

## Tribunal meeting number 262

Case reference: 165797  
Level 2 provider: Itech Logic Limited (UK)  
Type of service: Competition Service  
Level 1 provider: Dynamic Mobile Billing Limited (UK)  
Txtnation Limited (UK)  
mGage Europe Limited (UK)  
Tap2Bill Limited (UK)  
Network operator: All Mobile Network Operators

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

The case concerned a quiz competition service which operated under the five brand names 'txtwinner', 'voucher.me', 'britsms', 'smsunltd' and 'txtintl' (the "Service").

The Level 2 provider for the Service was Itech Logic Ltd (the "Level 2 provider"). The Level 2 provider was first registered with the Phone-paid Services Authority on 26 July 2011.

The Level 1 providers for the Service are Dynamic Mobile Billing Limited (UK) ("DMB"), Txtnation Limited (UK) ("Txtnation"), mGage Europe Limited (UK) ("mGage") and Tap2Bill Limited (UK) ("Tap2bill").

The Executive defined 'operates on' as any shortcodes associated with the service, in particular shortcodes used for entering, billing and exiting the service. The Service operated on various shared and dedicated shortcodes: 80199, 88833, 80267, 87070, 65067, 85222, 80181, 80252, 87066, 85450 and 68899. The Service subscribed users through Pay-for-It, PIN opt-in and mobile-originating ("MO") messaging. The Service had three price points of £1.50 per message, £3.00 per week or £4.50 per week.

The Service began promotion in June 2011, promotions to opt-in via PSMS and MO ended in November 2016 and promotions to opt-in via Pay-for-It ended promotion in February 2017. The Executive notes that promotion and operation on the different shortcodes began and ended on various dates as set out below based on the information that had been provided by the various Level 1 providers:

Tap2Bill stated billing on 85222 began in June 2011

Tap2Bill stated billing began on 80252 in June 2015

Tap2Bill stated billing began on 80181 in June 2016

Tap2Bill stated billing began on 87066 in February 2016 and ceased on March 2017

Dynamic Mobile Billing stated billing on 88833 began on 8 April 2014 and ceased in February 2017

Dynamic Mobile Billing stated billing on 80199 began on 27 June 2016 and ceased in February 2017

Dynamic Mobile Billing stated billing on 87070 began in June 2016 and ceased February 2017

Dynamic Mobile Billing stated opt ins to 80267 began on 13 September 2016 and ceased in February 2017

Dynamic Mobile Billing stated the Direct Billing with STOP shortcode 65065 was active from December 2015 and ceased in January 2017

Txtnation stated billing on 68899 began on 15 May 2016 and ceased on 15 December 2017

mGage stated billing on 85450 began in June 2018 and ceased in July 2019

The Service continued to charge subscribers on the Tap2Bill platform on 85222, 80252 and 80181.

### **The Service operation**

The Level 2 provider gave the following description of the Service:

*“Txtwinner, This is a subscription service, it will cost £3.00 per week, Text YES to 85222 to Join the competition until you send STOP to 85222. A quiz consists of 4 rounds (rounds end at Sunday 12:00pm, new rounds start a Sunday 12.01pm) and a new quiz starts every month. Each Month one winner will be selected in the 1st working week of the month and the prize will be issued by mid of the month..By signing-up for and/or using the service acknowledge and confirm that you have read the terms & conditions, that you are a resident from the United Kingdom, 18 years or older and authorized account holder and/or that you have the consent of the accountholder. Subscribers compete to win the monthly prize; the monthly quiz consists of 10 questions per round, per week. High score players play open question tiebreaker.  
High score: answer the most questions in any given week (max. 10) correctly compared to other contestants to get a high score. (Multiple high scoring contestants all get invited to the knock out final) Closest/correct answer in knock out final wins. Multiple finalists, play additional tiebreakers. The winner of the final will receive its prize within 90 days. After PFI mandates are imposed the subscription is changed to £4.50 per week for new PFI and the co-reg customers”*

The Level 2 provider supplied examples of how the Service operated using co-registration promotions to opt-in users by MO opt-in, PIN opt-in and Pay-for-It flows. The Executive noted that the Level 2 provider did not provide the full consumer journey for the MO flow.

MO flow

**What does Amazon Share its name with?\***

**Your chance to WIN £500 Amazon Vouchers!**

**Terms and Conditions**  
This is a unique campaign by Txtwinner/voucher.me.uk. By replying to our free SMS you will be able to register and be subscribed to our service, it will cost **£4.50 per week**, only until you send STOP to 88833. 18+ only.  
A quiz consists of 4 rounds and a new quiz starts every month. rounds end at Sunday 12:00pm, new rounds start at Sunday 12:01pm. Each month one winner will be selected in the 1st working week of the month. support 03302231767.txtwinner/voucher.me is a brand of itech logic ltd. We offer competition services by allowing users to enter into our draw by texting to our shortcodes.

Rainforest

Planet

Animal

Not interested

*Initial Promotional Message*

*FreeMsg: (Name), Reply YES to 85222 To confirm your web entry for £750 Tesco Voucher draw ignore if not requested. t.voucher.me.uk . £4.50/wk 03302231767*

*Welcome Message*

*FreeMsg: U have joined Txtwinner weekly comp draw for £4.50 per week until you text in stop to 85222. Help? 03302231767*

*Play weekly quizzes, earn points reach the finals for a chance to WIN that Voucher! Make sure your WAP settings are set correctly! Info: 03302231767*

*Voucher is a skill based quiz for young and old and from all walks of life, where you can win vouchers of tesco, asda, aldi, amazon and much more!*

*We will call you if you win the voucher. Thank you*

*FreeMsg: You have been removed from [www.voucher.me.uk](http://www.voucher.me.uk)*

## PIN opt-in flow



Compete to  
**Win an iPad2!**  
*Answer the question below for a chance to win!*

Which icon is used by Apple to access **the camera?**



This is a subscription service. It will cost £3.00 per week. Text: 123 12322 to join the competition until you reach 57078 80222 or 80222. It runs for 12 months and ends at Sunday 12 00pm, next month start a Sunday 12 00pm and a new app starts every month. Each month one winner will be selected in the 1st working week of the month.  
By signing up for and/or using the service acknowledge and confirm that you have read the terms & conditions, that you are a resident from the United Kingdom, 18 years or older and authorized account holder and/or that you have the consent of the account holder. Subscribers compete to win the monthly prize. The monthly quiz consists of 10 questions per month, per week. High score offers you more questions to answer.  
High score answer the next questions in any given week/week 11) correctly compared to other contestants to get a high score. (Include high scoring contestants all get invited to the final and final) (Discontinued answer in each and final week. Multiple Prizes, play additional prizes. The winner of the final will receive the prize within 30 days.  
For help, Contact details: 0275745853 or e-mail: [support@lxlwinner.co.uk](mailto:support@lxlwinner.co.uk) for more information on Terms and Conditions see: <http://www.lxlwinner.co.uk/terms.html>



**LXL Winner!**

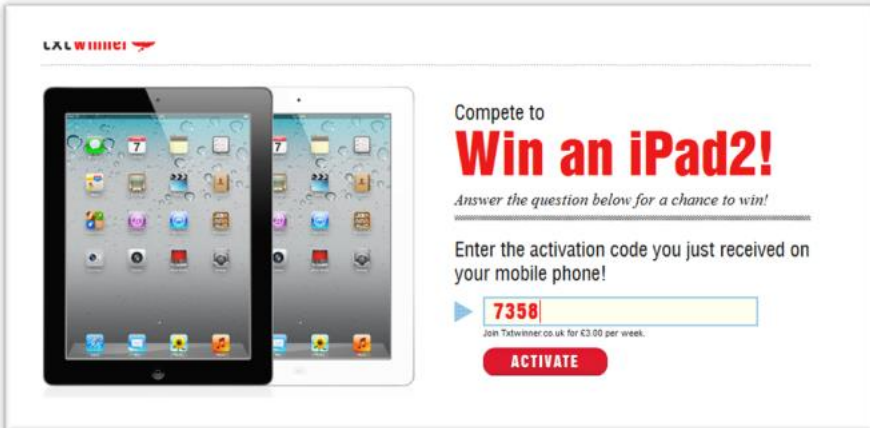
Compete to  
**Win an iPad2!**  
*Answer the question below for a chance to win!*

Enter your mobile number  
and have a chance to WIN an iPad 2!

