authority (the “**PSA**”) since the 3 September 2015. They also operated another service called Mobsfun.

The Level 1 provider in this case was Daotec Ltd (**Daotec**), who were based in London in the United Kingdom. Daotec have been registered with the PSA since the 12 August 2011.

The Service

This case concerned a fixed line, non-scratch card competition service called “Dial4Fun” operating on premium rate numbers (PRN(s)); 09117523698, 09115628671, 09115628679 and 09115620784 (the “**Service**”). It was charged at £1.10p per minute for PRN 09115628671 and 99p per minute for the other PRN(s), plus network access charges with a cap of £30 applied on it. The Service offered entry into a non-scratch card competition, where consumers called a PRN and answered multiple choice quiz questions.

The Service was said to have started operating from October 2015 according to the Level 2 provider, however Daotec advised the Executive that the Service began operation on the 6 November 2015.

The Level 2 provider stated that the numbers under investigation were no longer in use and that the current status of the Service was inactive. Daotec confirmed that on the Level 2 provider's request, incoming calls were blocked to the Service on 7 December 2018.

Level 2 provider's account of the operation of the Service

The Level 2 provider was asked to supply a summary of the way in which the Service was intended to operate, and it responded by stating:

“The service operates by calling the 0911- number. Previous to calling the 0911- number the participant above has indicated his/her interests as he/she seems to have participated to a different service by means of a free prize draw and receiving txt messages. However, the 0911- number service does not generate a free prize draw or any text message. The performance of the 0911-number goes via one online page as shown in the information as attached, see ‘xxxxxxxxxxx’. The further performance goes completely manual directly via the mobile telephone of the end-user. This means that the end-user participates to a multiple-choice knowledge question with four possible answer options A, B, C, D by tapping in the rights answer. A cap of £30 applies. The service number is tariffed with 99p per minute, plus phone company's access charges.

Please see attachment ‘User terms’.

The Executive also asked the Level 2 provider to describe how the Service is promoted, to which it responded with the following:

“Since 2017 the Dial4fun service was promoted via a service partner sms after a participant was validated/registered as participant to a media buy channel with data capture points, privacy policies and data protection statements. Media owners often use this method when advertising services and products of partners (such as Interact2Media) without passing on the phone number at the start of the data capture. When the participant calls the number the Dial4fun service commences. To participate to the Dial4fun service the service partner sms was sent 30 minutes after the participant validated his/her registration. In summary: participant enters the service, finalises his/her participation and receives the service partner sms.

Interact2Media | Dial4fun is service partner and does not have access to personal data which is processed during the data capture. The service partner sms is sent after participation.

The standard example of sent service partner sms is:

+-+ Sent 23-sep-2017 2:05:23:

FREE MSG: Hi {First name}! Your number has been selected for the final round to win an IPHONE X! Call now: 09115628671 (99p/min) Good luck!

+-+

See also answer under question 5”.

Question 5 referred to by the Level 2 provider above, is where the Executive directed the Level 2 provider to provide a clear description of the consumer user flow regarding the Service: from promotion through to answering the quiz question stage. The Level 2 provider said the following in response to the question:

“Please see attached the standard consumer user flow used to promote the service: ‘Consumer journey Surfeyo’ and ‘Consumer journey Amazando’. See also the renewed questions and available rounds to participate which was attached to the answer and explanation under question 2 above”.

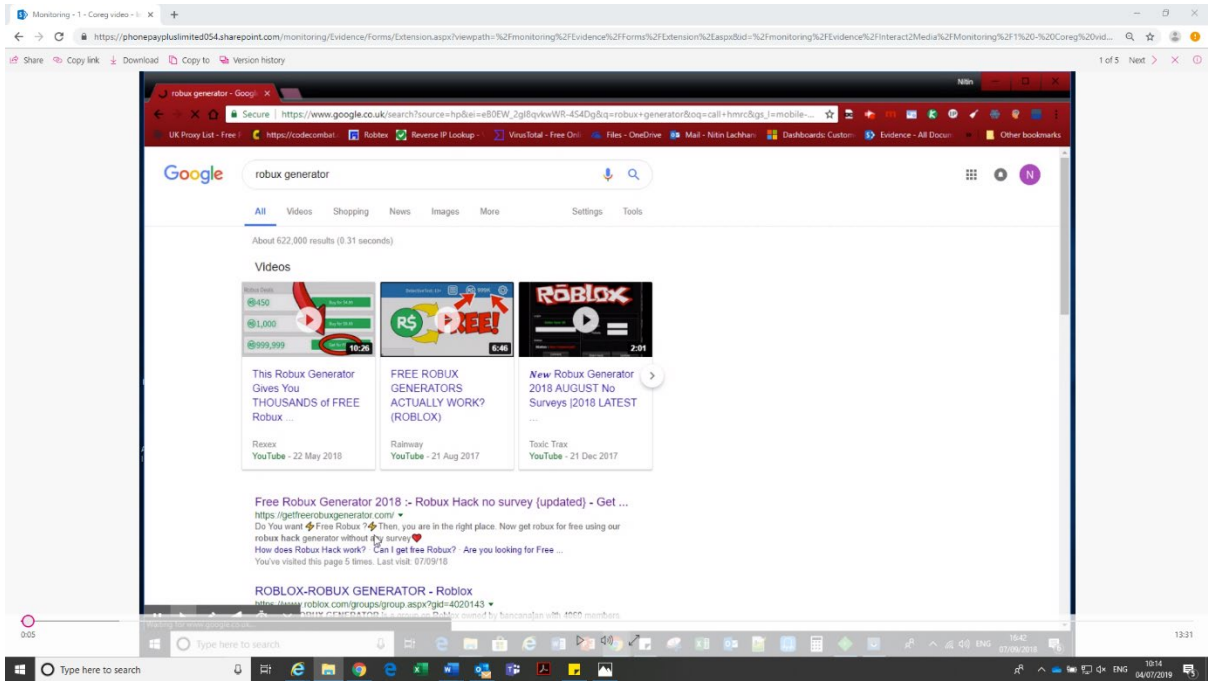
The two documents referred to by the Level 2 provider both depicted consumer journeys into the Service.

The Level 2 provider did not provide any examples or explanation as to what occurred when a consumer dialled the PRN included in the text they received, however it did provide a spreadsheet of new questions, it had recorded, based on a trivia-quiz containing local UK based questions and generic trivia questions.

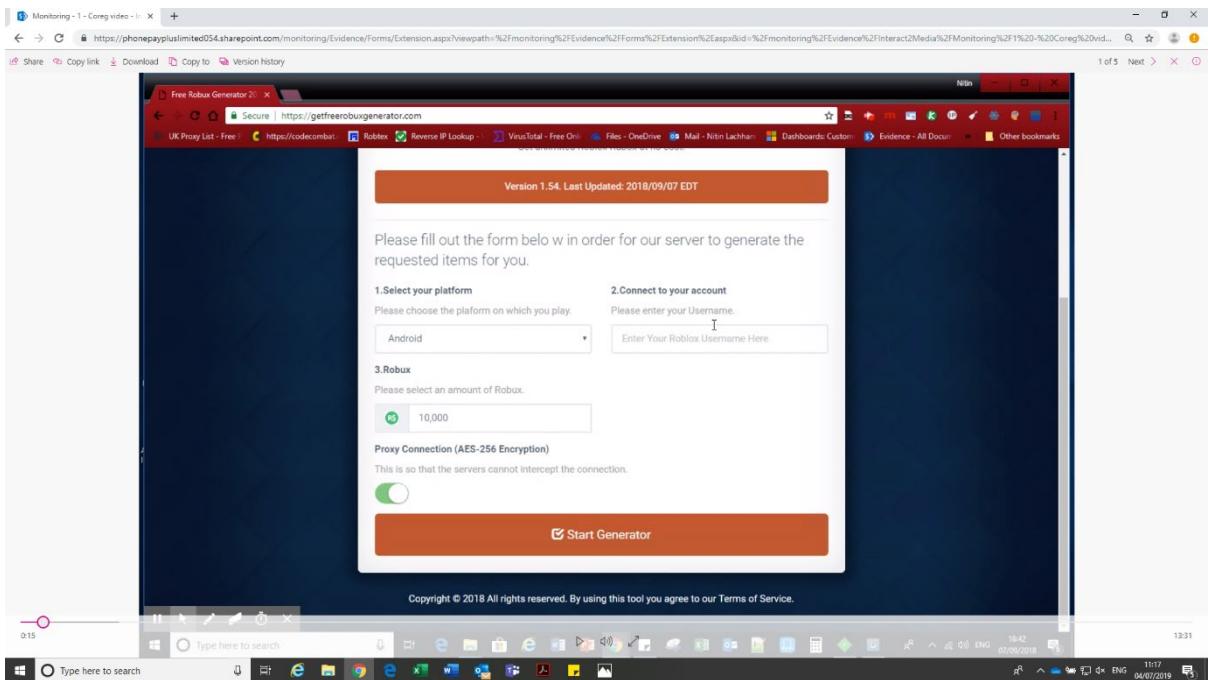
Executive’s account of the operation of the Service

Executive’s experience with the promotion of the Service

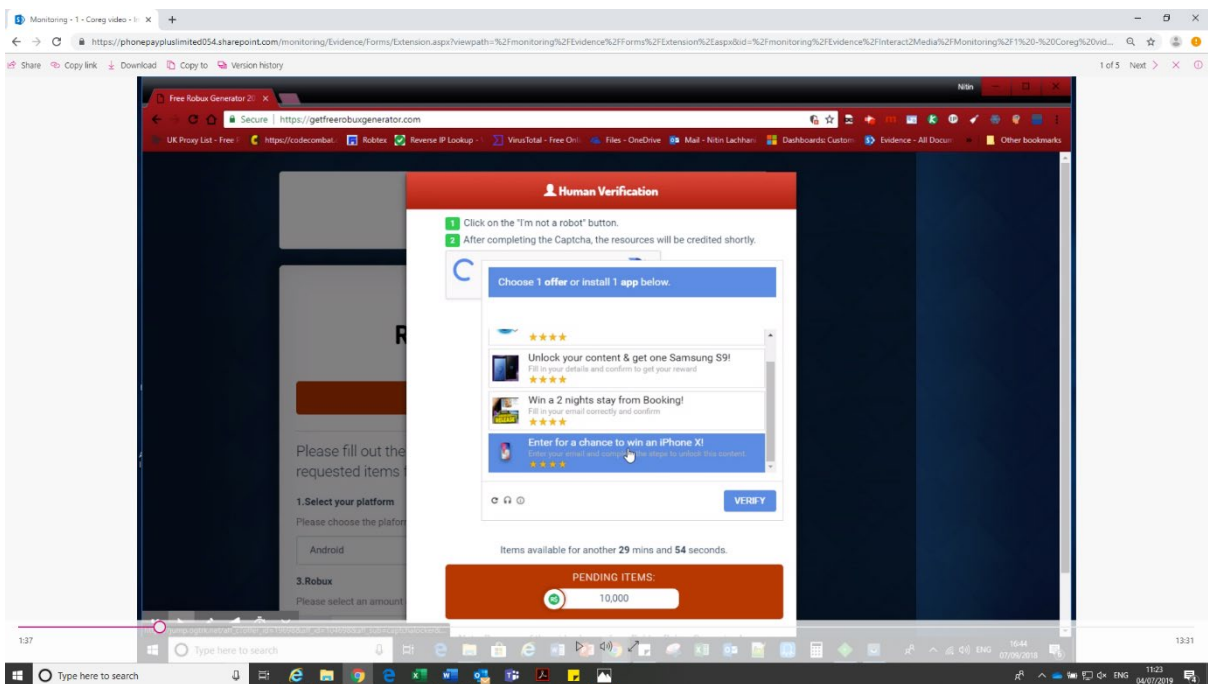
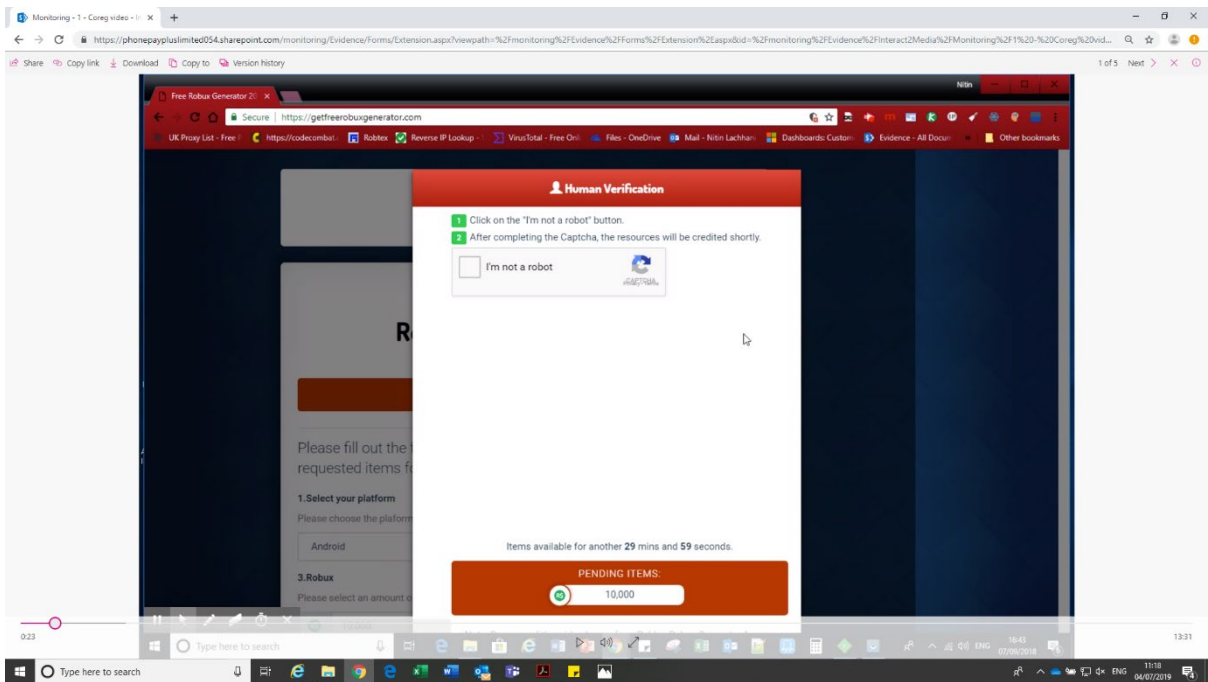
The Executive captured a consumer journey whilst monitoring the Service, on a desktop computer, much like that described by the Level 2 provider. However, the access point was through a Google search for a Roblox game hack using the search terms “robux generator” (an in game currency to purchase upgrades and buy special abilities in games), the journey of which contained content locking. The mode of opt in was through the process of co-registration.



After selecting the first link on the result page titled “Free Robux Generator 2018...”, to generate the items, the Executive was instructed to; select their platform on which they play the game, input the amount of Robux they wanted and then connect to their account by inputting their username on the page.

