

## Tribunal meeting number 267

Case reference: 146098  
Level 2 provider: Plus que PRO SAS  
Type of service: Information, Connection and/or Signposting Service (ICSS)  
Level 1 provider: Innecto/Daotec  
Network operator: GCI Network Solutions Ltd.

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 (“the **Code**”).

### Background

The case concerned an Information, Connection and/or Signposting Service (ICSS) which operated on the number range 0904289514X (“the **Service**”).

The Level 2 provider for the Service was Plus que PRO SAS (“the **Level 2 provider**”). The Level 1 provider was Innecto though a second Level 1 provider Daotec also operated within the value chain. The Network operator was GCI Network Solutions Ltd.

The Service was first promoted in November 2016 but was initially run by another Level 2 provider. The Level 2 provider registered the Service with the Executive on 7 March 2017.

The Service was a call-connection Service which offered connection to a number of organisations and was promoted on web-based search engines such as Google, Bing and Yahoo. The Level 2 provider supplied the following summary of the way in which the Service was intended to operate to the Executive:

*“The shop owners register their shop in our service to have visibility on Google, Bing, Yahoo, they provide their contact information, with their phone number : <http://www.the-shops.co.uk/index.php?c=login&redirect=ajouter>  
The customer get to the shop card after doing a search, and he can phone the shop using the PRN that points to the number provided by the shop owner : <http://www.the-shops.co.uk/KT1/kingston-upon-thames/pret-a-manger-51900.html>  
The customer can provide a comment on the shop card, by creating an account on our service.”*

In addition to the above, the Level 2 provider also provided the full consumer journey as set out below:

The customer :

- 1- looks for a shop on Google
- 2- Get to the shop card and reads the contact information
- 3- If he wants to call the shop he pins on the



### Display phone number

- 4- He calls the PRN
- 5- He is connected to the shop

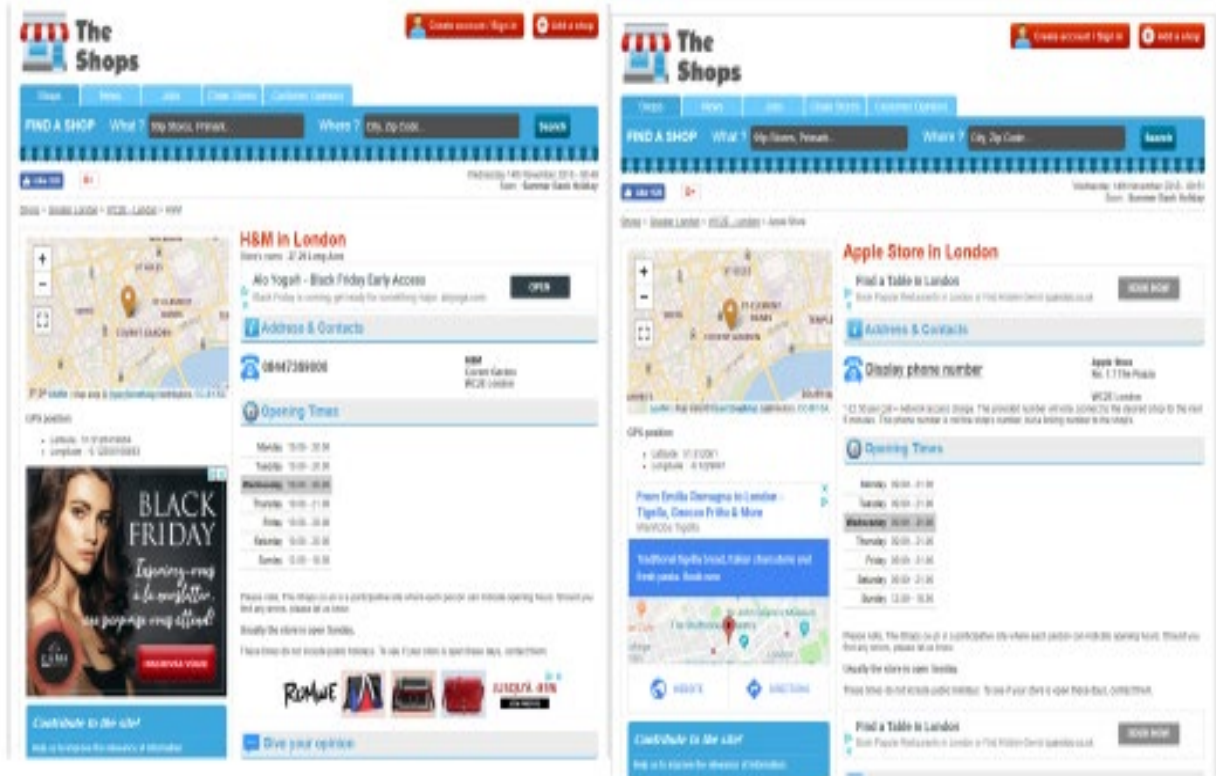
In addition to the above the Level 2 provider also sent in the following information as a step-by-step user flow:

If consumers come on our website through the homepage (1<sup>st</sup> screenshot), they have the possibility to search for a specific shop thanks to the intern search engine. They will then come to the result page (2<sup>nd</sup> screenshot).

The first screenshot shows the homepage of The-Shops.co.uk. It features a navigation menu with 'Home', 'About Us', 'Contact Us', 'Privacy Policy', and 'Terms & Conditions'. A search bar is prominently displayed with the text 'FIND A SHOP' and 'Where?'. Below the search bar, there are several news articles and a section titled 'The-Shops.co.uk' which includes a 'Website Stats' section showing 100,000,000+ shops and 100,000,000+ users.

The second screenshot shows a search result page for 'Shops closest to london (h&m)'. It features a map of London with red pins indicating shop locations. Below the map, there is a list of shops with details such as 'Etam Tout le Site -30%\*' and 'Profiter Aujourd'hui de -90% sur la Lingerie'.

Once they have found the shop they were looking for, consumers can go to its page and look for informations. On some shop's page, they can find PR number.



Once consumer have clicked on the button “Display phone number”, the PR number is shown. The only difference between our recent update and the previous months, is the message next to the number. We have made it a little bit clearer

**The Shops** Create account / Sign in Add a shop

Shops | News | Jobs | Chain Stores | Customer Opinions

FIND A SHOP What? 99p Stores, Primark... Where? City, Zip Code... **Search**

Like 928 G+ Wednesday 14th November 2018 - 09:51  
Soon : Summer Bank Holiday

Shops > Greater London > WC2E - London > Apple Store

Leaflet | Map data © OpenStreetMap contributors, CC-BY-SA

GPS position

- Latitude : 51.512061
- Longitude : -0.1229647

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Manitoba Tigella

Traditional tigella bread, Italian charcuterie and fresh pasta. Book now

[WEBSITE](#) [DIRECTIONS](#)

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### Apple Store in London

**Find a Table in London**  
Book Popular Restaurants in London or Find Hidden Gems! [quandoo.co.uk](#) **BOOK NOW**

**Address & Contacts**

**09042895145\*** **Apple Store**  
No. 1-7 The Piazza  
WC2E London

\* £2.50 per call + network access charge. The provided number will only connect to the desired shop for the next 5 minutes. This phone number is not the shop's number, but a linking number to the shop's.

**Opening Times**

Monday	09.00 - 21.00
Tuesday	09.00 - 21.00
<b>Wednesday</b>	<b>09.00 - 21.00</b>
Thursday	09.00 - 21.00
Friday	09.00 - 21.00
Saturday	09.00 - 21.00
Sunday	12.00 - 18.00

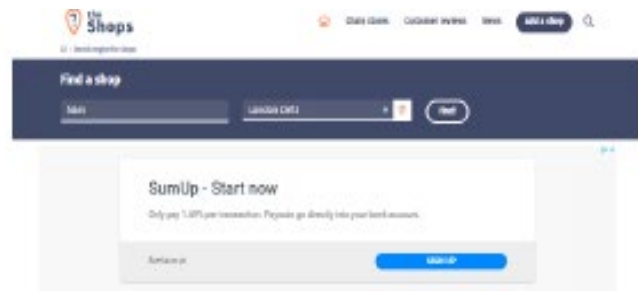
Please note, The-Shops.co.uk is a participative site where each person can indicate opening hours. Should you find any errors, please let us know.

**Usually the store is open Sunday.**  
These times do not include public holidays. To see if your store is open these days, contact them.