▶

Yes, I am 18 years or older and agree to the [T&Cs](#)  
Join Txtwinner.co.uk for £3.00 per week.

**CONTINUE**



**LXL Winner!**

Compete to  
**Win an iPad2!**  
*Answer the question below for a chance to win!*

Enter the activation code you just received on  
your mobile phone!

▶

Join Txtwinner.co.uk for £3.00 per week.

**ACTIVATE**

3<sup>rd</sup> party PIN verification (pinchecked.com)



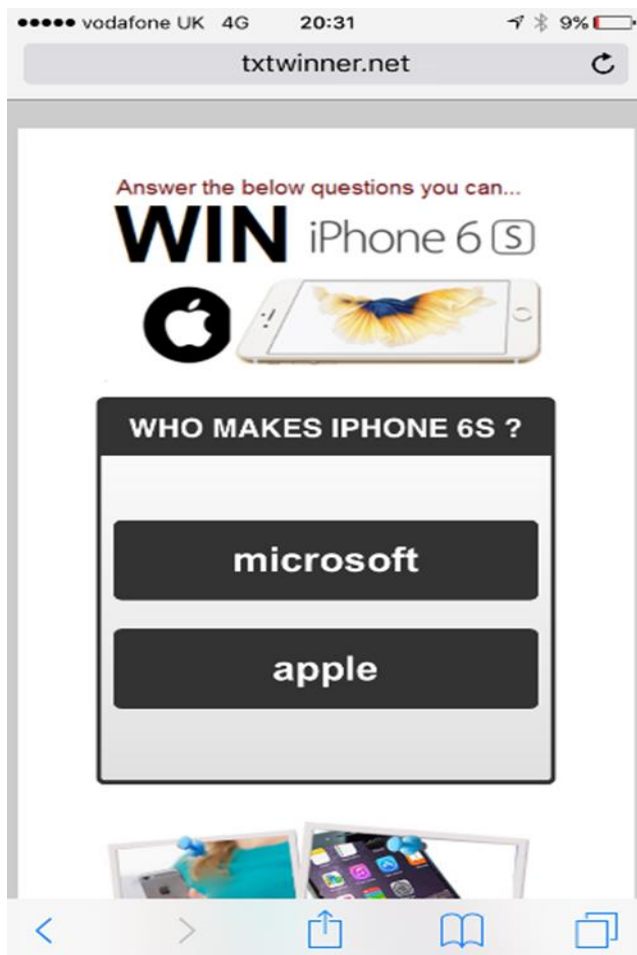
**XLWINNER**

Compete to  
**Win an iPad2!**

*Answer the question below for a chance to win!*

Thank you for registering with  
txtwinner.co.uk.

Pay-for-It flow




vodafone UK 4G 20:31 9%

txtwinner.net

Answer the below questions you can...

**WIN** iPhone 6 S



**WHO MAKES IPHONE 6S ?**

microsoft

apple

< > [share] [bookmarks] [tabs]

Answer the below questions you can...

**WIN** iPhone 6 



Help: 03302231767 Service charged to your mobile.  
Purchase subject to [Techlogix](#) & [Payforit](#) terms Exit

  **payforit**    
Charge to mobile

Subscribe to Win Iphone 6s  
until you text STOP to 65065.  
This will be charged to your mobile phone.






[Subscribe Now for £4.50 per week](#)

Answer the below questions you can...

# WIN iPhone 6



Help: 03302231767. Service charged to your mobile.  
Purchase subject to Ittecllogic & Payforit terms Exit

Subscribe to Win Iphone 6s for £4.50 per week until you text STOP to 65065

Confirm this charge to your mobile

Send offers for similar products and services to my mobile








Answer the below questions you can...

# WIN iPhone 6 S



Help: 03302231767. Service charged to your mobile.  
Purchase subject to Ittechlogic & Payforit terms

✓ Payment Received

**Your subscription for £4.50 per week has been set up and will continue until you text STOP to 65065**

This will be charged to your next mobile bill or deducted from your prepay balance

Continue to Win Iphone 6s





verify your purchase of £4.50

Free Msg: Use code 1108 to verify your purchase of £4.50

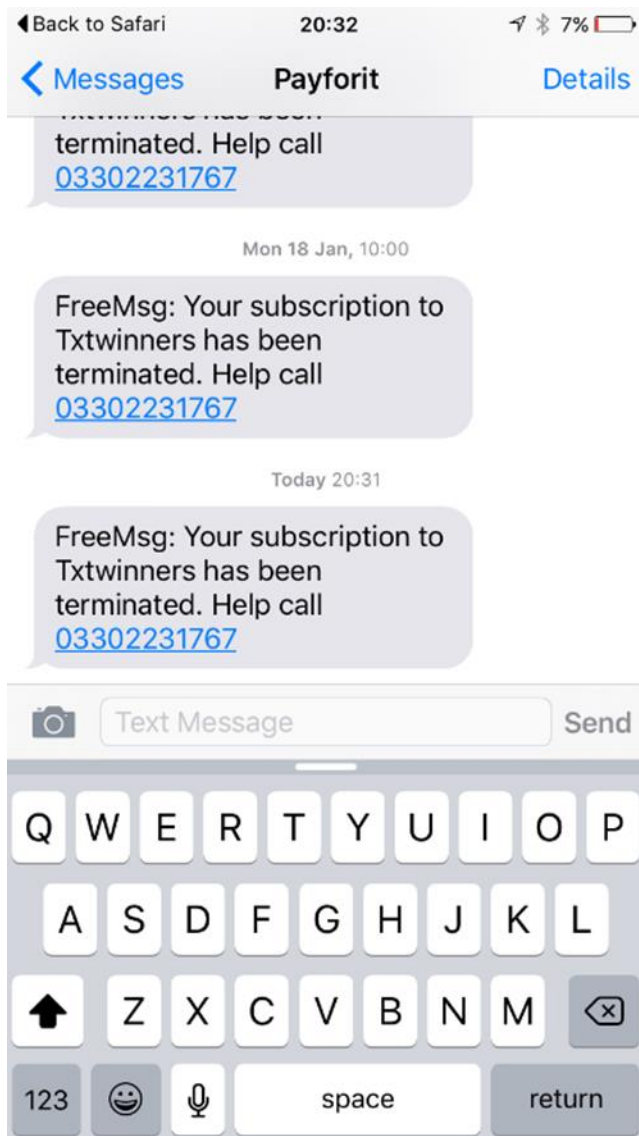
Stop  
Stop

Today 20:31

FreeMsg: Thank you for subscribing to Win Iphone 6s for £4.50 per week from ltechlogic until you text STOP to [65065](tel:65065). HELP? [03302231767](tel:03302231767)