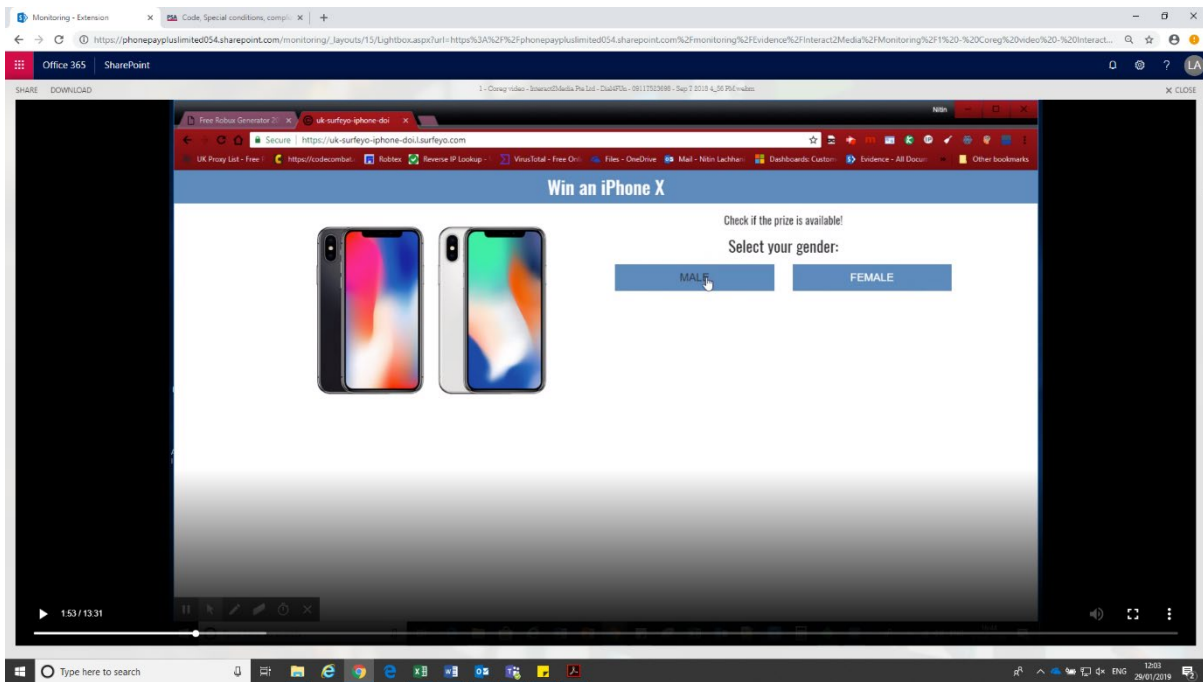
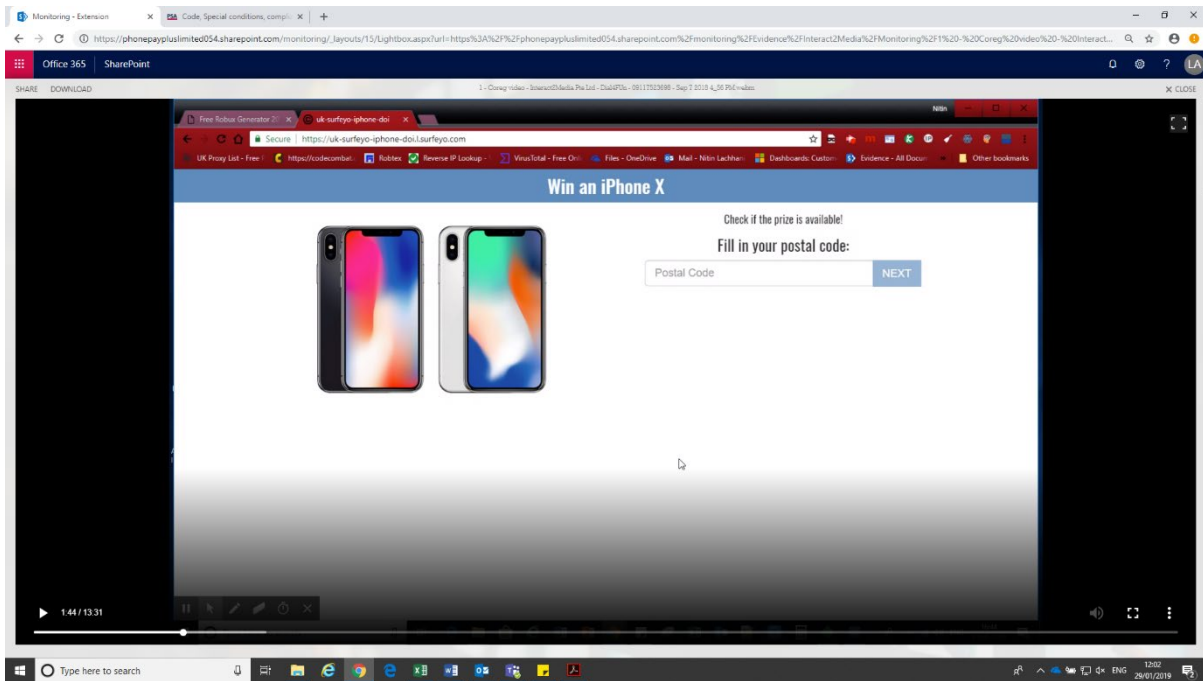


They were then instructed to verify that they were human by choosing one offer or installing one app from a list which came up on the screen.

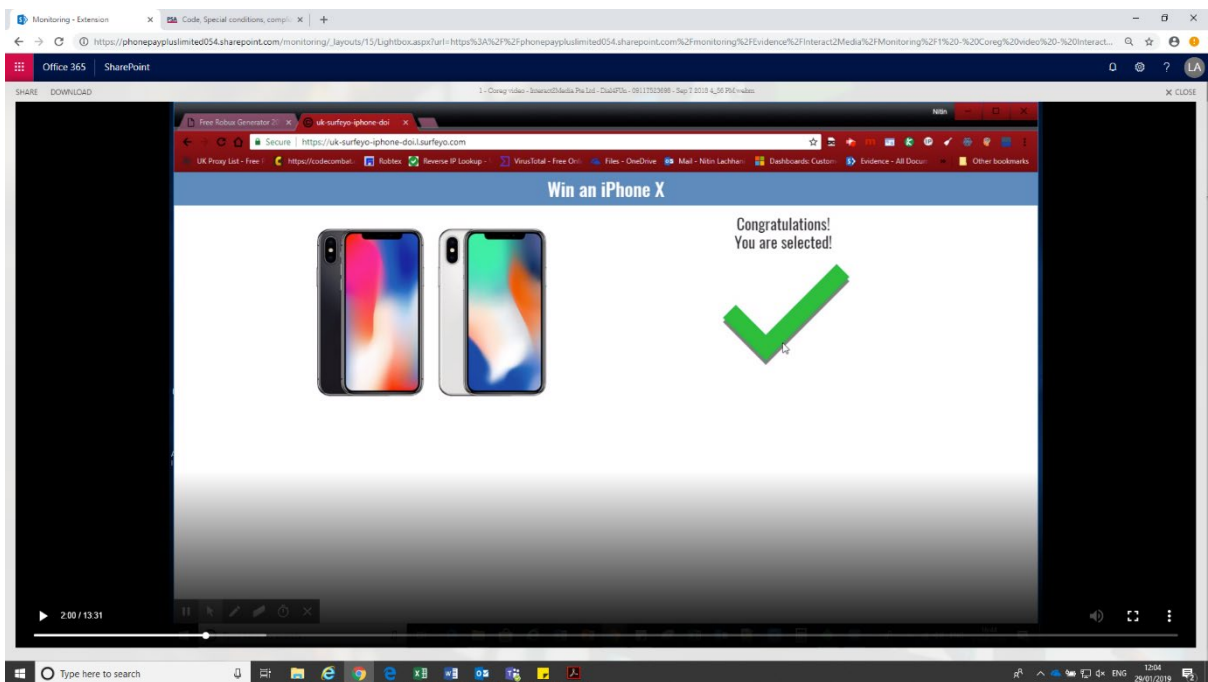
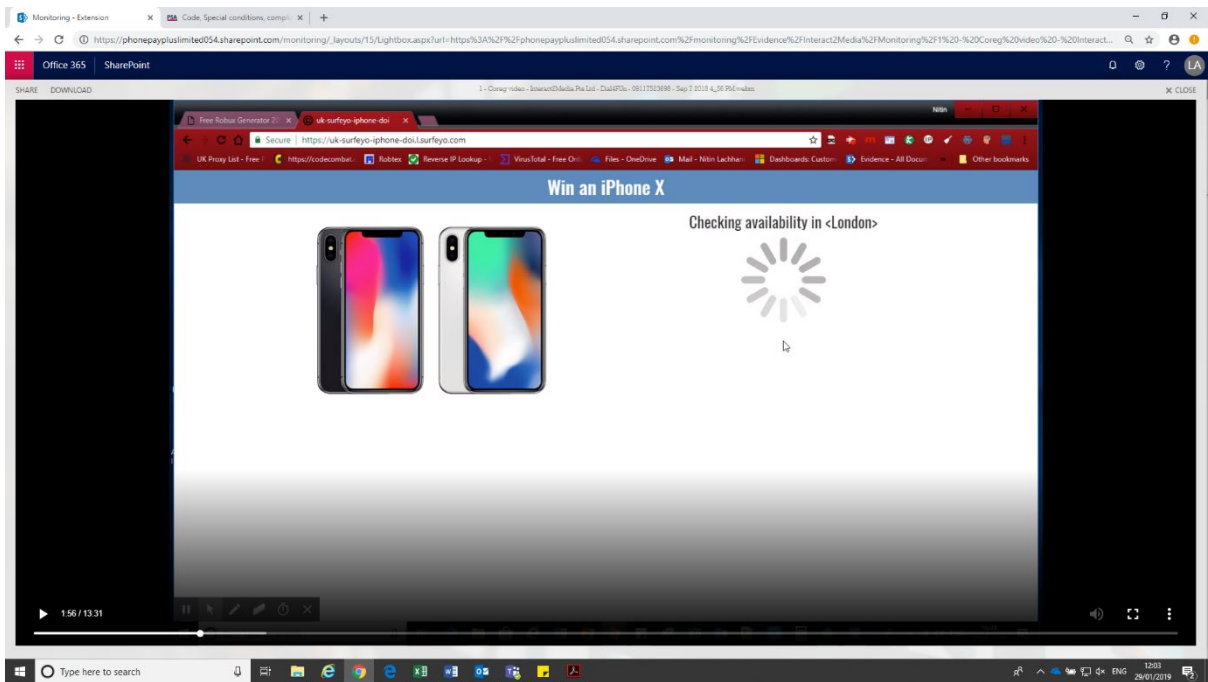


The offer to enter a competition for a chance to win an iPhone X was selected, this led the Executive through a number of personal and general questions to check the availability for the product they were seeking to win.

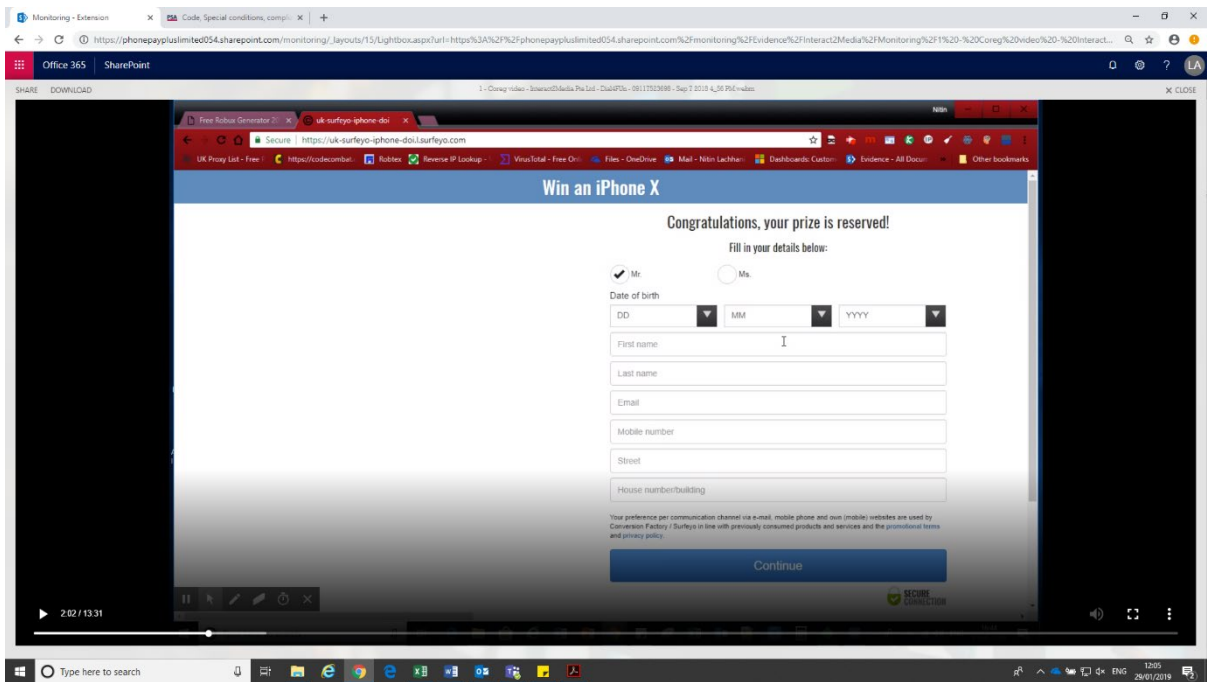
They were first instructed to input their postal code and then select their gender.



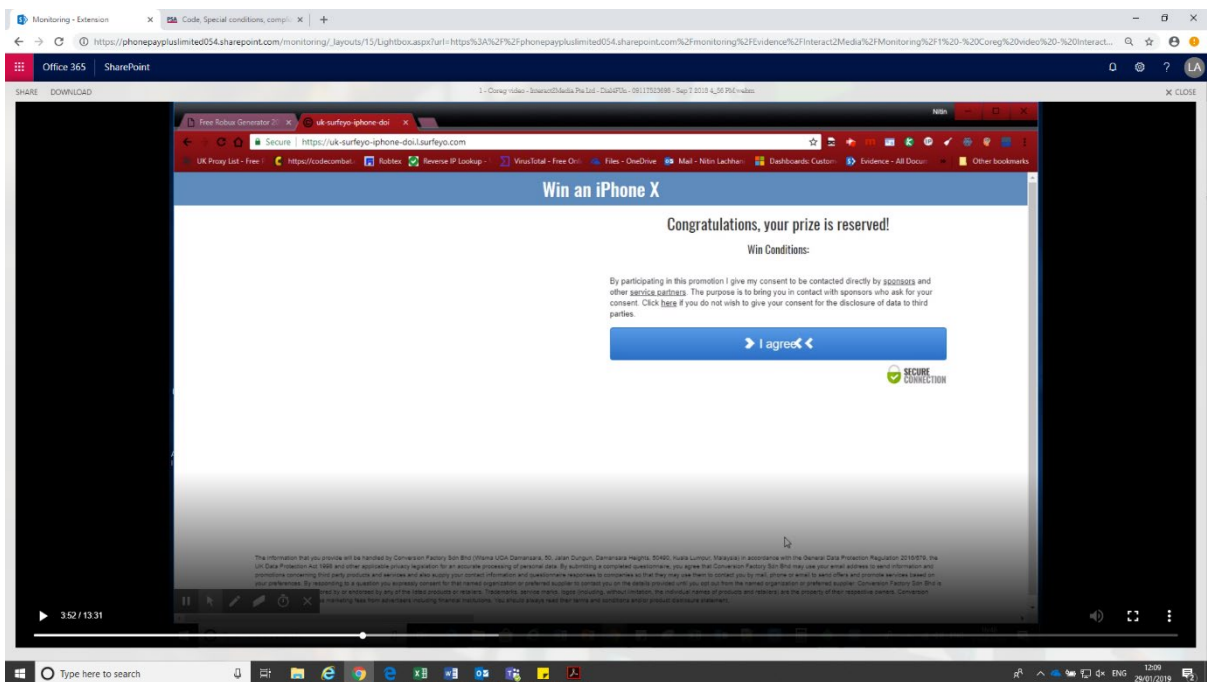
Following this, the availability of the prize in London was checked and they were then told "Congratulations You are selected".

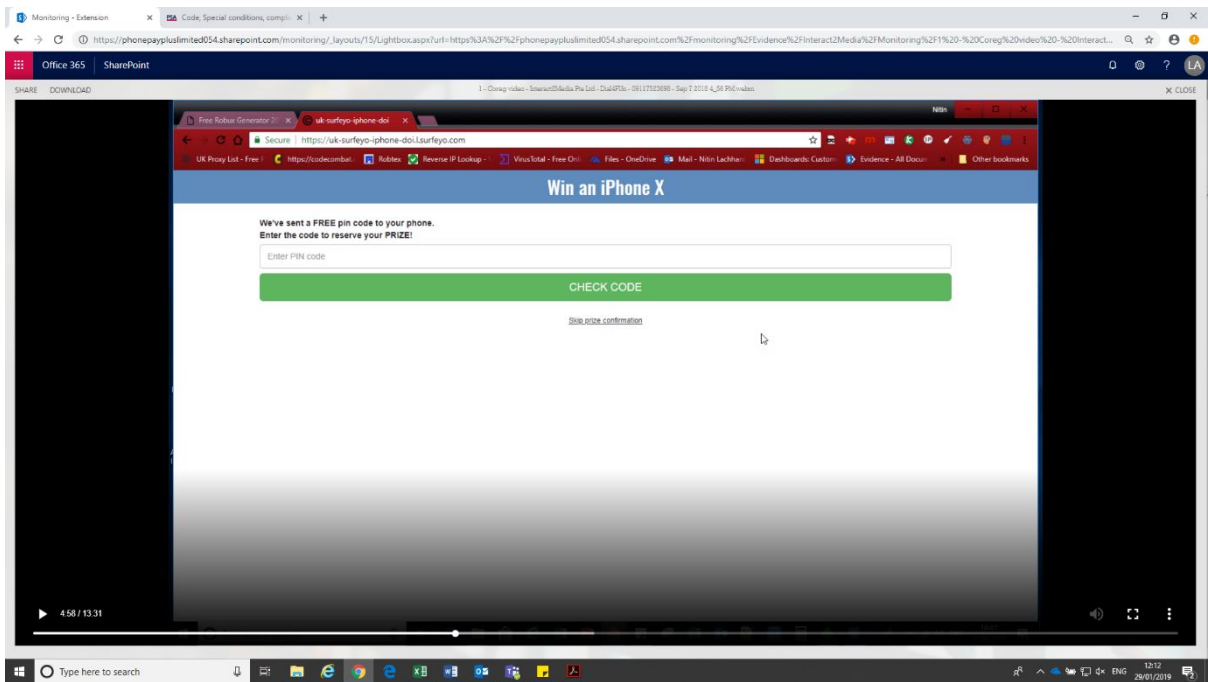


They were then led to a page that stated on the top that “Congratulations, your prize is reserved!” which required them to input their personal information such as their date of birth, name, email and address.