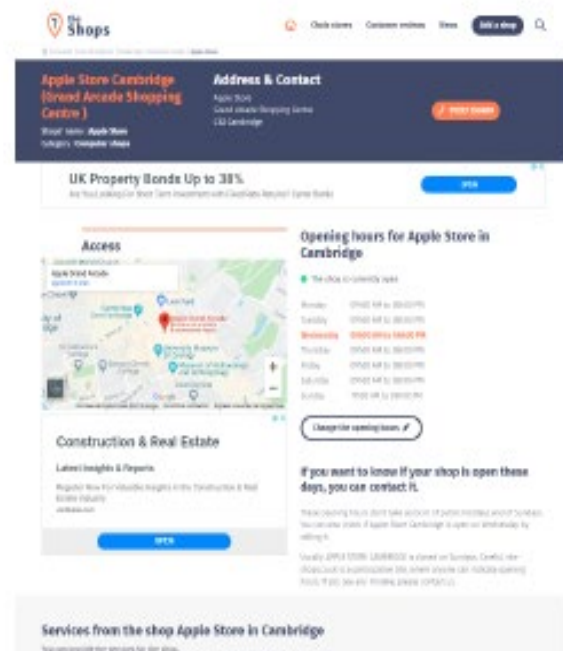
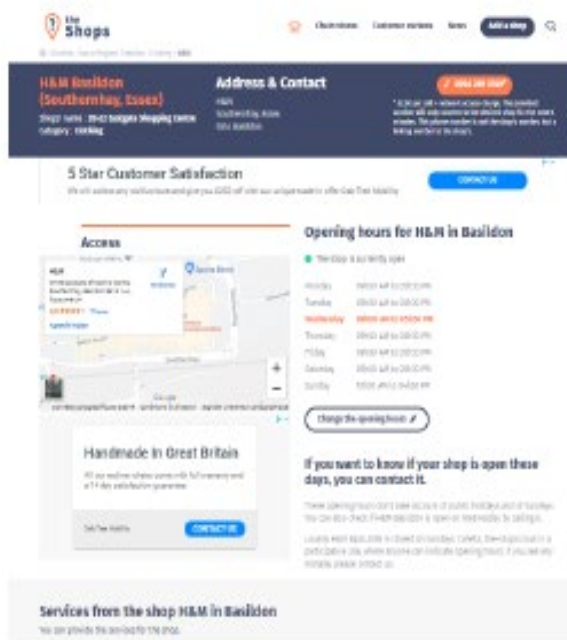
**Find a Table in London**  
Book Popular Restaurants in London or Find Hidden Gems! [quandoo.co.uk](#) **BOOK NOW**

**Give your opinion**

The Level 2 provider amended the website in August 2019 and provided the step-by-step user flow for the new website as set out below:



Once they have found the shop they were looking for, consumers can go to its page and look for informations. On some shop's page, they can find PR number.



Once consumer have clicked on the button "Display phone number", the PR number is shown.

## The investigation

The Executive received one complaint in relation to the Service which prompted monitoring of the Service to take place. The Executive recorded calls to the numbers used by the Service on 4 December 2017 (two calls), 24 January 2018 (one call), 30 October 2018 (three calls), 30 October 2019 (seven calls), 5 November 2019 (four calls) and 22 November 2019 (five calls).

The Executive also captured the full consumer journey through the Bing search engine using a desktop PC on 6 July 2018. Further screenshots of the original website promotion were also captured on 16 and 30 October 2018.

In relation to mobile devices, the Executive was able to capture screenshots of the original website promotion on 16 October 2018 and used the digital archive website WaybackMachine to capture the original website as it was promoted on a mobile device on 8 July 2017.

The Executive also monitored the promotional website for the Service following the re-design of the website which took place in August 2019. The Executive captured screenshots of this website on 30 October 2019, 5 November 2019 and 22 November 2019 on a desktop PC. The Executive also captured screenshots of the new website on a mobile device on 8 January 2020.

The Level 2 provider indicated that compliance advice in relation to the Service had been obtained on 16 September 2016, however the Executive was unable to locate any records of compliance advice that was given at this time to the Level 2 provider or to its predecessor.

The Level 2 provider sought further compliance advice on 11 June 2018 in relation to the website which promoted the Service. The Compliance Team within the Executive responded to the request for compliance advice on 21 June 2018. The Compliance Team stated that the information across the site did not seem consistent for each entry for each store and that the Level 2 provider should provide a single listing as an example which would enable the Compliance Team to provide advice.