Text Message Send

Q W E R T Y U I O P  
A S D F G H J K L  
↑ Z X C V B N M  
123 ☺ 🎤 space return



The Level 2 provider supplied the following terms and conditions of the Service:

*"Txtwinner, This is a subscription service, it will cost £3.00 per week, Text YES to 85222 to Join the competition until you send STOP to 85222. A quiz consists of 4 rounds (rounds end at Sunday 12:00pm, new rounds start a Sunday 12.01pm) and a new quiz starts every month. Each Month one winner will be selected in the 1st working week of the month. By signing-up for and/or using the service acknowledge and confirm that you have read the terms & conditions, that you are a resident from the United Kingdom, 18 years or older and authorized account holder and/or that you have the consent of the accountholder. Subscribers compete to win the monthly prize; the monthly quiz consists of 10 questions per round, per week. High score players play open question tiebreaker.*

*High score: answer the most questions in any given week (max. 10) correctly compared to other contestants to get a high score. (Multiple high scoring contestants all get invited to the knock out final) Closest/correct answer in knock out final wins. Multiple finalists, play additional tiebreakers. The winner of the final will receive its prize within 90 days.*

### **Agreement between Txtwinner and service user.**

#### **Our Commitment To Privacy**

Your privacy is important to us. To better protect your privacy we provide this notice explaining our online information practices and the choices you can make about the way your information is collected and used. To make this notice easy to find, we make it available on our homepage and at every point where personally identifiable information may be requested.

#### **The Information We Collect:**

Network

Mobile number

This notice applies to all information collected or submitted on our websites. On some pages, you can make requests, and register to receive materials.

#### **Our Commitment To Data Security**

To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, we have put in place appropriate physical, electronic, and managerial procedures to safeguard and secure the information we collect online.

#### **How You Can Access Or Correct Your Information:**

You can access all your personally identifiable information that we collect online and maintain by accessing our control panel. We use this procedure to better safeguard your information.

You can correct factual errors in your personally identifiable information by sending us a request that credibly shows error.

To protect your privacy and security, we will also take reasonable steps to verify your identity before granting access or making corrections.

If you have a subscription service and wish to STOP then you may do so by texting in STOP to the country specific shortcode from which you receive our text messages.

#### **How To Contact Us:**

Should you have other questions or concerns about these privacy policies, please call us at or send us an email at [support@Txtwinner.com](mailto:support@Txtwinner.com)

#### **Service :**

Any error, omission in any offer, invoice, quotation, information, or document supplied by Txtwinner shall be subject to correction without liability.

On accepting these terms and conditions, Txtwinner will provide the customer the facility to use the SMS and web facilities.

Txtwinner is a contact and sms service. By using this service you agree to the following specifics relating to this site :

1. You are 18 years or older
2. You have the bill payers permission to use this service
3. Your profile, including your photograph will be made publicly available
4. Txtwinner has permission to use your profile and photograph in its advertising and promotions
5. Txtwinner will not accept any responsibility for the content of the communications

*between yourself and other users*

*6. Txtwinner will not be held liable for any loss, harm or damage incurred by you as a result of using this service and that you agree to indemnify and hold Txtwinner harmless in this respect*

*7. You take full responsibility for exchanging contact information with other users and with meeting or establishing contact with them and will not hold Txtwinner liable for any loss, damage or harm suffered as a result there from*

*8. Txtwinner and its affiliated companies may contact you with regards to promotions*

*9. Usage of the site is governed by a Fair Use Policy whereby excessive usage may have your account terminated or disabled*

*10. Txtwinner blocks and cancel the users once unsubscribed(opt-out) from the service and will be no longer able to send any further texts.*

**Contact**

*Online support available via : [support@txtwinner.com](mailto:support@txtwinner.com)*

*Phone Support:*

*UK : Tel : 03302231767*

**Content:**

*All services provided by Txtwinner may be used for lawful purposes only.*

*Transmission, storage, or presentation of any information, data or material in violation of any country or City law is prohibited.*

*The user agrees to indemnify and hold harmless Txtwinner from any claims resulting from the use of the service which damages the customer or any other party.*

**Abuse:** *Any attempts to undermine, slander, libel, threaten, or cause harm to a Txtwinner server, customer, employee, or the company directly is strictly prohibited and is grounds for immediate termination without refund.*

*In addition, we will pursue all attempts to the fullest extent of the law.*

**Indemnification:**

*User agrees that it shall defend, indemnify, save and hold Txtwinner harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Txtwinner , its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by reseller, it's agents, employees.*

*User agrees to defend, indemnify and hold harmless Txtwinner against liabilities arising out of;*

*(1) any injury to person or property caused by any products sold or otherwise distributed in connection with Txtwinner*

*(2) any material supplied by Txtwinner infringing or allegedly infringing on the proprietary rights of a third party and*

*(3) copyright infringement. Reseller agrees to limit the liability of Txtwinner to the amount paid for service.*

**Disclaimer :**

*Txtwinner will not be responsible for any damages your business may suffer. Txtwinner*

*makes no warranties of any kind, expressed or implied for services we provide. Txtwinner disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, and any and all service interruptions caused by Txtwinner and its employees. Txtwinner reserves the right to change or update policies without notice."*

The Service is no longer accepting new subscriptions but continues to bill the existing subscriber base.

## **Previous cases**

The Executive previously conducted four formal investigations under the Track 1 procedure in relation to the Service. The investigations spanned from 27 February 2013 to 6 October 2017.

- Track 1 investigation (case ref: 18165) 27 February 2013 to 22 April 2013  
Under Code 12 breaches of Rule 2.2.5 were raised and the Level 2 provider was required to make changes to the format of the pricing and the text on the call to action.
- Track 1 investigation (case ref: 37217) 9 January 2014 to 6 June 2014  
Under Code 12 rules breaches relating to pricing, transparency, method of exit and consent to market was raised. The Level 2 provider agreed to make the required changes and refund all complainants.
- Track 1 investigation (case ref: 63108) 24 February 2015 to 20 April 2015  
Limited information is available on this case; however, the Executive was able to identify that the case originated from concerns not being addressed that had been identified in the previous Track 1 case.
- Track 1 investigation (case ref: 100009) 29 April 2016 to 6 October 2017  
Under Code 14 rules 2.2.1 and 2.2.2 were raised both which related to pricing and transparency. The Level 2 provider was required to issue refunds to complainants and implement changes to the promotional material should promotion of the service restart. On 17 February 2017, the Level 2 provider was referred to the Executive's Compliance Team for advice on the new promotional material it had submitted in response to the Track 1 Action Plan. As the service was no longer promoting, the Executive gave advice on the promotional material should the promotion restart.

The Level 2 agreed to the Track 1 actions by remedying the raised breaches and issuing refunds to complainants.

## **The investigation**

The Executive has received 85 complaints since October 2018.

Various complainants alleged that the Service charges were unsolicited and that when contacting the Level 2 provider they were unable to have their complaints handled or receive a refund.

A sample of complainant accounts have been provided below:

Consumer has been charged by Itechlogic, Consumer does not know how they signed up to the service.  
Consumer advises that they have tried to contact itech around 3 times by email and 4 times by phone but have not had a response.

I never subscribed to this company, they are charging me since 2017. Although I continuously trying to contact the company, sending them e mail...never responded. Billed me 48 times with 3.5 pounds per message and nobody can help me. Reported to o2.as well. Sometimes they would stop for couple of weeks and then started it again. I have never ever,not even once used their "services ". I really need help with this as they are effectively stealing my money and nobody does a thing to stop it.