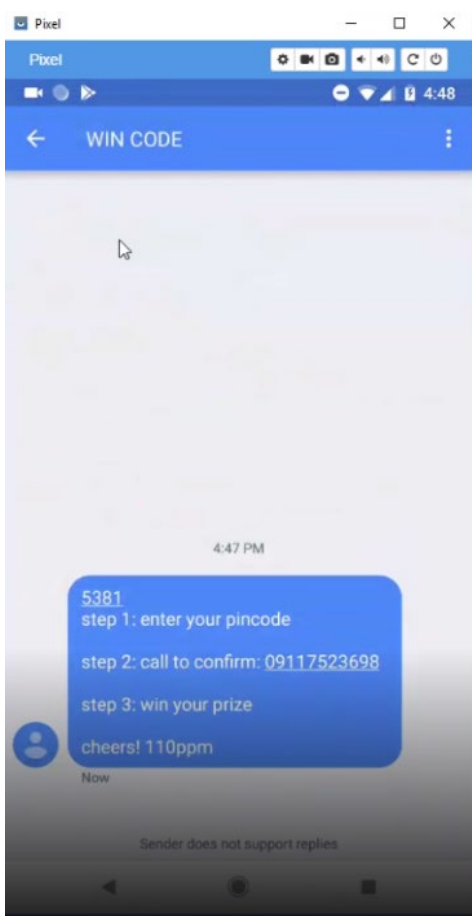


The Executive then clicked on an "I agree" button and was led to a page where they were required to enter a PIN CODE.



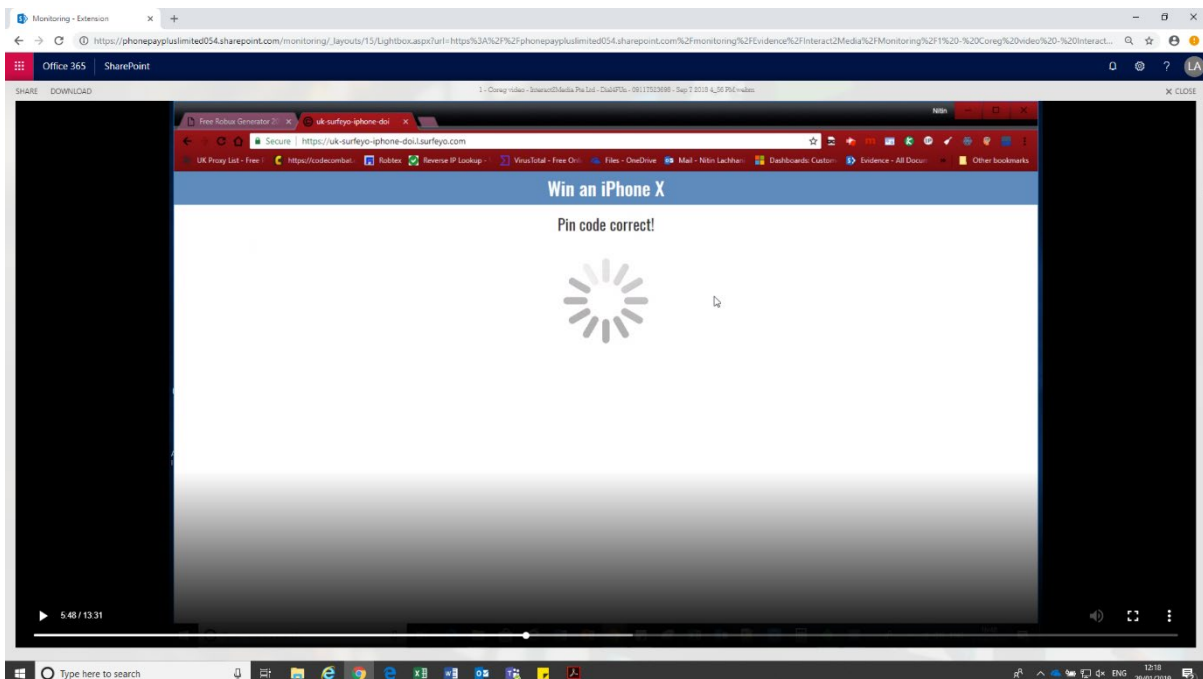
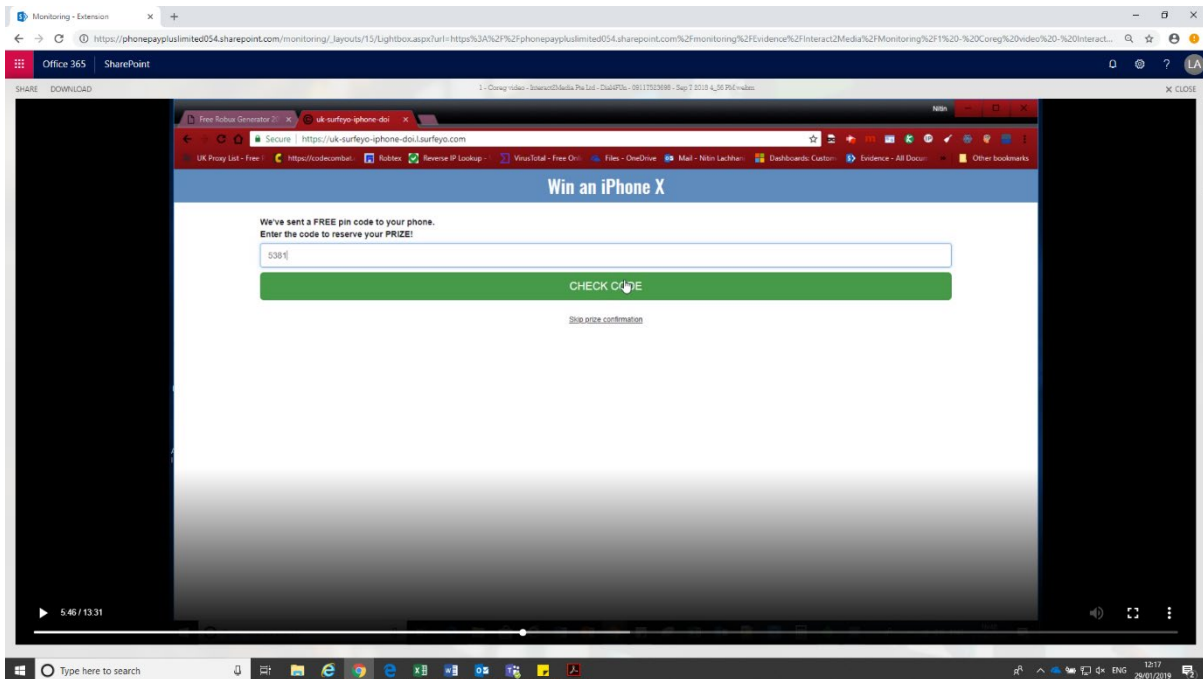


They were then sent a text message to the mobile number they inputted, under the heading “Win Code” which can be seen in the screen shot below.

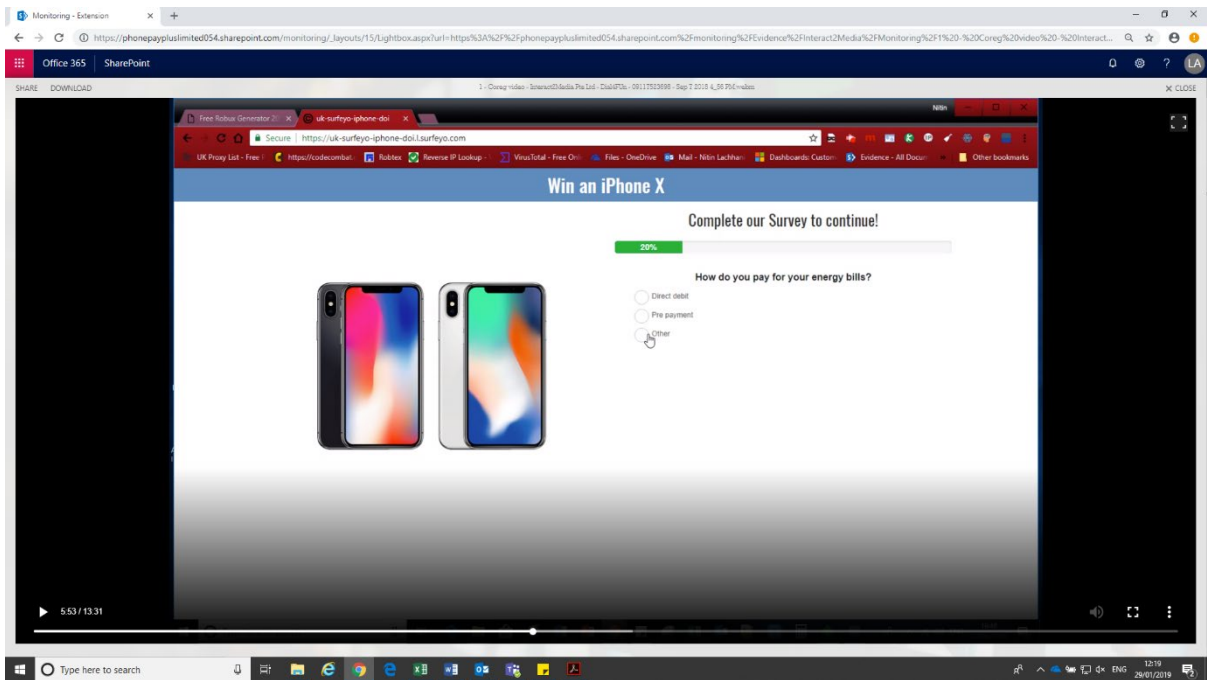


The text message included a PIN CODE and a PRN to dial to win your prize.

The Executive then inputted the code it was sent to continue on the path to obtain the Robux it was originally trying to generate.



They then had to complete a survey with various questions regarding their preference and other competition entries but by the end of the monitoring the Executive had not obtained the Robux, for which they had engaged with the promotion, to acquire in the beginning.



Executive's experience interacting with the Service

Regarding the PRN within the text message (screenshot provided above), the Executive monitored the consumer interaction with the Service through the PRN. In the video the Executive dials the number and hears an introduction; stating the name of the Service and that they will be answering multiple choice trivia quiz questions. After the introduction the trivia quiz begins. They were provided with the option of four answers which they must select by pressing the appropriate number on the telephone keypad.

Within the video after the Executive selected an answer, they were praised by the recorded voice that informed them "they are good at this" and on other occasions that they were "so good" or "fantastic".

The trivia quiz questions continued with no interruptions for 27:15 minutes while the Executive selected answers, however, 3.16 minutes into part 2 of the monitoring video which is 27.16 minutes on the call, it disconnected without any warning or mention that the call was going to end.

Summary of complaints

There were two complaints received regarding the Service; one was received in August 2018 and the other was received in September 2018.

- *received a text message but did not inform me that I was being charged for this*
 - *Dailforfun [SIC].*
- *09115628671 number*
 - *Consumer said she received a call from the 09 number and was charged*
 - *30 min call*
 - *Consumer said the company said she had been selected my Morrison's and was told to answer some questions [SIC].*

Breaches of the Code

The Executive believes that this Service contravenes the Phone-paid Services Authority Code of Practice 13th and 14th Edition (“the Code”) and in particular the following Code provisions:

- Code Rule 2.2.1 – Transparency
- Code Rule 2.2.2 – Transparency
- Code Rule 2.2.7 – Pricing
- Code Rule 2.3.2 – Misleading

Breach 1

Outcome 2.2 provides:

“That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

Code Rule 2.2.1 states that:

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

The Executive asserted that the Level 2 provider has breached Rule 2.2.1 of the Code of Practice 13th and 14th edition (the Code), by failing to supply consumers with vital information necessary for them to make an informed decision to purchase or use the Service.

The Executive relied on Guidance note “Promoting Premium rate service” (PRS) which states that: -

2. Setting out key information and promoting transparently

2.3. Because of this complexity, the Phone-paid Services Authority recommends that providers familiarise themselves with the entire contents of this Guidance and especially the parts relevant to the promotional mechanics they use. However, as a basic starting point, the following information is considered key to a consumer’s decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- cost
- brand information
- product or service information
- how it is delivered or used
- how it is paid for – one off payment, recurring charges, etc.
- how to get help where necessary.

Through monitoring the quiz competition line for the Service, the Executive discovered that consumers were not being supplied with the pricing information for calling the PRN at the beginning of the call. The pre-recorded voice did not provide any information about the

chargers a consumer could incur from calling the number and participating in the quiz. The voice recording merely introduced the quiz, gave consumers instructions on how the questions will be divulged and how they should supply their answer to the questions, but did not state how much the consumer would be charged on the call for participating in the quiz. The transcript can be seen below:

“Welcome to the quiz.

Don’t hang up, the quiz is about to start.

Just answer the questions with your telephone. In order to answer the question, all you need to do is press either 1, 2, 3 or 4. Get ready...”

According to the Code, a consumer must be supplied with vital information necessary for them to be able to make an informed decision about taking part in or utilising a service before a purchase is made. The guidance notes on Promoting PRS, mentioned above, states that key information which should be provided includes the cost of a service which should be provided before any such purchase is made. It is the Executive’s view that through the Level 2 provider omitting this information, on the call, it deprived consumers from having everything they needed to make an informed decision about utilising the Service.

The Executive asserted that the Level 2 provider has breached Rule 2.2.1 of the code by failing to fully and clearly inform consumers of all the information likely to influence their decision to purchase or use the Service by not disclosing its cost before a purchase.

Provider’s response

The Level 2 provider partially admits the breach of Code Rule 2.2.1.

The Level 2 provider explained that the reason why it partially admitted the first breach is because the lack of clear information on pricing was only given for a limited time period. The Level 2 provider submitted that every consumer interacting with the Service before the end of August 2018 would have received pricing in a clear and acceptable format.

Parties’ agreement on Breach 1

The Level 2 provider was accordingly prepared to admit a breach of Rule 2.2.1 of the Code on the basis that there was a lack of clear information on pricing given to consumers over a limited time frame, between August and October 2018. In the absence of monitoring undertaken by the Executive during a different period, the Executive accepted the submission made by the Level 2 provider.

Accordingly, the parties agreed that a breach of Rule 2.2.1 should be upheld.

Breach 2

Outcome 2.2 provides:

“That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made.”

Code Rule 2.2.2 states that:

“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”.

The Executive asserted that the Level 2 provider had breached Rule 2.2.2 of the Code by failing to include its name or brand name, the name of the Service and its contact details within the promotion of the Service.

When monitoring the Service, the Executive observed that as part of the Service entry consumers were sent a text message where they were presented with a code and a PRN to call to win a prize. The Executive was of the view that this text message served as a promotion for the PRN since the PRN is not mentioned or referred to within the co-registration aspect of the Service entry.

Furthermore, the PRN within the text message led consumers to the Service when selected by diverting them to their telephone application to dial the number, because of this the PRN is considered the point of access to the Service and the text message. The Executive therefore asserted that this was a promotion for the Service (see point 2.2 of Guidance note mentioned below).