The Compliance Team did however provide some immediate advice to the Level 2 provider in relation to the format of the pricing on the website:

In terms of immediate advice, I would advise that the pricing information displayed underneath the premium rate number is not currently formatted correctly. It states:

*\* £2.5 per call - This phone number is valid 5 minutes (until 21/06/2018 10:42:15), - Our service will connect you with this shop.*

In correct terms it should state "£2.50 per call", and also advise consumers of the additional 'network access charge', while you may only charge consumers £2.50 for the entire call, the consumer should also be notified

The Compliance Team also queried the meaning of the phrase "this number is valid 5 minutes" and emphasised the importance of ensuring that the information on the website was correct.

In relation to the last point, the Compliance Team used an example of a listing on the Level 2 provider's website for a branch of HMV which still had a contact number for consumers to dial even though that branch of HMV had closed in 2014.

The Level 2 provider did not respond to the Compliance Team. However, during the course of the investigation, the Level 2 provider did confirm that the numbers were only available for five minutes as they would re-use the numbers which were allocated to the Service for different organisations as set out below. The Level 2 provider also explained what would occur if a consumer called a number after the five-minute time period had elapsed:

*"We can have different scenario:*

- if a customer calls back the same rotating number without it being assigned, it will be linked to the destination number corresponding to his first call.*
- If the number has been re-assigned, and the first customer calls during the 5 minutes availability of the new assignment, in this case the consumer is connected to the new assignment."*

The Level 2 provider informed the Executive that as of April 2020 it was no longer using premium rate numbers for the Service.

### **Apparent breaches of the Code**

The Executive sent a Warning Notice to the Level 2 provider on 24 April 2020 in which the following breaches of the Code were raised:

Rule 2.2.1 – Transparency and Pricing

Rule 2.3.1 – Fairness

Rule 2.3.2 – Misleading

Paragraph 3.11.3 (Special Conditions ICSS3)

Paragraph 3.4.8 – Registration

On 1 July 2020 the Tribunal reached a decision in respect of the breaches.

## **Submissions and conclusions**

### **Preliminary issue – Service**

The Tribunal noted that the Warning Notice had been served on the Level 2 provider by email on 24 April 2020. The Tribunal further noted that two written responses to the alleged breaches had been received from the Level 2 provider on 19 May 2020 and 26 May 2020 which indicated that it had received a copy of the Warning Notice.

During questioning, the Executive confirmed that the Level 2 provider had also been notified of the time and date of the Tribunal on 16 June 2020. The Tribunal was therefore satisfied that the Executive had complied with its obligations in relation to service of the warning notice.

### Proceeding in absence

The Tribunal noted that the Level 2 provider had responded to the Warning Notice via email indicating that they did not want to make oral representations on 26 May 2020. The Tribunal further noted that the Level 2 provider had sent in written responses to the breaches for the Tribunal to consider. The Tribunal therefore decided that in the circumstances it would be fair to proceed in the absence of the Level 2 provider as there was no suggestion that the Level 2 provider would attend any future Tribunal listing and as the Level 2 provider had provided written responses to the breaches which the Tribunal could take into account.

### Alleged breach 1

#### Rule 2.2.1 of the Code

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

1. The Executive stated that the Level 2 provider had breached rule 2.2.1 of the Code as the promotional material for the Service did not provide consumers with key information that could have influenced their decision to use the Service. The Executive placed reliance on the PSA’s General Guidance Note on Promoting Premium Rate Services to assert that promotional material for the Service should have included the cost, the brand information, product or service information, how the Service was delivered; how the Service was paid for and how to get help if necessary.

When questioned by the Tribunal, the Executive confirmed that when the Service number provided was dialled, it would connect to the Level 2 provider’s system first and then connected onwards to the telephone number of the relevant store which was why there was a French style dialling tone. The Executive also confirmed to the Tribunal that even when the call length was recorded as 0 seconds that a charge of £2.50 would occur as a result of the time taken to connect the call.