## Registration

The Executive noted that the Service began while the Code 11 was in force. At this time, there was no requirement to register Services. When Code 12 came into force on 1 September 2011, it became a requirement to register Services. Prior to the launch of the Registration Scheme, the Executive allowed any party within the Services value chain to register the Service. This allowed Level 1 providers to register services on behalf of the Level 2 provider.

## Apparent breaches of the Code

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

- Rule 2.6.1 - Complaint handling
- Paragraph 3.4.14(a) - Registration
- Paragraph 4.2.2 - Providing false or misleading information

On 30 March 2020, the Tribunal reached a decision on the breaches.

## Submissions and conclusions

### Alleged breach 1

Rule 2.6.1 of the Code

***“That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily”***

1. The Executive stated that the Level 2 provider had breached rule 2.6.1 of the Code as the Level 2 provider had failed to quickly and easily provide redress to complainants.

The Executive outlined that as part of a previous investigation, which was dealt with using the Track 1 process between April 2017 and October 2017, the Level 2 provider agreed to issue refunds to valid complainants. However, following on from the Track 1 process, the Executive began to receive numerous complainants regarding the Level 2 provider’s customer service.

The Executive asserted that there was a significant delay in complainants receiving refunds from the Level 2 provider even at times when the Executive had intervened in order to ensure that complainants received redress. The Executive summarised the length of time that it had taken to issue a refund to Complainants A – I from the date on which the Executive first contacted the Level 2 provider through to the date on which the refund was issued in the table below:

<b>Complaint</b>	<b>Date Executive contacted Level 2 provider</b>	<b>Date refund issued</b>
Complainant A	3 October 2018	2 November 2018
Complainant B	23 November 2018	20 March 2019
Complainant C	3 May 2019	23 May 2019
Complainant D	22 May 2019	3 June 2019
Complainant E	26 June 2019	8 August 2019
Complainant F	18 July 2019	1 August 2019
Complainant G	2 August 2019	Unresolved
Complainant H	5 August 2019	Unresolved
Complainant I	20 August 2019	23 August 2019

The Executive also asserted that in some cases the Level 2 provider only issued partial refunds without discussing the amount with the complainant. One example of this was in relation to Complainant H, who first escalated their complaint to the Executive in November 2018. The Executive noted that despite its intervention, Complainant H only received a refund of £36 in August 2019 despite having been charged far more by the Service. The Executive relied on the message logs provided by the Level 2 provider to calculate the total spend by Complainants A-I and compared this with the amount of the that was issued by the Level 2 provider by way of a refund in the table below:

Escalated Complaint	Consumer total spend amount	Final Level 2 provider refund amount
A	£297	£200
B	£441	£441
C	£481.50	£276
D	N/A ( <u>incomplete</u> logs supplied by the Level 1 provider)	£36
E	£270	£154.50
F	N/A ( <u>incomplete</u> logs supplied by the Level 1 provider)	£210
G	N/A (Level 2 provider did not respond to request for logs)	No refund issued
H	£252	£36
I	N/A (Level 2 provider did not respond to request for logs)	£36

The Executive also noted that complainants had encountered problems in receiving refunds by the Level 2 provider. Examples of this included escalated Complaints A and B which were issued via cheque. In relation to Complainant A on 5 October 2018, following intervention by the Executive, the Level 2 provider sent the Executive the following email:

***"We have tried to call the customer server time, however we are unable to connect him, I would like to confirm that refund has been posted to the below address today[sic]"***

The Executive observed that despite this assurance Complainant A contacted the Executive on 30 October 2018 and stated that they had not received a cheque, which prompted the Executive to contact the Level 2 provider again as set out below:

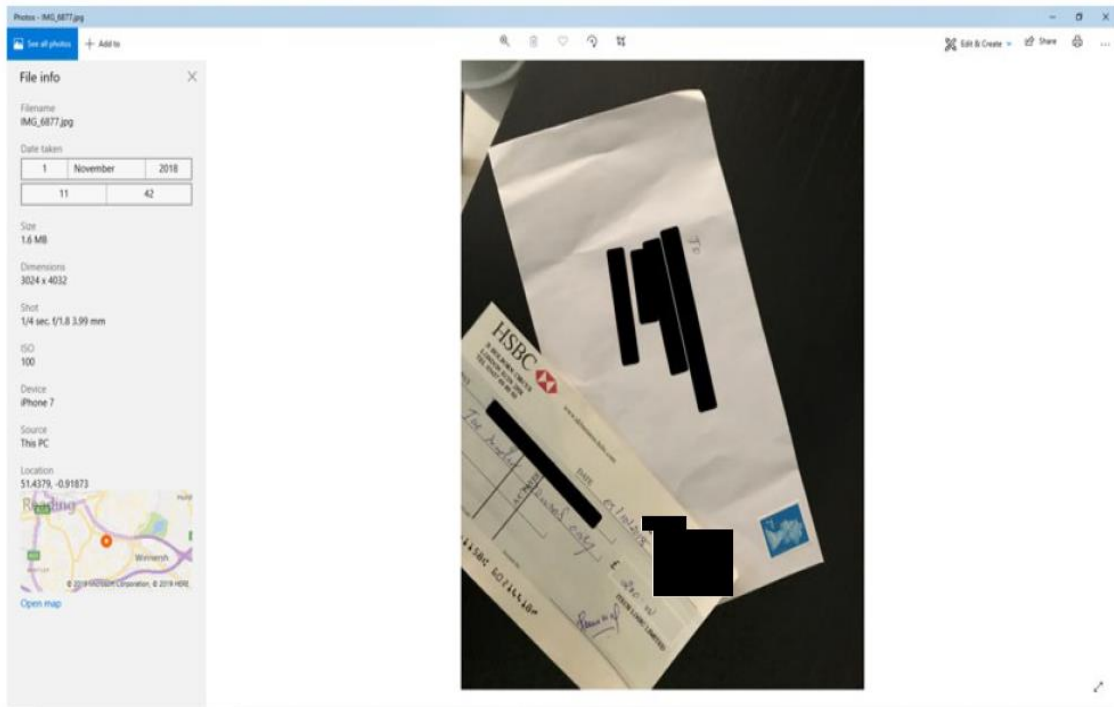
***"The PSA has been contacted by the consumer again who has stated he has not received a cheque.***

***Please could you provide some proof of delivery, otherwise I would be grateful if you could contact the consumer as soon as possible to discuss alternative methods to issue the refund. I have attached the consumer contact details again for your reference.***

***If possible I would be grateful if you could provide an update by the end of business day tomorrow."***

On 1 November 2018 the Level 2 provider responded to the Executive and attached a photograph of the cheque that had been sent to Complainant A:





The Executive requested proof of postage so that it could respond to Complainant A however the Level 2 provider replied saying the following:

***"It's posted in second class stamp , customer should get ASAP"***

Further exchanges then took place between the Executive and the Level 2 provider which culminated in the Executive saying the following to the Level 2 provider on 2 November 2018:

***"In future, if a cheque does require postage for an escalated complaint I would be very grateful if you were able to obtain proof of postage which is a free service from the post office. This will quickly and easily redress the consumer's complaint by providing evidence of the refund.[sic]"***

The Executive observed that similar problems were encountered in relation to escalated Complaint B. On 23 November 2018, the Executive contacted the Level 2 provider in relation to escalated Complaint B saying the following:

***"We have received an escalated complaint from a consumer who has stated they have been unable to receive a refund. I would be grateful if you could reach out to this consumer and issue a full refund.***

***The consumer's contact details are attached.***

***I would be grateful if you could inform me once this has completed."***

The Executive noted that the Level 2 provider responded on 28 November 2018 and stated that the complainant had been issued a refund via cheque which the complainant should expect to receive on 3 December 2018. However, the Executive

was contacted on 6 February 2019 by the same complainant who stated that they had not received a cheque. This prompted the Executive to contact the Level 2 provider again as set out below:

*"The below consumer has contacted the PSA this morning stating they never received their cheque.*

*Please could you provide evidence that this refund was issued as promised.*

*Alternatively, please contact the consumer to arrange a refund by other methods. I have attached the consumer contact details again in a secure link for you.*

*I would be grateful if you could respond within 2 working days."*

The Level 2 provider responded to the above email by stating:

*"please email the mobile number so that I can have a look at it"*

The Executive noted that the complainant's mobile number had already been supplied to the Level 2 provider on two previous occasions.