The Executive relied on the PSA Guidance on “Promoting premium rate services” (Promoting PRS) which states that:

2.2 In addition, there are a range of different types of promotional material, ranging from promotions that are self-contained (such as a print-based advert, inviting a consumer to call or text an access number), to promotions that have a number of components that lead a consumer toward a purchase. An example of this would be a text message with a link to a mobile website, where the consumer subsequently makes purchases using a secure payment method. In this latter case, there would be a number of steps between the first promotion and a purchase. This results in a number of stages at which a provider can act to ensure consumers were aware of all information necessary to make a decision to purchase, prior to any purchase.

For the reasons mentioned above, the text message must contain specific information because it is the promotion for the Service. The Executive relied on the Guidance note on “Promoting PRS which states that:

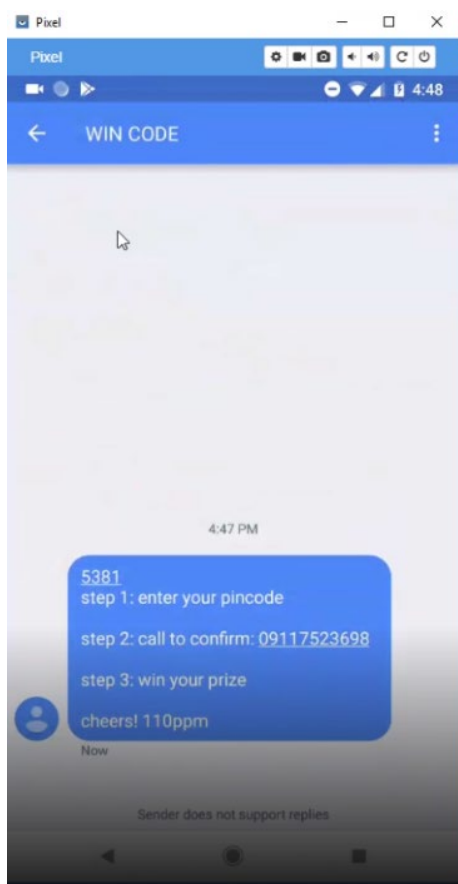
2. Setting out key information and promoting transparently

2.3. Because of this complexity, the Phone-paid Services Authority recommends that providers familiarise themselves with the entire contents of this Guidance and especially the parts relevant to the promotional mechanics they use. However, as a basic starting point, the following information is considered key to a consumer's decision to purchase any PRS, and so should be included in promotional mechanics for any PRS:

- cost
- brand information
- product or service information
- how it is delivered or used
- how it is paid for – one off payment, recurring charges, etc.
- how to get help where necessary.

The Executive observed that the message sent to consumers, after the co-registration entry stage of the Service promotion, did not contain all the key information stipulated within the guidance note as being the necessary components required in the promotion of PRS. The text message did not contain the name of the Service, the name or brand name of the Level 2 provider and did not contain any contact details for the Level 2 provider of the Service either.

See below for text message:



It is submitted that the information provided within the text message did not provide enough information for a consumer to be aware of; the Service that was being promoted, who

operated the Service and how the Level 2 provider could be contacted. The text message did not provide the consumer with any specific information about the Service or the identity of the Level 2 provider.

During the investigation the Level 2 provider was asked to describe how the Service was promoted. The Level 2 provider responded by explaining that since 2017 the Service had been promoted via a service partner SMS after participating in media buy data capture points, which is a method also known as co-registration. The Level 2 provider stated that the Service partner SMS is sent 30 minutes after the participant validates their registration. They also mentioned that it is the Service partner that sends an SMS after the consumers participation in the co-registration journey. It therefore appeared that the text message was the main entry point into the Service. Because the SMS was sent 30 minutes after the consumer interacted with the co-registration promotion, the Executive asserted that it was very likely that a consumer would not connect the journey they went through with the text message they received and therefore it was imperative that the text message contained information relevant for the consumer to be able to recognise: what the Service was, who operated it and how to contact them before purchasing or utilising the Service.

It is the Executive's view that the information supplied within the promotional text message was not sufficient for a consumer to make a well-informed decision before they use or purchased the Service.

In conclusion the Executive asserted that the Level 2 provider had breached Rule 2.2.2 of the Code due to its failure to include: the name of the Service, the name of the Level 2 provider of the Service or any contact details for the Level 2 provider in the promotional material for the Service.

Provider's response

The Level 2 provider admits the breach of Code Rule 2.2.2 on the above basis.

Parties' agreement on Breach 2

The Level 2 provider admitted the breach of Rule 2.2.2 of the Code.

The parties agreed that a breach of Rule 2.2.2 should be upheld.

Breach 3

Outcome 2.2 provides:

"That consumers of PRS are fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made."

Code Rule 2.2.7 states that:

“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”.

The Executive asserted that the Level 2 provider had breached Rule 2.2.7 of the Code due to the pricing supplied within the text message consumers were sent, not being clear or proximate to the PRN.

For the reasons previously stipulated, the Executive was of the view that the text message sent to consumers was part of the promotion for the Service and as the promotion, the Guidance note on “Promoting PRS” states the following concerning pricing:

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

- *‘premium rate charges apply’,*
- *100ppm’,*
- *‘1.50 GBP’*
- *‘50p/min’*

Whilst monitoring the Service the Executive observed that the pricing information within the text message, sent to the consumers, was provided in the following format “110ppm”. Corresponding with the guidance note mentioned above, it can be said that the pricing supplied within the text promotion of the Service is unclear as it mirrors one of the examples of what an ambiguous description of the charges regarding a service looks like. The Executive is of the view that the pricing information issued by the Level 2 provider has the potential to confuse consumers because it does not include any symbols and is written in a format that is uncommon when referring to the cost of goods and services.

The Guidance on “Promoting PRS” also provides examples of what is considered as conventional and clear methods of displaying pricing:

3.3 Phone-paid Services Authority strongly recommends the price should be expressed in conventional terms, such as ‘50p per minute’, ‘£1.50/msg’ or ‘£1.50 per text’. The Phone-paid Services Authority accepts there may be different conventions, based upon the amount of space available (for example, in a small print ad, or a single - SMS - promotion); however, pricing should remain clear. Variations on this, such as charges being presented in per second formats, or without reference to a ‘£’ sign (where the rate is above 99p), may breach the Phone-paid Services Authority’s Code of Practice.

Additionally, the Executive observed that the pricing information was displayed in a way that was not proximate to the PRN given within the text message. The price was not displayed

straight after the PRN, which made it seem as though the pricing was not connected to the PRN in any way. The Executive asserted that consumers were likely to believe that “110ppm” was unrelated to the PRN given within the text message and were also likely to disregard the information completely due to the unclear way the pricing has been described and where it is placed within the text.

In conclusion, it is asserted that the Level 2 provider had breached Rule 2.2.7 of the Code by omitting to provide pricing in a clear format and proximate way within the text message sent to consumers promoting the Service.

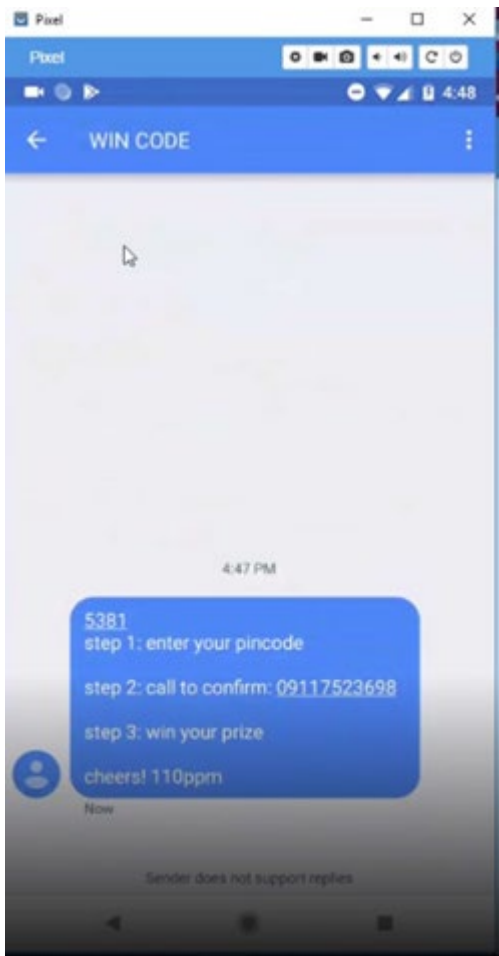
Provider's response

As with the first breach, the Level 2 provider partially admits the breach of Code Rule 2.2.7.

The Level 2 provider explained that the reason it partially admitted the third breach was because the lack of clear information on pricing was only present for a limited time period. The Level 2 provider submitted that every consumer interacting with the Service before August 2018 would have received a text message with pricing in what it believed to be clear and acceptable format such as:

“FREE MSG: Hi Wayne! Your number has been selected for the final round to win an IPHONE X! Call now: 09115628671 (99p/min) Good luck!”

The Level 2 provider explained that a pathway including content locking was, regrettably, introduced in August 2018 and resulted in the sending of the following text message:



The Level 2 provider admitted that this text message did not contain sufficiently clear information on pricing but stated that the content locking was only introduced on the PRN 09117523698.

Parties' agreement on Breach 3

The Level 2 provider was accordingly prepared to partially admit a breach of Rule 2.2.7.

The Executive accepted the Level 2 provider's representations that the text message received through its monitoring was as a result of the content locking pathway introduced in August 2018.

However, the Executive observed that the pricing described as "clear and acceptable" by the Level 2 provider, namely '99p/min', is an example of unclear pricing as set out in the Promoting PRS Guidance mentioned above. Notwithstanding this, the Executive acknowledged the specific way in which the breaches were framed and did not believe that raising a further breach at this stage would be proportionate or necessary, particularly when the guidance outlines that there may be variations in pricing based on the space available so long as pricing remains clear.

Accordingly, the Executive accepted the Level 2 provider's submission based on the monitoring it had undertaken and acknowledged that the breach was formulated specifically in relation to the text message with the pricing of '110ppm'.

Breach 4

Outcome 2.3 provides:

"That consumers of PRS are treated fairly and equitably."

Code Rule 2.3.2 states that:

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

The Executive asserts that the Level 2 provider has breached Rule 2.3.2 of the Code based on:

1. The misleading consumer journey depicting content locking captured by the Executive on the 24 September 2018 in the promotion of the Service.
2. The Level 2 provider misled the consumer to believe that the prize was guaranteed through the wording used within the promotional text in sent consumers.
3. The video capture of the automated quiz line also recorded on the 24 September 2018.
 - I. The additional remarks stated when a consumer provides an answer to a quiz question.
 - II. The abrupt way the call disconnects.

The Executive relied on the PSA General Guidance note on "Digital marketing and promotions" which states at point 1.3 that:

1.3 Examples of practices which are always capable of misleading if not treated with caution and control:

- *Content locking*
Specifically, this relates to marketing techniques used by one party, such as an affiliate marketer, to generate leads and increase conversions for a second party's online service transaction. Consumers are often induced to make the payment on the second party's website because they believe it is the only means of accessing the original party's content, and not because of any interest in the product or service for which they make payment. Furthermore, commission from the payment goes to the marketing affiliate to pay for content that may be presented as being "free".

The guidance goes on to say that:

1.6 When managing any digital marketing campaign, PRS providers should address potential risks by actively seeking to meet outcomes in the Phone-paid Services Authority's Code of Practice (the 'Code'). In particular, PRS providers should give due regard to:

- *Fairness – If consumers are to have confidence in the PRS industry, it is important that they are not intentionally misled.*

In addition to this the guidance note goes on to state that content locking is an example of practices capable of misleading consumers, the concept is elaborated upon within the Annex attached to it at point 6:

6. Content locking

A6.1 When a practice known as content locking or content unlocking is used, consumers are enticed into purchasing a product, often PRS, in order to access unrelated content. Consumers may be looking to download an app or a new film or access a particular offer (shopping vouchers for example), which is not made available until they go through a certain number of steps where charges might be incurred. In PRS terms, a consumer might for example be prompted to enter his or her mobile phone number in order to download a film or access shopping vouchers but in reality, they are entering into a subscription-based quiz. Effectively consumers enter the quiz to access the 'locked' content.

The Executive also relied on the Guidance note on “Digital Marketing and Promotions” which sets out how to manage relationships with affiliate marketers, lead generators and other digital marketing partners. It states that:

2.1 PRS providers often subcontract their digital marketing to partners, the majority of which are known as ‘affiliate marketers’. This is an entirely reasonable and legitimate thing to do and can provide value to providers by leveraging external marketing tools and techniques paid for on a results basis.

2.2 However, providers who use affiliate marketers need to be aware of two key points:

- *Responsibility for ensuring that promotions are compliant with our Code remains with the PRS provider regardless of whether this activity is sub-contracted to a third party such as an affiliate marketer. So if an affiliate marketers activities lead to a breach of the Code in relation to a PRS service, then a Tribunal will generally hold the PRS provider accountable for the breach under the Code.*

Additionally, the Executive relies on the General Guidance note on “Competitions and other games with prizes”, which states at point 2 that:

2. Promotional material should not mislead consumers

2.1 Any promotional material in relation to competitions services must not:

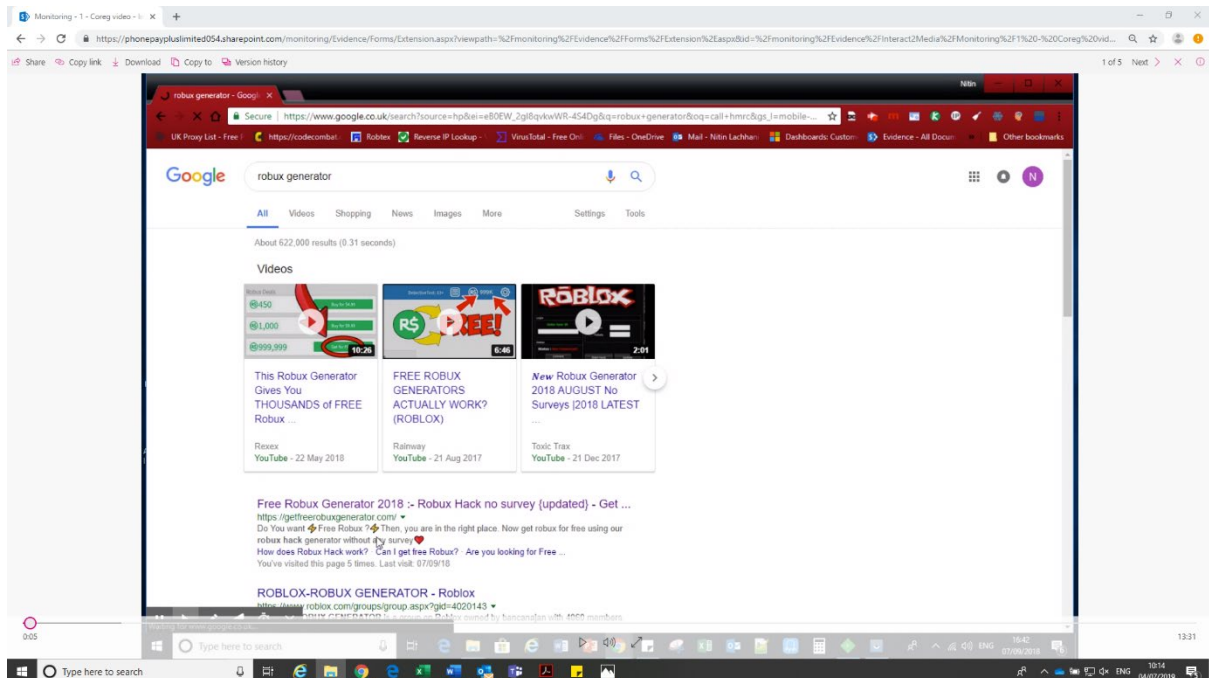
- *Imply that items that can be claimed by all, or a substantial majority, of participants are prizes;*
- *Exaggerate the chances of winning;*
- *Suggest that winning is a certainty; or*
- *Suggest or imply that consumers can only use a premium rate service in order to participate, where a free, or significantly cheaper, alternative entry route is available.*

The Executive lastly relied on the monitoring captured by the Executive on the 24 September 2018 which was of a content locking journey obtained on a desktop and on part 1 & 2 of the video recording of a monitoring call to the Service PRN obtained by the Executive on the same date.

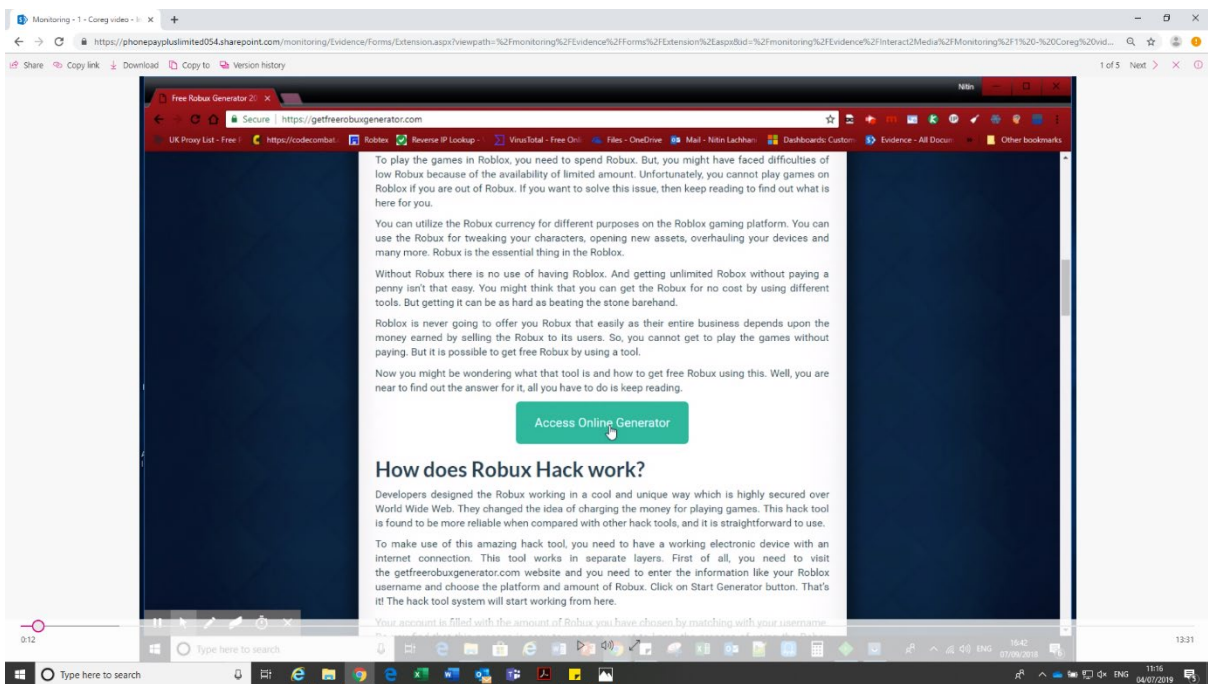
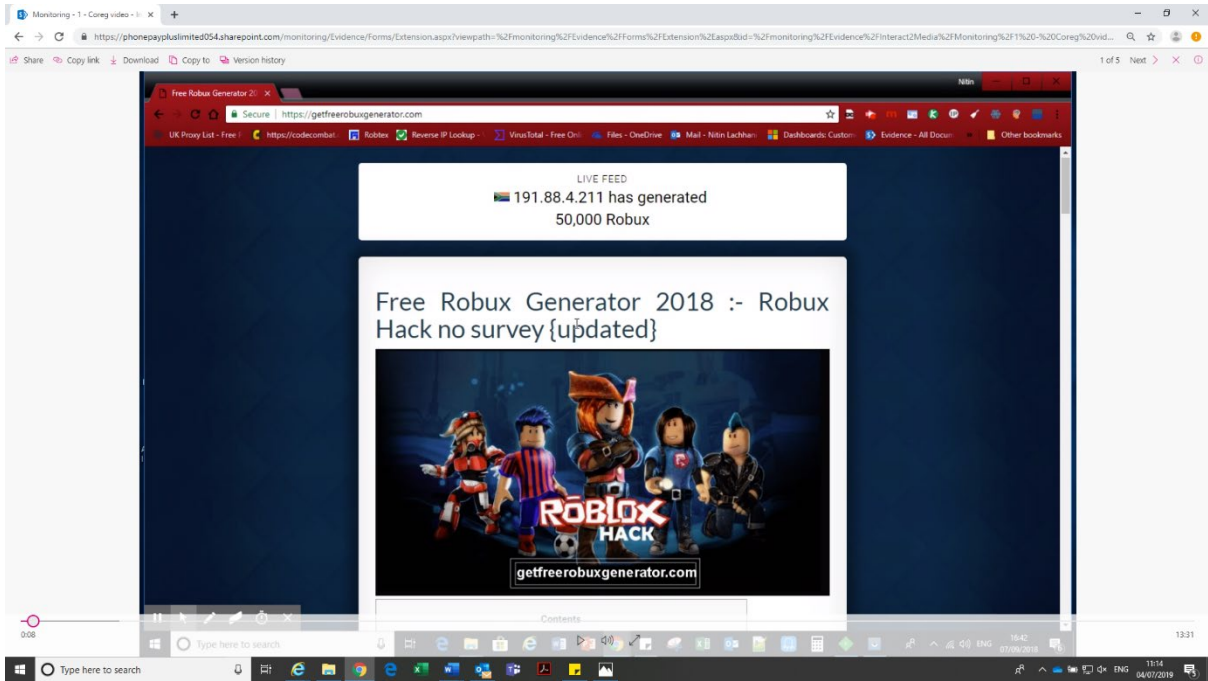
Reason one: The Level 2 provider misled consumers to use its Service through the content locking promotion.

On the 24 September 2018 the Executive captured a misleading consumer journey in relation to the Service while attempting to obtain free Robux through a Roblox hack online, whilst using a desktop computer.

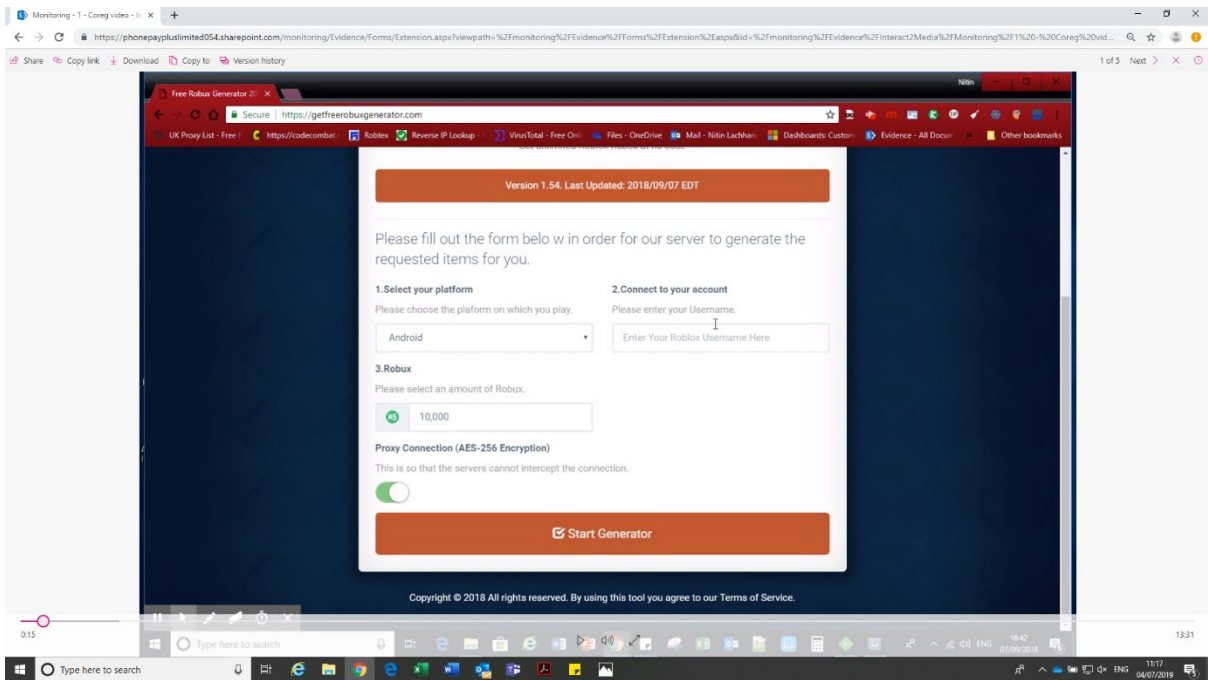
The Executive typed the search terms “robux generator” in the google search engine that brought up over 600,000 results.



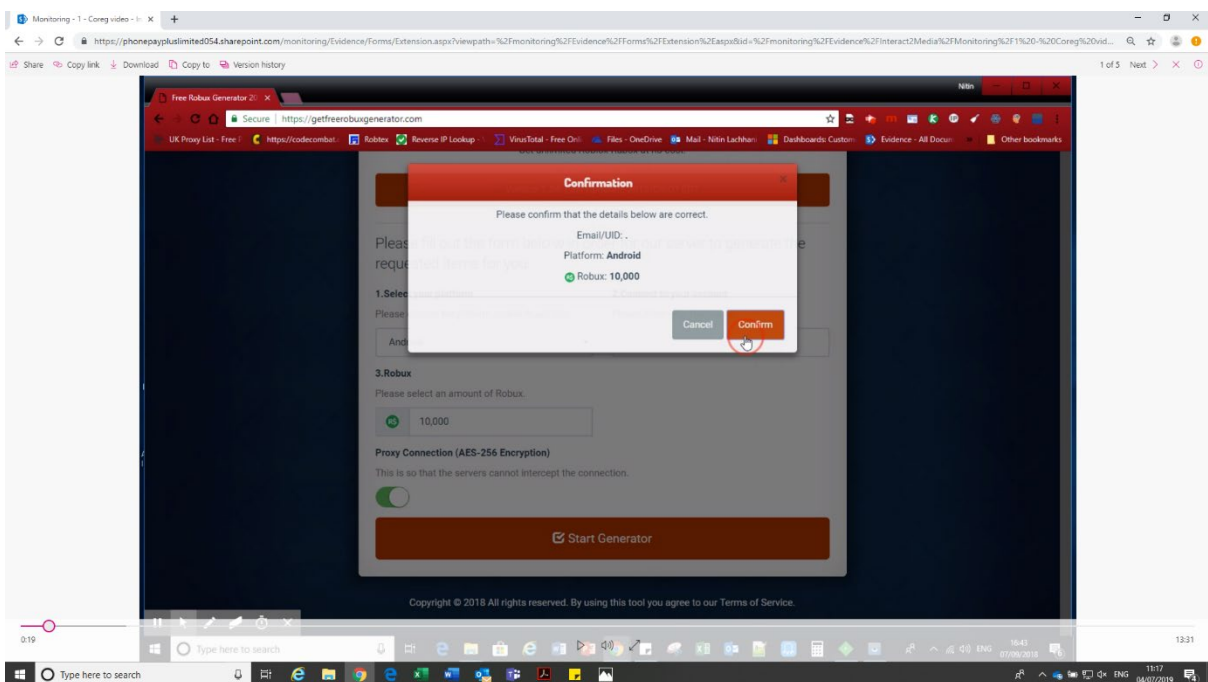
They then selected the first link within the results titled “Free Robux Generator 2018”, this link sent them to a page also titled “Free Robux Generator 2018 which when the scrolled down contained a green small box that read “Access Online Generator”.



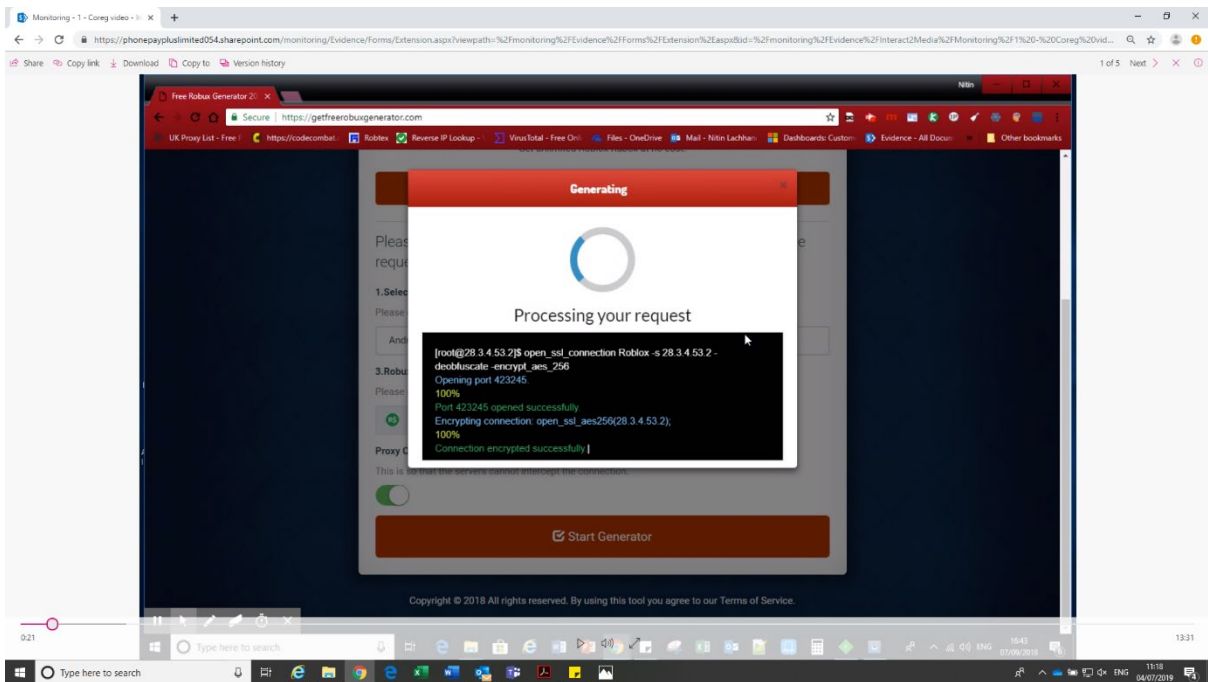
The Executive clicked on this box and was led to another page containing an image of a larger box instructing the them to; select their platform, connect to their account and select the Robux amount them they are instructed to click on the start generator link.



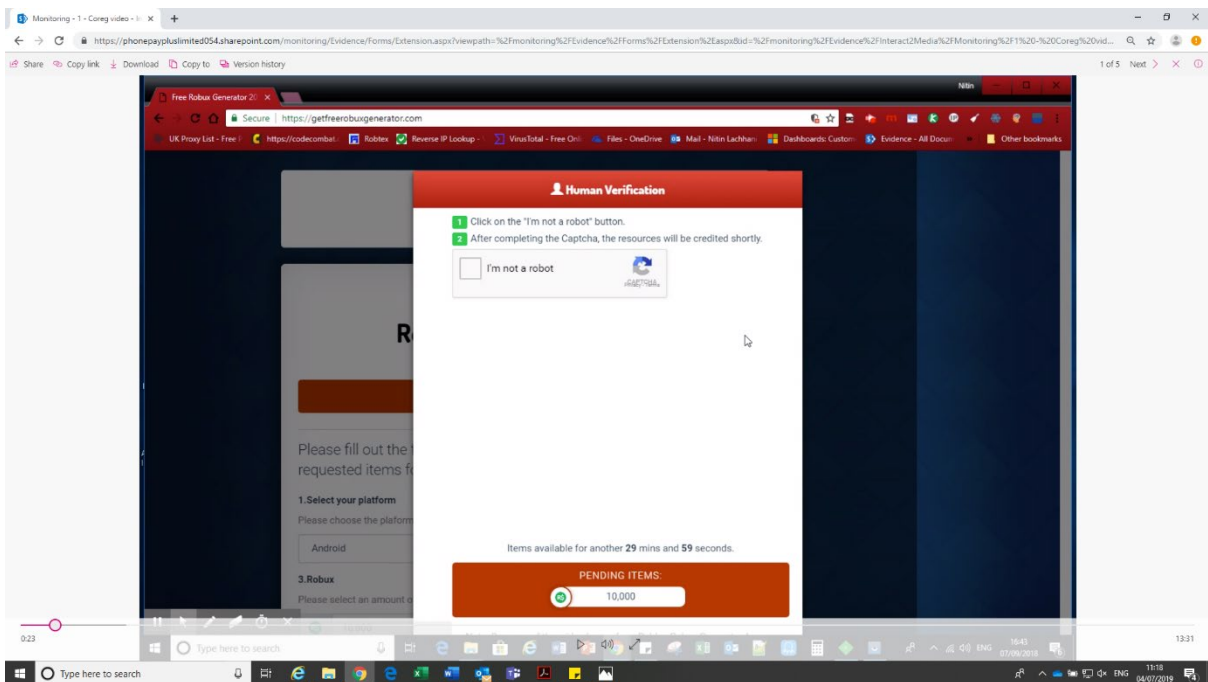
After clicking the start generator link, another box popped up asking the user to confirm that their selections are correct.