The Executive observed that following this exchange the Level 2 provider said:

*"we have done a refund, but we are unable to find the cheque, however we have again refunded the customer [sic]"*

The Executive observed that even when refunds were issued by a different method (via a third party) complainants still encountered issues in receiving their money. One example of this was in relation to escalated Complaint F. The Executive contacted the Level 2 provider on 18 July 2019 as set out below:

*"We have been contacted by another consumer who has stated they were unable to receive a refund. Additionally, the PSA has sent two requests for information to iTechLogic regarding this complainant on 8 April 2019 and 10 April 2019 but neither were responded to. The Level 1 provider was able to supply message logs confirming that the consumer had been charged by the 'voucher.me' service operated by iTechLogic.*

*I have attached the contact details on the complainant in a secure link and would be grateful if you could issue a full refund by 5pm on Monday 22 July 2019 in line with the previous Track 1 action plan.*

*Please confirm once this has been issued and provide evidence of the refund.*

*I would also like to refer you to paragraph 2.6 of the Code of Practice regarding complaint handling which states;*

*"That consumers are able to have complaints resolved quickly and easily by the Level 2 provider responsible for the service and that any redress is provided quickly and easily."*

*Given the number of escalated complaints received to the PSA since the closure of the Track 1 case, and the length of time it has taken for iTechLogic to resolve each one, please explain how the 'Txtwinner/Voucher.me' service complies with this section of the code.*

*I look forward to receiving your response by Monday 22 July 2019 with the additional evidence of the refund."*

On 8 August 2019, the Level 2 provider responded requesting the mobile number for the complainant and stated that refunds would now be issued within two working days. The Executive noted that the Level 2 provider also suggested that the Executive could contact the third party which issued refunds directly to request a refund for the complainant. The Executive observed that this would be inappropriate as it was the Level 2 provider and not the Executive who was responsible for facilitating refunds with third-party companies for complainants.

The Executive was contacted by Complainant F on 9 August 2019 who stated that they had still not received a text message confirming the refund however no further contact was made with the complainant after this time.

The Executive relied on the correspondence for all nine of the escalated complaints (A-I) to assert that complaints were not handled in a timely or effective manner by the Level 2 provider. The Executive noted that even when it had persistently intervened to try to obtain redress for complainants from the Level 2 provider, substantial delays were still encountered.

In addition to this the Executive submitted that the process for obtaining a refund was inadequate. The Executive noted that the method of issuing cheques had not proved to be effective as complainants failed to receive the cheques. The Executive further observed that even when a third party was used to process refunds, complainants still experienced delays. In addition to this the Executive asserted that several complainants received only partial refunds and that there was no evidence to suggest that these complainants had agreed to smaller refunds.

The Executive emphasised that the Level 2 provider failed to adhere to the Compliant Handling Guidance as published on the Executive's website as it failed to make every reasonable effort to resolve complaints and as it overarchingly failed to resolve matters fully and to provide proper redress.

In light of the above the Executive submitted that the Level 2 provider had acted in breach of rule 2.6.1. of the Code as it failed to resolve complaints quickly and provide redress quickly and easily.

2. The Level 2 provider admitted the breach in part.

When questioned by the Tribunal the Level 2 provider acknowledged that there had been delays in relation to complaint handling and in the processing of refunds for complainants, particularly at times when the Service had been busy.

The Level 2 provider outlined that the Service had been extremely busy up until 2017 and that it had issued hundreds of refunds using cheques that were posted using a second-class stamp. The Level 2 provider emphasised that they had tried their best but agreed that there had been delays in the issuing of refunds and for that reason admitted the breach in part.

The Level 2 provider asserted that they had taken measures to improve their complaint handling. The Level 2 provider indicated that they had engaged third parties to issue refunds and that since this had occurred there had been very few issues. The Level 2 provider relied on a spreadsheet which listed the amount of refund issued by mobile number by one of the third parties.

In relation to the issuing of partial refunds, the Level 2 provider submitted that in relation to some complainants the message logs held by the Level 2 provider indicated that complainants had in fact used the Service and that as a result of this only partial refunds were offered. The Level 2 provider asserted that partial refunds were discussed with complainants before they were issued and confirmed when questioned that discussions had taken place between Complainant H regarding the amount of the refund issued. The Level 2 provider also indicated that full refunds were always provided to complainants who were under the age of 18.

3. The Tribunal carefully considered all the evidence before it and the informal representations made by the Level 2 provider.

The Tribunal was of the view that the correspondence relied on by the Executive of the escalated complaints it received clearly demonstrated that there had been delays in complainants receiving refunds and that complainants had not received refunds for the total amount that they had spent on the Service.

The Tribunal noted that the Level 2 provider admitted that there had been delays with their complaint handling. The Tribunal accepted that the Level 2 provider had put

measures in place to try to address the issue by engaging third-party companies to provide refunds and through addressing staffing needs.

In relation to the partial refunds that were issued, the Tribunal noted that the correspondence between the Executive and the Level 2 provider in relation to Complainant H, for example, made no reference to a partial refund having been agreed by Complainant H. The Tribunal further noted that the Executive was not informed by the Level 2 provider that Complainant H had agreed to a partial refund. In light of this the Tribunal was unable to accept the assertion that all partial refunds had been discussed and agreed to by all complainants.

Taking all of the evidence into account as well as the admission by the Level 2 provider, the Tribunal was satisfied that on the balance of probabilities a breach of rule 2.6.1 of the Code had occurred as consumers had not had complaints resolved and/or redress provided quickly and easily.

Decision: UPHELD.

### **Alleged breach 2**

Paragraph 3.4.14(a) of the Code

***“Level 2 providers must within two working days of the service becoming accessible to consumers, provide to the PSA relevant details (including any relevant access or other codes ) to identify services to consumers and must provide the identity of any Level 1 providers concerned with the provision of the service”***

1. The Executive submitted that the Level 2 provider had breached paragraph 3.4.14 of the Code as a number of shortcodes used by the Service had not been registered.

The Executive outlined that the Service began in June 2011 and that the requirement to register services only became obligatory from 1 September 2011 after Code 12 came into force. Taking into account the history of the Level 2 provider, including the previous Track 1 investigations, the Executive confirmed that the breach under paragraph 3.4.14 (a) was only being raised from 2 May 2019, which was after the date on which the notification to register the Service was sent to the Level 2 provider.

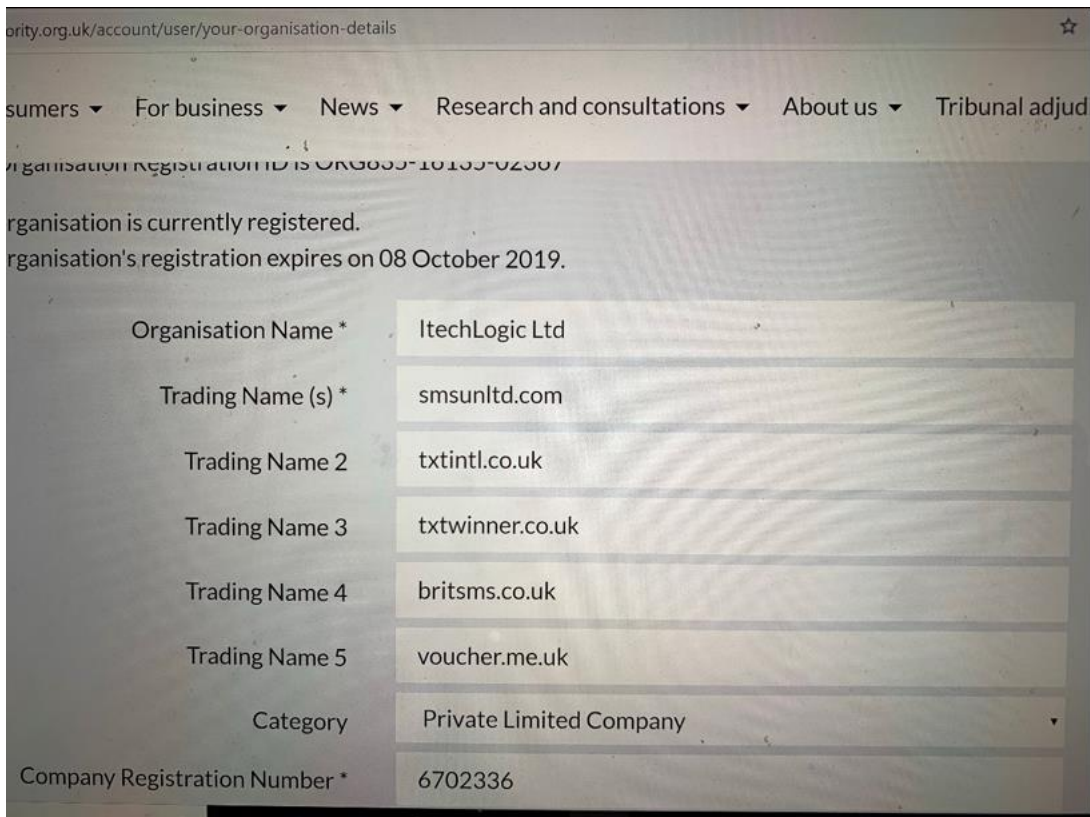
The Executive noted that two of the shortcodes used by the Service were registered by the Tap2Bill one of the Level 1 providers for the Service. However, the Executive observed that a number of shortcodes remained unregistered as summarised in the table below:

Shortcode	Level 1 provider	Start and End date	Registration Date	Shared/ Dedicated
88833	Dynamic Mobile Billing Limited	Assigned 8 April 2014	Not registered	Shared

		Traffic April 2014 - February 2017		
80199	Dynamic Mobile Billing Limited	27 June 2016- February 2017	Not registered	Dedicated
87070	Dynamic Mobile Billing Limited	29 June 2016- February 2017	Not registered	Shared
80267	Dynamic Mobile Billing Limited	13 September 2016- February 2017	Not registered	Dedicated
65065	Dynamic Mobile Billing Limited	December 2015- January 2017	Not registered	Shared
85222	Tap2Bill Limited	June 2011- <i>Present</i>	30 August 2011	Shared
80181	Tap2Bill Limited	June 2016- <i>Present</i>	28 April 2017	Dedicated
80252	Tap2Bill Limited	June 2015- <i>Present</i>	Not registered	Shared
87066	Tap2Bill Limited	February 2016- March 2017	Not registered	Shared
68899	Txtnation Limited	15 May 2016-15 December 2017	Not registered	Shared
85450	mGage Europe Limited	June 2018- July 2019	Not registered	Shared

The Executive submitted that it was a requirement to register all shortcodes that had been used by the Service regardless of whether they were currently in use. The Executive explained that the reason for this was to allow consumers to identify that the relevant shortcodes for the Service using the Executive's online number checker and emphasised that if all shortcodes were not registered then consumers would be unable to identify that the shortcodes were associated with the Level 2 provider and the Service.

The Executive noted that following the registration notification being sent to the Level 2 provider on 2 May 2019, the Level 2 provider responded by confirming that it would register the Service. The Level 2 provider followed this by providing a screenshot of the Services that had been registered:



The Executive responded to the Level 2 provider on 2 May 2019 to explain that the screenshot showed only the trading names registered under the organisation and did not show that the Service had been registered as set out below:

***"I can confirm that you have added the organisation trading names.***

***However, no services are registered under the organisation [sic]***

***You only have to enter the short codes associated with the services on the PSA service checker. To find that both services are not listed under the associated short codes***

***Registering your service helps to ensure consumers are provided with the most appropriate customer care contact details for any enquiry about the service.***

***Please ensure when registering the services that you provide, the L1 providers details and the STOP shortcode for the service.***

***Should you require any assistance in understanding the changes necessary please contact [registration@psaauthority.org.uk](mailto:registration@psaauthority.org.uk)***

***Please confirm once these changes have been made."***

The Executive confirmed during questioning that no attempts were made to register the Service by the Level 2 provider until December 2019. The Executive also confirmed that the shortcodes were now registered.

The Executive submitted that despite shortcodes now being registered a breach of the paragraph 3.4.14(a) of the Code had still occurred between May 2019 and December 2019.

2. The Level 2 provider accepted the breach.

When questioned by the Tribunal the Level 2 provider accepted that some of the shortcodes used by the Service had not been registered. The Level 2 provider explained that they had erroneously thought that old shortcodes that were no longer in use did not need to be registered.

The Level 2 provider submitted that once they were made aware of the need to register all of the shortcodes that had been in use they attempted to rectify their mistake but encountered technical difficulties in registering the shortcodes. The Level 2 provider confirmed when questioned that they had liaised with the Executive regarding the technical issues they were encountering between December 2019 and February 2020.

3. The Tribunal carefully considered all of the evidence before it and the representations made by the Level 2 provider.

The Tribunal was of the view that the evidence produced by the Executive clearly demonstrated that a number of shortcodes that had been used by the Service had not been registered. The Tribunal noted that the Level 2 provider accepted that they had not registered shortcodes that were no longer in use between May 2019 and December 2019.

The Tribunal considered the representations that had been put forward by the Level 2 provider that it had encountered technical issues when trying to register all of the shortcodes for the Service. The Tribunal noted that it had not seen any correspondence between the Executive and the Level 2 provider which demonstrated that the Level 2 provider had encountered technical issues when registering the shortcodes for the Service from May 2019 to December 2019. For this reason, the Tribunal did not accept that technical issues had prevented the Level 2 provider from registering all of the shortcodes for the Service during this period.

As a result of all of the above the Tribunal were of the view that on the balance of probabilities a breach of paragraph 3.4.14 (a) of the Code had occurred.

Decision: UPHELD.

### **Alleged breach 3**

***“A party must not knowingly or recklessly conceal or falsify information or provide false or misleading information to the PSA (either by inclusion or omission)”***



1. The Executive submitted that the Level 2 provider had provided false information to the Executive in relation to the issuing of a refund in relation to escalated Complaint A.