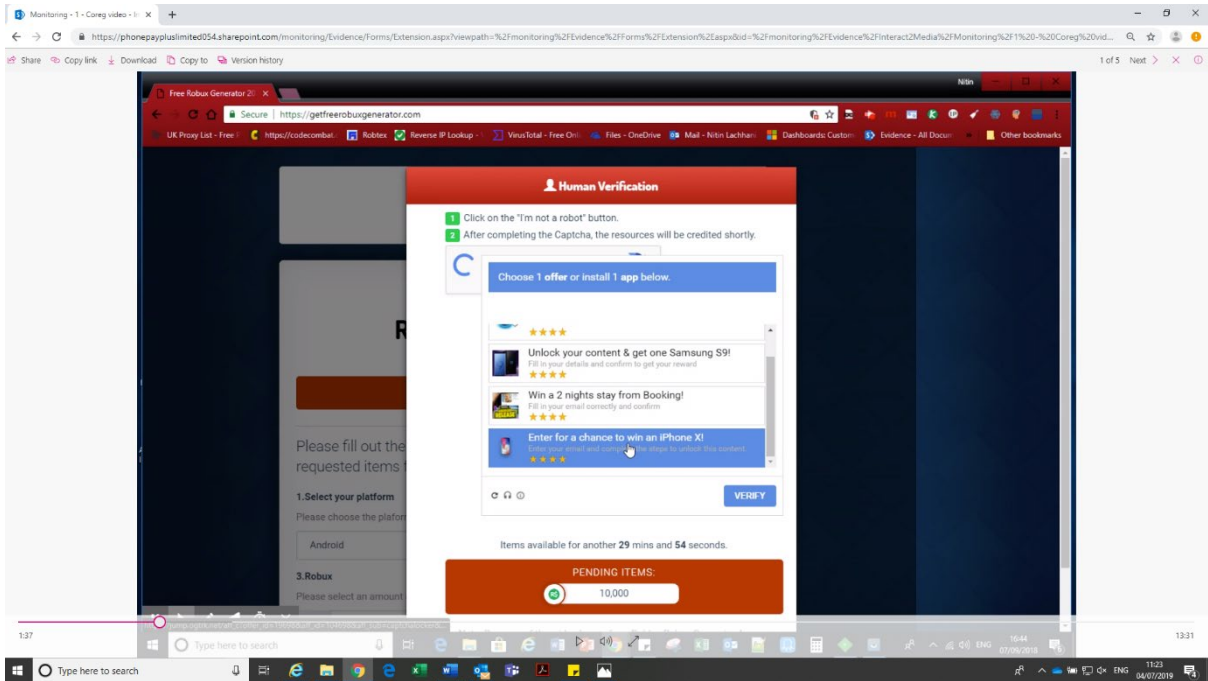
When the Executive clicked the confirm tab the pop-up converts to another box with the heading "generating", within the box is a loading circle and the statement "Processing your Request" written underneath it.



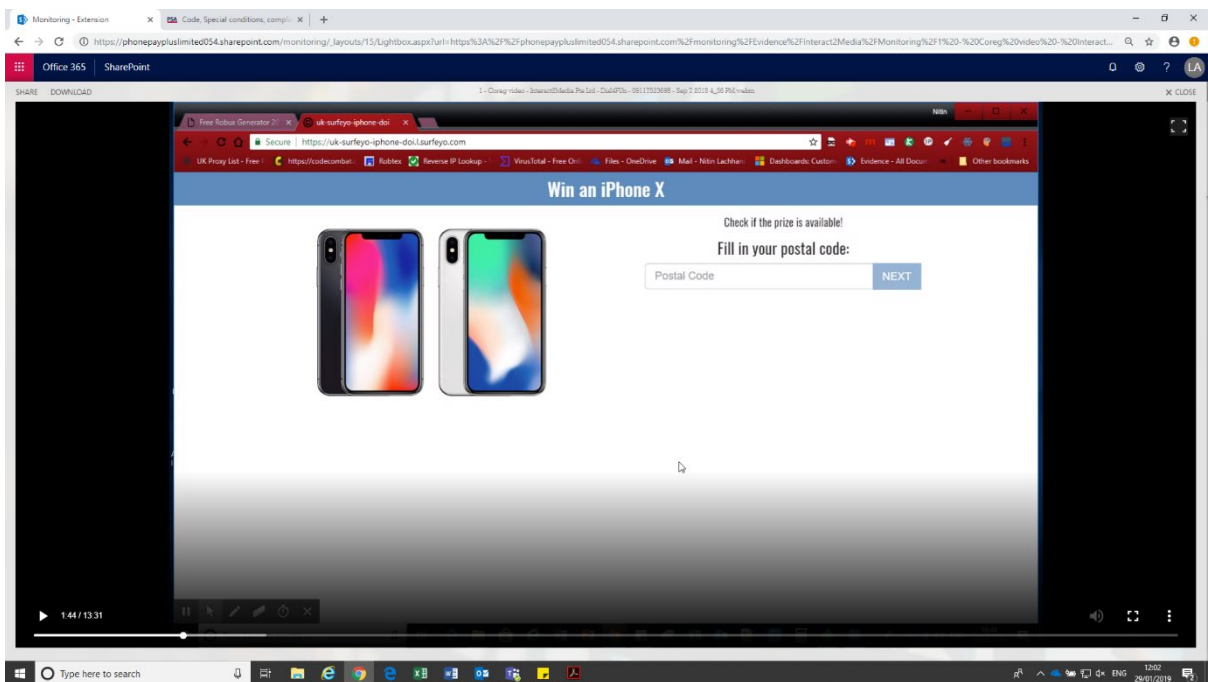
This box then converted to a box titled “Human Verification”, it stated that the user should 1) click on the “I’m not a robot button” and then stated that 2) After completing the captcha, the resources will be credited shortly.



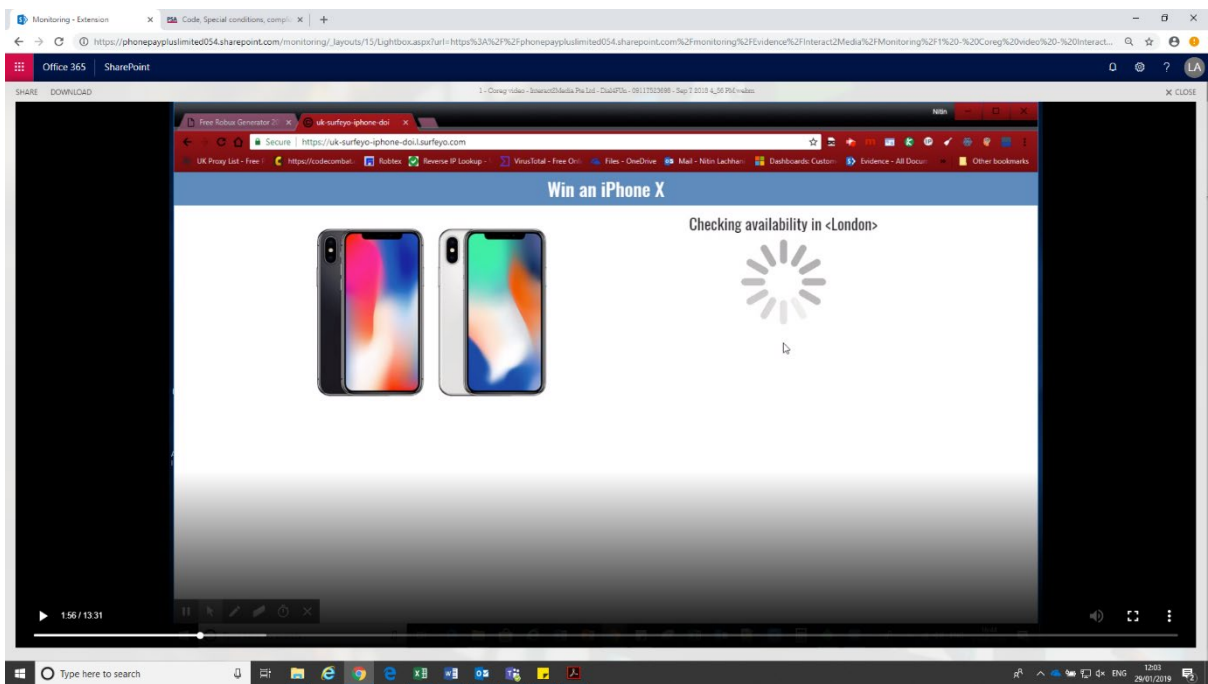
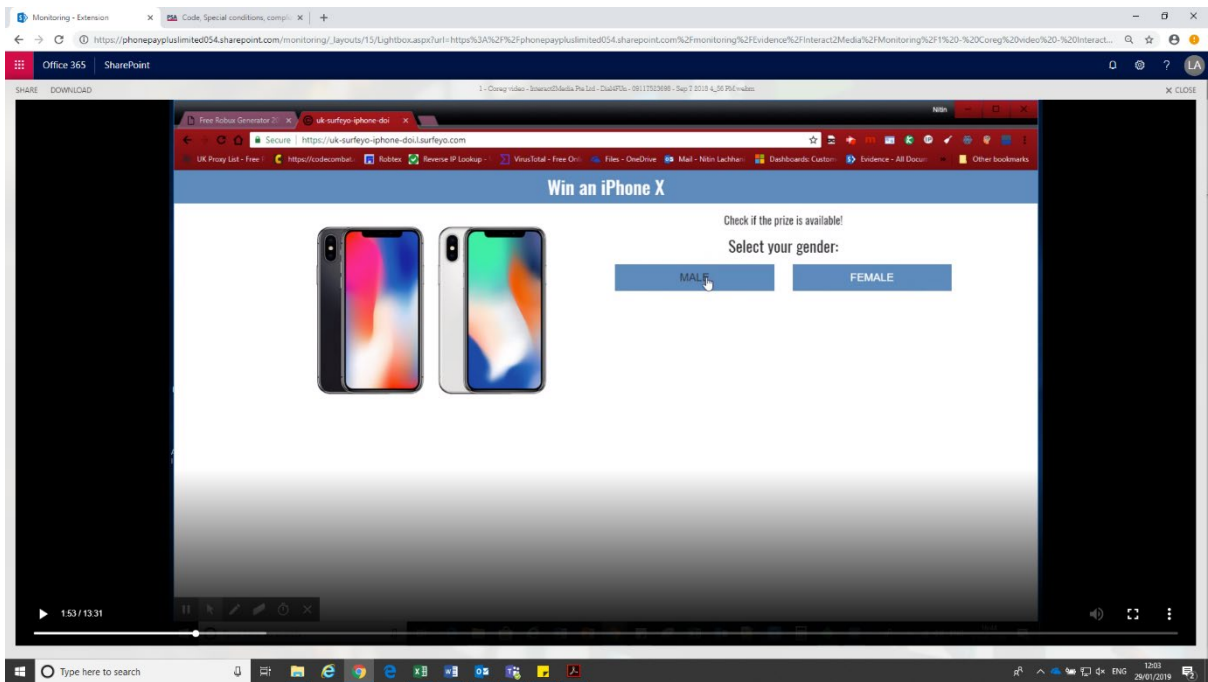
The Executive then proceeded to click the “I’m not a robot” box which brought on the page a box that instructed the user to “choose 1 offer or install 1 app below. A list of offers was provided under the instruction.



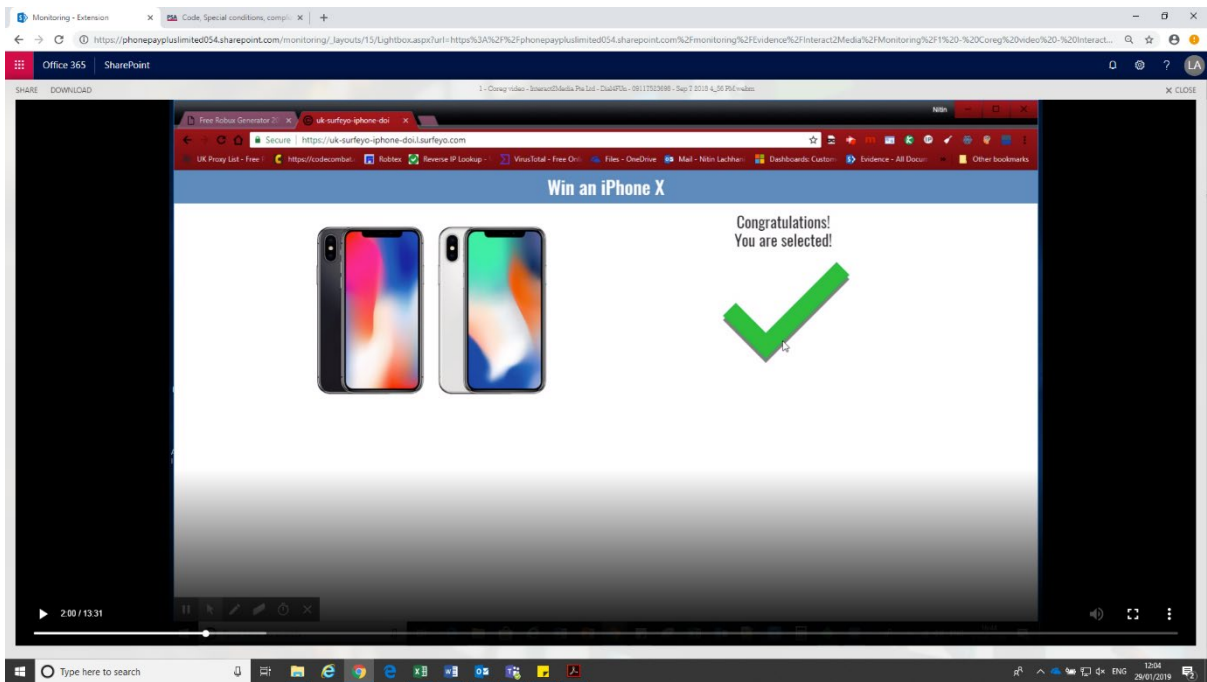
The Executive clicked on the offer to “Enter for a chance to win IPhone X!”. This then transferred them to a page with the heading “Win an IPhone X” with images of two different colour IPHones, beside them was a rectangular box instructing them to “Fill in your postal code” to check whether the prize is available”.



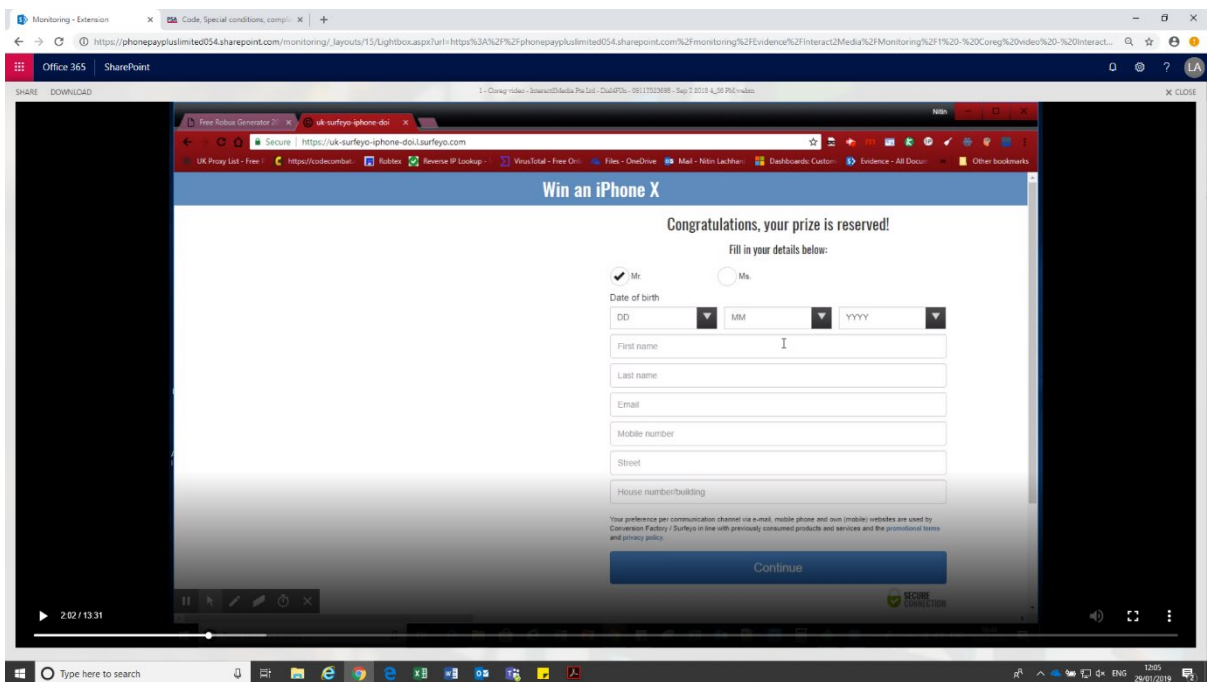
After inputting a post code, the Executive was then asked to select its gender and then once selected the page changed again to reveal a turning wheel with the words “Checking availability in <London>”.



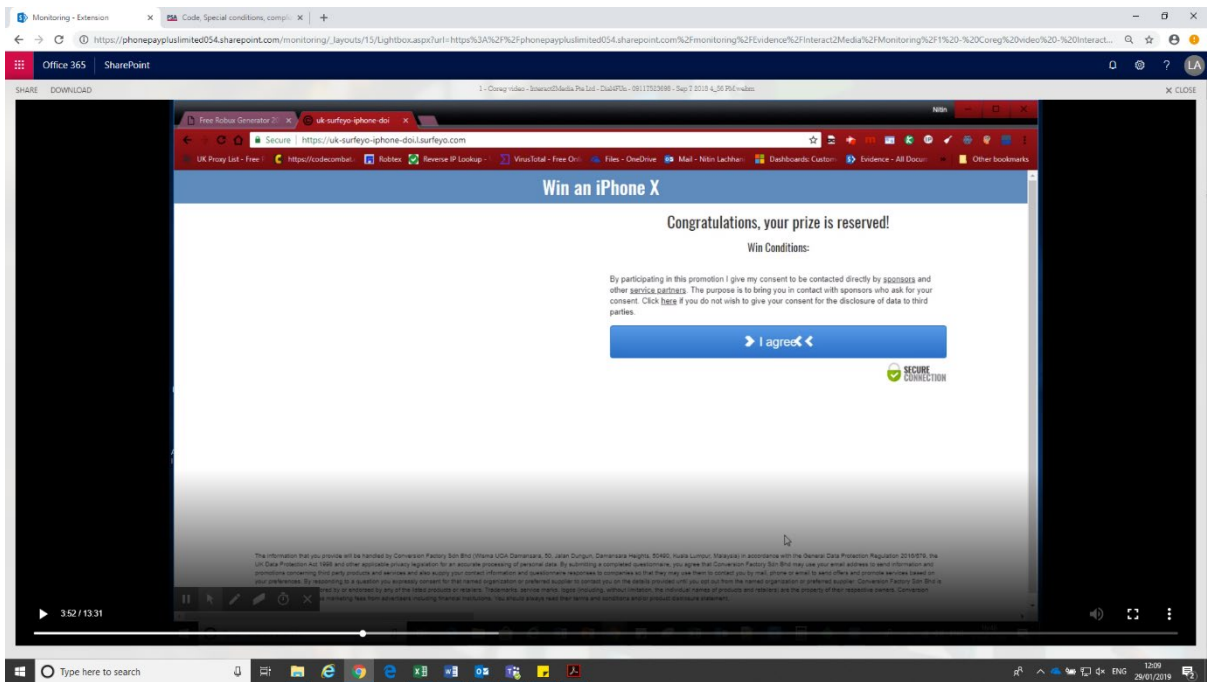
When the checking was completed the image of a turning wheel then changed to a big green tick.



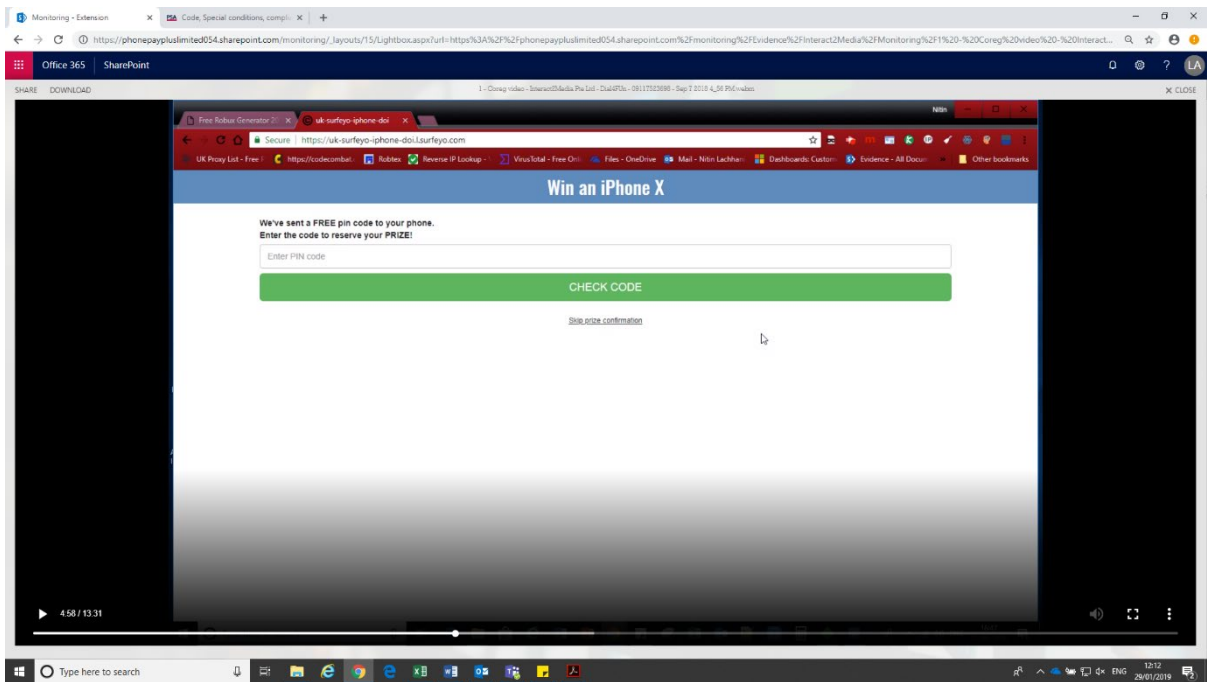
After this the page changed again and the Executive was informed that “Congratulations, your prize is reserved!” and instructed to fill their details in a small form below.



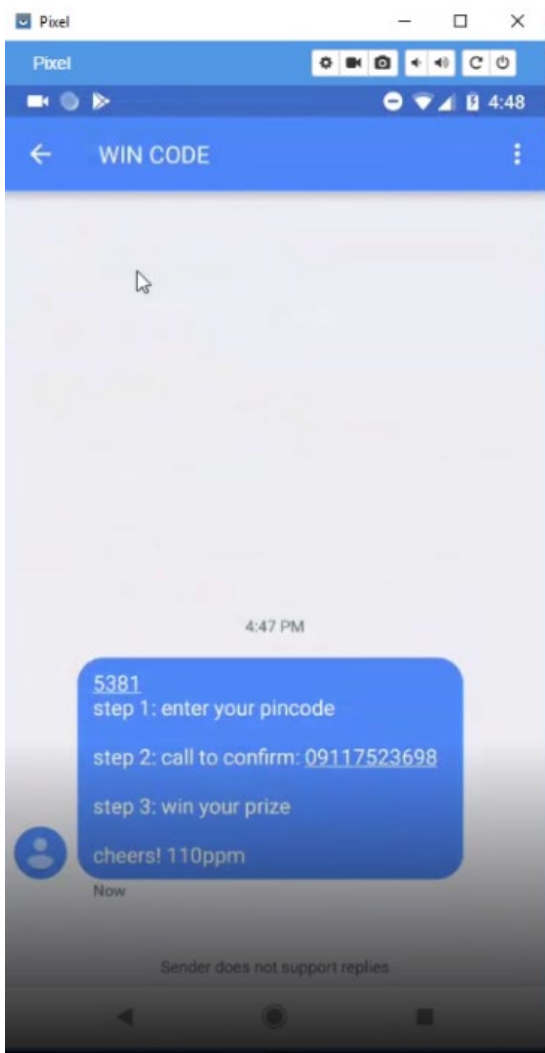
Once the form is filled and the continue button is selected, the image changed to a page telling the Executive “Congratulations, your prize is reserved” including win conditions below this statement and an “I agree” button after it.



The Executive clicked on the “I agree” button and was led to a page stating that they have been sent a free PIN CODE to their phone which they must enter into the box on the page to reserve their prize.



The Executive then received a text message with the PIN CODE they were told that they would be sent.



After the Executive inserted the pin into the box and the code was accepted, they were then taken through a series of Surveys to continue.

The journey continued through a multitude of surveys and offers but did not get redirected to the free Robux generator page the Executive initially accessed.

The Executive asserted that the promotion depicted above was a content locking consumer journey that was misleading to consumers and prevented them from obtaining the Robux coins they interacted with the link to obtain originally by forcing them to download or interact with the Service before they can acquire the coins.

The Executive observed from the monitoring obtained that even after the questions had been answered by the Executive the page did not revert to the Robux generator originally selected. The weblink, instead, continued to produce new surveys and competition pages so that the Executive was unable to obtain the coins it sought after.

Furthermore, during the investigation, to establish how the Service was promoted, the Executive asked the Level 2 provider to describe “how the Service was promoted”, the Level 2 provider answered by stating that:

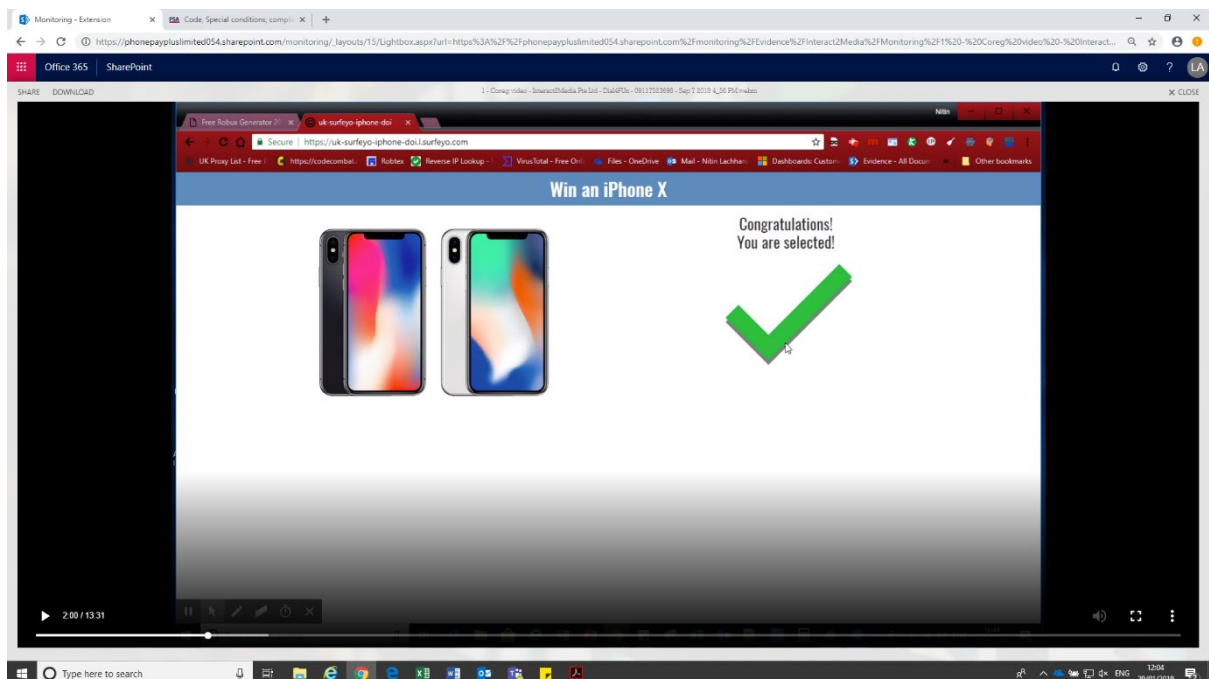
Since 2017 the Dial4fun service was promoted via a service partner sms after a participant was validated/registered as participant to a media buy channel with data capture points, privacy policies and data protection statements.

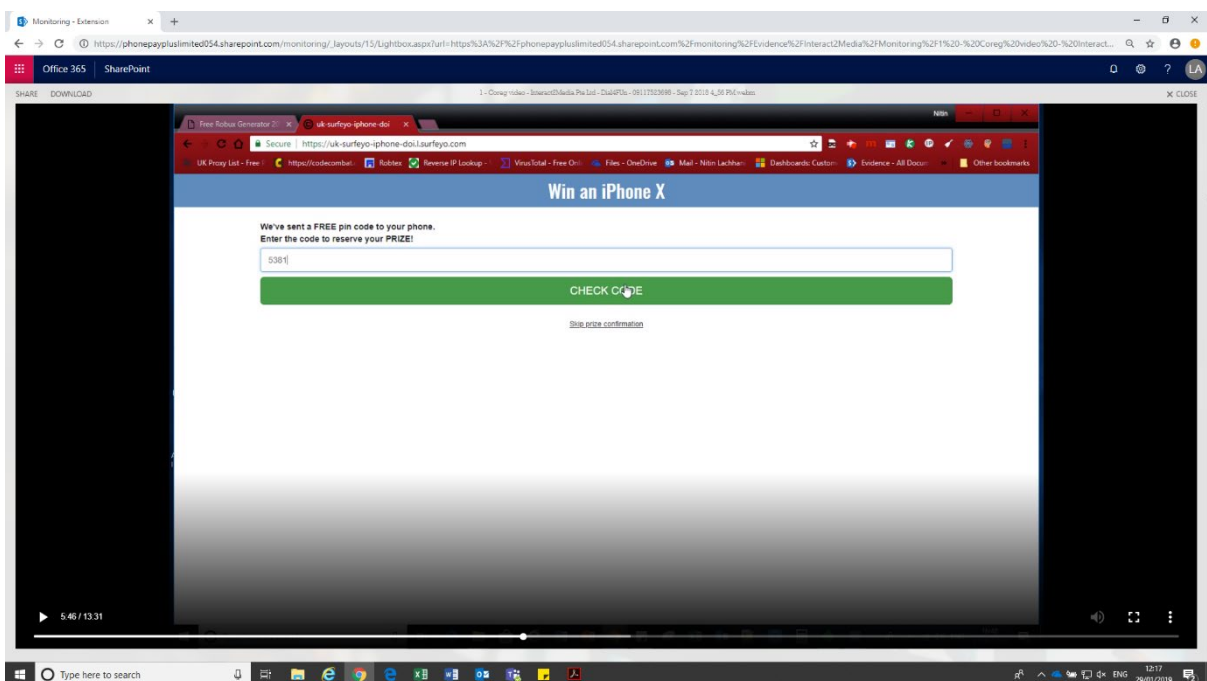
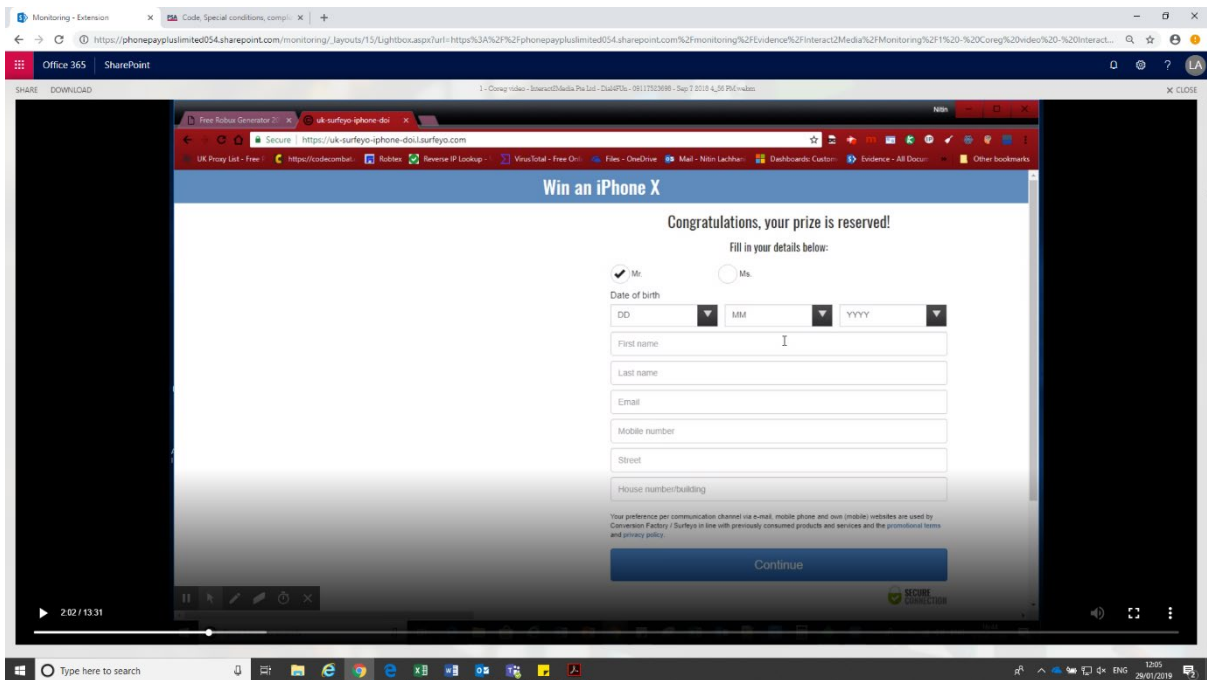
The Executive was of the view that, even though the Level 2 provider contracted with a service partner to promote its Service, it was wholly responsible for ensuring that promotions for its Service are fully in line with the PSA code of conduct.