The Executive relied on the information that had been supplied by the Level 2 provider in response to the Executive's queries regarding a refund for Complainant A. On 5 October 2018, the Level 2 provider emailed the Executive saying the following:

***"We have tried to call the customer server time, however we are unable to connect him , I would like to confirm that refund has been posted to the below address today"***

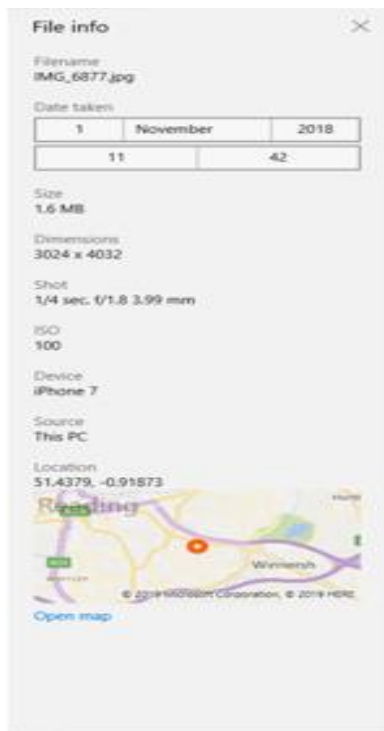
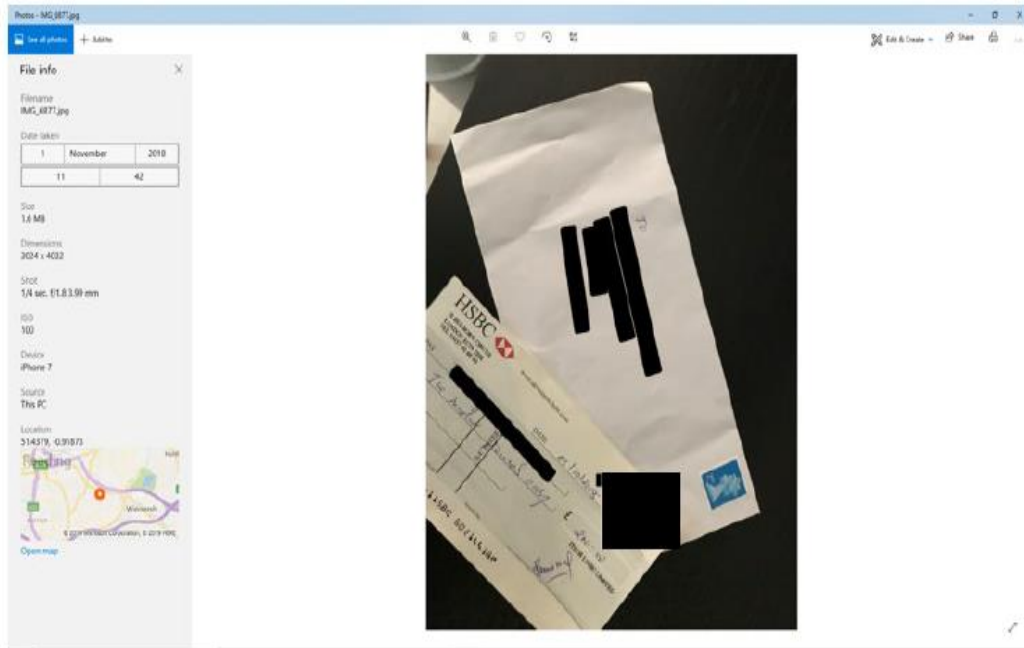
The Executive contacted the Level 2 provider again on 30 October 2018 as Complainant A had informed the Executive that they had not received a cheque:

***"The PSA has been contacted by the consumer again who has stated he has not received a cheque. Please could you provide some proof of delivery, otherwise I would be grateful if you could contact the consumer as soon as possible to discuss alternative methods to issue the refund."***

The Executive noted that on 1 November 2018 the Level 2 provider emailed the Executive saying "Please find the payment confirmation attached" and attached a photograph of the cheque which the Level 2 provider indicated had been sent to Complainant A:



The Executive observed that the cheque was dated 5 October 2018 however when the Executive opened the photograph the "file information" demonstrated that the photograph had been taken four minutes before the Level 2 provider had emailed the Executive on 1 November 2018:



On 2 November 2018 the Executive contacted the Level 2 provider asking for proof of postage of the cheque, but was informed that the cheque had been sent using a second-class stamp and that the only proof was therefore the photograph of the cheque. In response the Executive said the following:

***“In future, if a cheque does require postage for an escalated complaint I would be very grateful if you were able to obtain proof of postage which is a free service from the post office. This will quickly and easily redress the consumer’s complaint by providing evidence of the refund.***

***From the image sent yesterday, it is evident the picture was taken on 1 November 2018 at 11:42 and was therefore not sent on 5 October 2018 as previously requested.***

***As you are unable to provide evidence that the consumer has been issued a refund, I will contact the consumer again in the next 5 working days regarding whether they have received a cheque.***

***Should the PSA receive further complaints about the Service highlighting issues that were not rectified in accordance with Track 1 action plan then a further case may be raised and allocated under the Track 2 procedure.”***

The Level 2 provider responded to the email above by saying *“Please let us see today of tomorrow, Customer should get the cheque provided the address is right”*. The Executive noted that the Level 2 provider did not provide any explanation as to why the photograph of the cheque was taken on 1 November 2018.

The Executive asserted that the Level 2 provider had provided false and misleading information to the Executive through informing the Executive that the cheque had been posted on 5 October 2018 when this could not have been the case as the photograph of the cheque was taken on 1 November 2018. The Executive further submitted that the Level 2 provider had offered no further explanation or information as to when the cheque was in fact posted, even after the Executive had pointed out that the photograph was taken on 1 November 2018.

The Executive submitted that the Level 2 provider had accordingly acted in breach of paragraph 4.2.2 of the Code as it had either deliberately or at the very least recklessly provided false and misleading information as to the date on which Complainant A was sent their refund.

2. The Level 2 provider denied the breach.

When questioned by the Tribunal the Level 2 provider accepted that the photograph of the cheque had been taken on 1 November 2018. The Level 2 provider explained that the photograph of the cheque which had been sent to the Executive had been taken by an administrative team and that the individual who had emailed the photograph of the cheque had been out of the country at the relevant time so had just sent the photograph on to the Executive. The Level 2 provider confirmed to the Tribunal that photographs were not normally taken of cheques that were issued to complainants for refunds.

In relation to the date on which the cheque was actually sent to Complainant A, the Level 2 provider agreed that the cheque had not been sent on 5 October 2018. The Level 2 provider offered different and inconsistent explanations as to how this could have happened. The Level 2 provider indicated that it may have been the case that the cheque was dated 5 October 2018 and that it was due to be sent that day but that it

had been misplaced and not sent until 1 November 2018. In the alternative the Level 2 provider also explained that the cheque which should have been sent on 5 October 2018 was not sent and that a second cheque was then issued on 1 November 2018 but backdated to 5 October 2018.

The Level 2 provider asserted that while there had clearly been an administrative error which meant that the cheque had not been posted on 5 October 2018, the Level 2 provider had not deliberately provided false or misleading information to the Executive.

3. The Tribunal carefully considered all of the evidence before it, including the representations by the Level 2 provider.

The Tribunal considered the evidence put forward by the Executive, and was of the view that the evidence supported the assertion by the Executive that the photograph of the cheque was taken on 1 November 2018 and that the cheque could not therefore have been posted on 5 October 2018.