The Executive therefore submitted that; the Level 2 provider was likely to mislead consumers into utilising its Service due to the misleading content locking consumer journey captured in the promotion of the Service.

Reason two: The Level 2 provider misled the consumer to believe that the prize was guaranteed through the wording used within the promotional and the text it sent to consumers.

Within the monitoring video obtained regarding the Service, the Executive observed that at a point in the video the wording used to describe aspects of the process the Executive was going through started stating things such as “Congratulations! You are Selected”, then “Congratulations, your prize is reserved!” and also “Enter the code to reserve your prize” within the promotion of the Service.





The Executive was of the view that the language used in the above parts of the promotion gave the impression that the prize being advertised was guaranteed to be won. Therefore, misleading them to believe that as they continued to follow through with the instructions of the promotion, that they would acquire the prize at the end of the process.

Additionally, within the monitoring video the Executive was sent a text message to the mobile MSISDN it inserted in a field within the co-registration aspect of the journey depicted above. The text message appeared on the phone as being sent from "WIN CODE" and included steps that the Executive had to complete to acquire the prize; step 1 – enter your PIN CODE, step 2 – call to confirm 09117523698 and step 3 – win your prize.

The Executive was of the view that the words used by the Level 2 provider had likely misled consumers to believe that taking the steps stipulated within the text message would lead to them obtaining the prize. Through the Level 2 providers use of language, the consumer was given the impression that they had won the prize already and going through the process would give them access to the prize they had won.

For the reasons stipulated above, the Executive submitted that the Level 2 provider had likely to mislead consumers to believe that they were guaranteed the prize once they had completed the steps instructed to take by the promotion of the Service as a result of the words adopted within the co-registration promotion and within the text message promotion of the Service.

Reason three: The Level 2 provider misled consumers to believe they had a high chance of winning the prize due to the recorded reactions it programmed the recorded message to convey during the consumers engagement with the PRN aspect of the Service.

During the investigation, the Executive made a recording of its interaction with the PRN supplied within the text message they received. Within the text message, dialling the PRN was the third step to winning the prize. When the Executive dialled the PRN, they were connected to the quiz competition line where a pre-recorded voice; introduced the quiz, gave instruction on how to engage with the quiz and proceeded to read out the quiz questions:

“Welcome to the quiz.

Don’t hang up, the quiz is about to start.

Just answer the questions with your telephone. In order to answer the question, all you need to do is press either 1, 2, 3 or 4. Get ready...”

After the recorded voice supplied the instructions on how to participate in the quiz it went on to provide the quiz questions and offered a choice of four answers to respond to each quiz question. When the Executive selected an answer, the recorded voice provided a few feedback remarks such as “You’re good at this”, “Fantastic! You’re good at this”, “Fantastic!” and “You’re so good”.

For instance, on the monitoring call, the Executive was asked the question; “Clarinets are musical?” and then they are told to “Press 1 for instruments, press 2 for birds etc”, the Executive selected number 2 for birds and in response the recorded voice exclaims “Fantastic! You’re good at this”. Another quiz question that was asked was “Ricky Gervais starred in?” and then the answers to select from were “Press 1 for the office, press 2 for Borat, press 3 for Modern family or press 4 for two and a half men”. In the video the Executive selected number 4 after which the recorded voice remarks “Fantastic! You’re so good”.

From the video monitoring captured, the Executive observed that the voice recording did not differentiate between right or wrong answers selected by the monitoring Executive but gave a positive remark every time a selection was made. The Executive is of the view that; the pre-recorded remarks the Level 2 provider added on the line were likely to encourage consumers to continue answering questions whilst the charges to their bills were increasing, thereby

enticing consumers to answer more questions to increase their chances of obtaining the prize as they believed what the recorded message said when it said that they were “..so good”.

The Executive submitted that the Level 2 provider was likely to mislead consumers to continue engaging with the Service due to the enticing and encouraging remarks relayed by the pre-recorded voice message in response to the consumers answer selections, regardless of whether it was correct or not.

Furthermore, the Executive also noted that the call suddenly disconnected in part 2 of the monitoring video at 3:19 minutes and at 27:16 minutes into the call while the quiz questions were still being read out. The Executive was not given any warning or indication that the call was going to disconnect or that the quiz was ending, this was likely to give consumers the impression that the quiz had not finished or that their entry had not been recorded, which could therefore have led them to dial the PRN again and incur even more charges for participating in and utilising the Service.

Given the above, the Executive asserted that the Level 2 provider had breached Rule 2.3.2 of the Code by misleading consumers to interact with and use the Service through; (i) the content locking consumer journey discovered in the promotion of its Service, (ii) the wording used within the Service promotion, (iii) the pre-recorded remarks and responses of positive feedback regardless of whether a correct or incorrect answer to the quiz questions had been made and because the call disconnected abruptly without acknowledging the consumers entry into the quiz.

Provider's response

The Level 2 provider partially admits the breach of Rule 2.3.2 of the Code.

The Level 2 provider explained that the reason it partially admitted the fourth breach is because the breach concerned the content lock {SIC} only occurred for a very short period. The Level 2 provider explained that before that period, there was no content locking on the Service. The Level 2 provider stated that a pathway including content locking was, regrettably, introduced in August 2018 and was only introduced on the PRN 09117523698.

The Level 2 provider submitted a screenshot from its systems showing the period during which the SubAffiliate 2222_104698 was in operation. It explained that this was the content lock {SIC} pathway which was used by the PSA Executive and referred to the video prepared by the PSA Executive, at 4.56PM, where the web address showed the SubAffiliate ID at the end. The Level 2 provider stated that the screenshot submitted in evidence showed that the SubAffiliate was used only during the period 12 August 2018 until 22 October 2018.

The Level 2 provider also produced an Excel spreadsheet showing the number of paid transactions on SubAffiliate 2222_104698 and an Excel spreadsheet showing the timestamped message logs with caller information (in total 42 calls) in the ‘content lock’ period.

The Level 2 provider respectfully submitted that the Executive had not proved that the breaches of Rules 2.2.1 and 2.2.7, or the “content lock” part of the breach of Rule 2.3.2, occurred prior to August 2018 or after October 2018.

Parties’ agreement on Breach 4

The Level 2 provider was prepared to partially admit a breach of Rule 2.3.2 of the Code.

The Level 2 provider was accordingly prepared to admit this breach of the Code on the basis that reason 1 of Rule 2.3.2, the content lock {SIC} occurred, but only for a relatively short time frame, specified above, on PRN 09117523698 alone. In the absence of any monitoring undertaken by the Executive on the other three numbers operated by the Level 2 provider or during another time period, the Executive therefore accepted the Level 2 provider's submissions regarding reason 1 of Breach 4.

In respect of the Executive’s reasons 2 and 3, the Executive accepted that they materialised as a result of the content locking pathway related to PRN 09117523698, and in the absence of monitoring proving otherwise.

Accordingly, the parties agreed that a breach of Rule 2.3.2 should be upheld on this basis.

Service revenue

The gross revenue for the Service was a total of £99,239.34.

Executive’s assessment of breach severity

Rule 2.2.1 (Transparency): Very Serious

Rule 2.2.2 (Transparency): Serious

Rule 2.2.7 (Pricing): Serious

Rule 2.3.2 (Misleading): Very Serious

Recommended initial sanctions

The Executive recommended the following initial sanctions:

- a requirement that the Level 2 provider remedy the breaches by ensuring that it has addressed issues around transparency, pricing, pricing prominence and misleading promotions.
- a formal reprimand.

- a requirement that the Level 2 provider seeks compliance advice from the PSA and implements it to the satisfaction of the PSA in respect of this service and any future services of this nature.
- a requirement that the Level 2 provider is barred access to the service until compliance advice has been implemented to the satisfaction of the PSA.
- a requirement that the Level 2 provider refunds all consumers who claim a refund, for the full amount spent by them for the Service, save where there is good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made.
- a fine of £850,000.00

Overall Case and Proportionality Assessment

Overall case seriousness

The Executive considered the case overall to be Very Serious.

The Level 2 provider accepted that some of the breaches were Very Serious but not to the extent alleged by the Executive in light of the following features of the admitted breach of Rule 2.3.2:

- the limited duration of the breach.
- the limited number of complaints, which was indicative of limited consumer harm.
- the limited amount of revenue generated by the PRN which the Executive had undertaken monitoring of.
- the provider's statement that it is no longer offering the Service and has no intention of offering new PRS services in the future.

Aggravating and mitigating factors going to the case as a whole

The Executive noted the following aggravating factors, which the Level 2 provider made no comment in relation to:

- the Level 2 provider failed to follow guidance which had they been followed, would have avoided breaches of the Code occurring.
- the Level 2 provider eventually asked its Network provider to stop incoming calls to the PRN, but this occurred two months after it was notified of the monitoring obtained by the Executive and one month after the case was allocated.

The Executive noted the following potential mitigating factors, which the Level 2 provider made no comment to:

- the Level 2 provider asked the Network operator to disconnect the PRN(s) so that they no longer received incoming calls.
- the Level 2 provider stated in a response that it would get in contact with the consumer regarding a refund and to ask them what their preferred method of receiving a refund was but the Level 2 provider did not supply any evidence that the consumer had been refunded.

Need to remove financial benefit/achieve deterrence after the provider's response

After receiving the Level 2 provider's representations on the recommended sanctions, the Executive considered the Level 2 provider's argument that because the duration of the "content lock" journey was on one PRN for a limited period, that the estimation of the revenue flowing from the breaches needed to be reduced because the PRN which it occurred on generated a substantially lower amount of revenue in the identified period.

On the delivery of further evidence by the Level 2 provider regarding the content locking, the Executive was willing to accept that; due to the reduction in the duration of the breach and lack of monitoring regarding the other PRN(s), a reconsideration of what level of revenue received by the Level 2 provider was generated or potentially generated by the non-compliant conduct and the extent of which the revenue adequately reflected the measure of potential consumer harm.

The Level 2 provider supplied evidence in support of its argument that its entire revenue was not generated by the non-compliant conduct and provided a clear breakdown of revenue generated within the relevant duration. As a result of this, the parties agreed that the relevant revenue flowing from the breaches was £5,000.00 in total.

Impact and proportionality of sanctions

In light of the seriousness of the breaches, the conduct of the Level 2 provider as a whole and the need to deter conduct of this nature, the Executive's view was that the recommended non-financial sanctions were proportionate and justified. However, regarding the recommended fine, the Executive was mindful that the amount greatly exceeded the revenue generated by the Service; and coupled with the non-financial sanctions could be deemed as excessive therefore, the Executive recommended that the imposed fine amount be adjusted.

Proportionality Adjustment

The Executive believed that it was appropriate to reduce the fine amount to ensure that it was being proportionate.

In conducting a balancing exercise concerning the principle of proportionality, the Executive took into account the overlap between the breaches as well as the revenue generated by the Service and accordingly adjusted the fine to a level that it felt was proportionate as well as capable of achieving a credible deterrence.

Considering the overall case and the proportionality considerations, the Executive considered that a fine of £250,000.00 would be proportionate in the circumstances of the case and adjusted the recommended fine accordingly.

The Level 2 provider's representations on recommended sanctions

The Level 2 provider was content to accept all the sanctions proposed, save for the fine of £250,000.00.

In respect of the recommended fine, the Level 2 provider stated that any fine should be limited to £50,000.00 as this was a more appropriate fine due to the duration of the breach of Rule 2.3.2 of the Code specifically.

The Level 2 provider stated that the more serious breaches occurred over a limited period and generated very little revenue. It provided evidence which included a clear breakdown of revenue by PRN and duration, which demonstrated that the total revenue for PRN 09117523698, in the whole of 2018, was just over £1,000.00 and only a small proportion of that (perhaps £200.00) was related to the content lock SubAffiliate.

The Level 2 provider accepted that estimating the revenues flowing from the breaches was not an exact science, but it submitted that there was no basis for estimating the revenue flowing from the breaches at more than £5,000.00. Accordingly, it stated that the fine imposed should be proportionate having regard to that sum.

The Level 2 provider stated that it had sought to assist the Executive with its investigation and had cooperated with all the Executive's requests. The Level 2 provider stated it had offered full cooperation including offering consumer refunds and providing the Executive with additional information without being prompted to do so. The Level 2 provider stated that it no longer offered the Service and had no intention to offer new PRS services in the future. The Level 1 provider confirmed that the Level 2 provider had requested that incoming calls to the PRN(s) for the Service be blocked on 7 December 2018.

Parties' agreement on Sanctions

The Executive considered the representations made by the Level 2 provider.

In relation to the pricing and branding information breaches, the Executive was satisfied that the Level 2 provider accepted that these breaches had occurred if only in part, as the Level 2 provider believed that it had adopted clear pricing within the text message sent to consumers. The Executive, however, did not believe that the pricing format adopted by the Level 2 provider was adequate. Notwithstanding this, the Executive acknowledged the specific way in

which the breaches were asserted and did not believe that raising a further breach at that stage would have been proportionate or necessary to address the fact that the Service was promoted as being '99p/min' as discussed above.

The Executive assessed the Level 2 provider's argument that the content locking breach captured by the Executive occurred for a limited period in the operation of the Service. After careful examination of the additional evidence supplied by the Level 2 provider, the Executive accepted the Level 2 provider's submission that the fine imposed should be proportionate to the level of non-compliant revenue which the parties agreed was £5,000.00.

The Executive accepted that the Level 2 provider had shown a good degree of co-operation and a willingness to settle the matter expediently. The Level 2 provider also stated that it had no intention of providing the Service (confirmed by its Level 1 provider) or any other PRS services in the future, eliminating any future harm to consumers by the Level 2 provider.

In conclusion, after assessing the Level 2 provider's representations, arguments and additional evidence, the Executive was of the view that the proposed £50,000.00 settlement offer recommended by the Level 2 provider would achieve a credible deterrence and a good regulatory outcome in the circumstances.

Considering the arguments and upon reflection of the evidence supplied by the Level 2 provider, the Executive was satisfied that a fine of £50,000.00 (rather than £250,000.00) would be a proportionate and appropriate sanction; on the facts of the case, the size of the Level 2 provider and provider's lack of intention to continue the Service or re-enter the PRS market. The Executive believed that the agreed upon fine would impact the Level 2 provider and serve as a deterrent against future misconduct.

Final agreed sanctions

Accordingly, the parties agreed that the following sanctions should be imposed:

- a requirement that the Level 2 provider remedy the breaches by ensuring that it has addressed issues around transparency, pricing, pricing prominence and misleading promotions.
- a formal reprimand.
- a requirement that the Level 2 provider seeks compliance advice from the PSA and implements it to the satisfaction of the PSA in respect of this service and any future services of this nature.
- a requirement that the Level 2 provider is barred access to the Service until compliance advice has been implemented to the satisfaction of the PSA.
- a requirement that the Level 2 provider refunds all consumers who claim a refund, for the full amount spent by them for the Service, save where there is good cause to

believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made.

- a fine of £50,000.00

The Level 2 provider agreed to pay 100% of the Executive's administrative costs.