The Tribunal noted that when questioned the Level 2 provider accepted that the cheque had not been sent on 5 October 2018. The Tribunal was of the view that the Level 2 provider had provided a number of different explanations as to how this had occurred, and that as a result of the different explanations provided the Tribunal could not be clear as to what occurred in relation to the cheque and when it was posted.

The Tribunal also considered the correspondence that had been exchanged between the Level 2 provider and the Executive regarding the refund for Complainant A between October and November 2019. The Tribunal noted that the Level 2 provider did not inform the Executive that an administrative error had occurred which meant that the cheque had not been sent on 5 October 2018 as originally thought.

In light of all of the above, the Tribunal were of the view that on the balance of probabilities a breach of paragraph 4.2.2 of the Code had occurred. The Tribunal reasoned that the Level 2 provider had provided false and/or misleading information to the Executive in relation to when the cheque had been sent to Complainant A by stating that the cheque had been posted on 5 October 2018.

The Tribunal was also of the view that the Level 2 provider had not informed the Executive at any stage that the cheque had not been posted on 5 October 2018. For this reason, the Tribunal was also persuaded that the Level 2 provider knowingly provided false and/or misleading information to the Executive and upheld the breach of paragraph 4.2.2 on that basis.

Decision: UPHELD.

## Assessment of breach severity

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

### Rule 2.6.1

This breach was **Very Serious**

The Tribunal considered that although complainants did receive some redress the breach had a clear and highly detrimental impact directly on consumers. The Tribunal also considered that the breach would cause a lack of confidence in premium rate services, noting that the requirement to provide refunds had been a requirement of the Track 1 process. The Tribunal was also of the view that the breach had occurred for a significant period of time.

### Paragraph 3.4.14(a)

This breach was **Moderate**

Although the breach was of a short duration and related to only some shortcodes most of which were no longer in use, the Tribunal nonetheless considered that the breach may have had a slight impact on consumer confidence in premium rate services.

### Paragraph 4.2.2

This breach was **Very Serious**.

The Tribunal considered that while the breach was confined to the information provided in relation to only one aspect of the case, it had nonetheless been committed intentionally and that the breach demonstrated a fundamental disregard for the requirements of the Code. The Tribunal also considered that as the breach was inextricably linked to complaint handling it had the potential to severely damage consumer confidence in premium rate services.

## Sanctions

### Initial assessment of sanctions

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

- a formal reprimand
- a requirement that the Level 2 provider must remedy the breach by registering the Service and all shortcodes on the PSA registration scheme

- a requirement that a compliance audit is undertaken of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the Level 2 provider with rules governing registration and complaints handling
- that access is barred to all of the Service until the compliance audit is conducted and implemented to the standard prescribed by the PSA and the breaches have been remedied to the satisfaction of the PSA
- a fine of £455,000 broken down as follows:  
Rule 2.6.1 £200,000  
Paragraph 3.4.14(a) £80,000  
Paragraph 4.2.2 £175,000

The Tribunal agreed with the Executive's recommendation on sanctions but adjusted the proposed fine in light of its findings on the severity of the breaches to the following:

- A fine of £420,000 broken down as follows:  
Rule 2.6.1 £200,000  
Rule 3.4.14(a) £20,000  
Rule 4.2.2 £200,000

## Proportionality assessment

### Assessment of mitigating and aggravating factors

#### Mitigation

The Executive submitted that some refunds had been provided and that the Level 2 provider had registered some of the shortcodes that it had used.

The Level 2 provider when questioned by the Tribunal stated that it had been in the industry for a long period of time and that it had worked with the Executive throughout that time to be compliant. The Level 2 provider considered this to be mitigation.

The Tribunal agreed with the Executive that some refunds had eventually been provided to complainants. However, the Tribunal was of the view that these had not been easily obtained and did not therefore consider this to be a mitigating factor.

The Tribunal also noted that the shortcodes which had not been registered were for the most part no longer in used and considered this along with the fact that the Level 2 provider had registered the shortcodes to be a mitigating factor.

The Tribunal did not accept the Level 2 provider's assertion that the length of time that it had been in the industry and the efforts that it had made to comply with the Code were mitigating

factors. The Tribunal was of the view that the breach history of the Level 2 provider was not indicative of long-standing compliance and could not therefore accept this assertion.

### Aggravation

The Executive submitted that it was an aggravating feature of the case that the Level 2 provider disregarded communication from the Executive in relation to numerous complaints and that this added to the delay in complainants receiving redress. The Executive further submitted that the delayed responses by the Level 2 provider during the investigation impacted on the investigation and on the resolution of complaints. The Executive further submitted that the breach history of the Level 2 provider was a significant aggravating factor as they had been subject to four previous Track 1 procedures.

The Tribunal agreed with the Executive that the Level 2 provider had disregarded communication from the Executive and that it had not been forthcoming in responding to the Executive's queries. The Tribunal also agreed that the breach history of the Level 2 provider was a significant aggravating factor particularly as there had been four previous Track 1 procedures from 2013 through to 2017. The Tribunal was also of the view that as the Level 2 provider had been within the industry for a significant period of time this meant that more effort should have been made by them to ensure their compliance with all provisions of the Code.

### Financial benefit/ Need for deterrence

The Executive submitted that the Level 2 provider had generated a gross revenue of £431,275.82 from October 2018 but that due to the nature of the breaches this revenue could not be said to flow from the breaches directly. The Executive however argued that in light of the nature of the seriousness of the breaches and the need to deter conduct of this nature there was a need to remove a significant proportion of the financial benefit accrued from the breaches through the imposition of a significant fine.

The Tribunal agreed with the Executive that the revenue did not in this case flow from the breaches but that it would be necessary to impose a significant financial penalty to achieve the sanctioning objective of credible deterrence.

### Sanctions adjustment

The Executive stated that the recommended that even though the initial fine did not exceed the revenue generated, this in combination with the recommended non-financial sanctions, would be likely have a significant impact upon the Level 2 provider. In light of this the Executive submitted that the recommended fine amount should be adjusted downwards in the interests of proportionality, to a total fine of £250,000.

The Level 2 provider submitted that the fine should be adjusted to a significantly lower level as the Service was no longer accepting new subscriptions. The Level 2 provider stated that as it had taken measures to improve compliant handling and resolve the registration issues there

was no need for a large financial penalty to be imposed and that a lower fine of approximately £60,000-£65,000 would be proportionate.

The Tribunal agreed that it was appropriate to adjust the initial recommended fine downwards, for the reasons advanced by the Executive.

Although the Tribunal accepted that the Service was no longer subscribing new users and that the imposition of a financial penalty would have significant impact on the Level 2 provider, the Tribunal did not agree that a fine in the region suggested by the Level 2 provider was sufficient to act as a credible deterrent.

The Tribunal noted that the proposed fine of £250,000 did not remove the full revenue of the Level 2 provider and were accordingly of the view that a fine of this amount was proportionate.

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

## Final overall assessment

### Sanctions imposed

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

- a formal reprimand
- a requirement that the Level 2 provider must remedy the breach by registering the Service and all shortcodes on the PSA registration scheme
- a requirement that a compliance audit is undertaken of the Level 2 provider to a standard prescribed by the PSA, to be conducted by an independent third party agreed by the PSA. Such compliance audit to include an audit of the compliance of the Level 2 provider with rules governing registration and complaints handling
- that access is barred to all of the Service until the compliance audit is conducted and implemented to the standard prescribed by the PSA and the breaches have been remedied to the satisfaction of the PSA
- a fine of £250,000.

Administrative charge recommendation:

100%