The monitoring evidence of the original website demonstrated that the Service number for the relevant stores was displayed without pricing information as set out below:

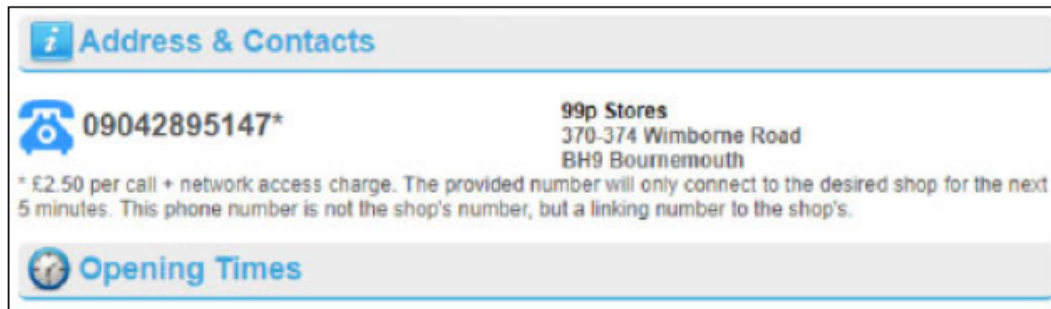


The screenshot shows the 'The Shops' website interface. At the top, there is a navigation bar with 'Shops', 'News', 'Jobs', 'Chain Stores', and 'Customer Opinions'. Below this is a search bar with 'FIND A SHOP' and 'What?' followed by '99p Stores, Primark...' and 'Where?' followed by 'City, Zip Code...'. There are buttons for 'Like 933', 'G+', 'Create account / Sign in', and 'Add a shop'. The date and time are 'Friday 6th July 2018 - 17:21' and 'Soon : Summer Bank Holiday'. The main content area is titled 'Shops > Chain stores > APPLE STORE'. On the left, there is a Lenovo advertisement with the text 'Challenge your current server suppliers. Get a quote from Lenovo.' and an Intel Xeon logo. The main list contains several entries for 'APPLE STORE' and one for 'ONE WORLD RENTAL'. The first 'APPLE STORE' entry is highlighted with a larger font for the phone number: 'Phone number : 09042895144\*'. Other entries have a smaller font for the phone number: 'Phone number : Display phone number'.

This is a close-up of the first 'APPLE STORE' entry from the screenshot. It shows the following text: 'APPLE STORE', '26 Midsummer Place - MK9 Milton Keynes', 'Opening times | Informations | Map | Opinions', and 'Phone number : 09042895144\*'. The phone number is displayed in a larger, bold font compared to the other entries in the list.

The Executive asserted that any pricing information which was displayed on the original website was displayed in a smaller size font than the Service number. The Executive stated that this was aggravated by the pricing information on the original website being displayed in an incorrect format “£2.5 per call” as opposed to “£2.50 per call” until October 2018.

The Executive submitted that while the price formatting was corrected and additional wording put in place, the pricing was still presented in a smaller standard font as compared with the larger, bold “Display phone number” or the Service number as shown below:



The Executive submitted that in all of the circumstances consumers were not provided with all of the information that was likely to influence their decision to purchase and that a breach of rule 2.2.1 of the Code had therefore occurred.

2. The Level 2 provider responded by indicating that on the newer version of the website, it had changed the format and size of the pricing so that it was clearer.
3. The Tribunal carefully considered all of the evidence including the Code and the relevant Guidance Note as well as the representations of the Level 2 provider in its response to the Warning Notice.

The Tribunal was not persuaded that the incorrect pricing format (£2.5) which appeared on the website until October 2018 was particularly egregious as the Tribunal were of the view that consumers were unlikely to interpret £2.5 as anything other than £2.50.

The Tribunal did however accept that insufficient information regarding the cost of the Service, the nature of the Service and how the Service was to be delivered or used had been given to consumers within the promotional material. In particular, the Tribunal noted that there was no information about consumers being charged while the Service number connected to the Level 2 provider's systems even after the pricing format and size were adjusted by the Level 2 provider.

As a result of the above the Tribunal found that on the balance of probabilities a breach of rule 2.2.1 of the Code had occurred as consumers had not been given enough key information to make a fully informed decision to use the Service.

Decision: UPHELD

## Alleged breach 2

### Rule 2.3.1 of the Code

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

1. The Executive asserted that a breach of rule 2.3.1 of the Code had occurred as the Level 2 provider had treated consumers unfairly by failing to provide the expected Service.

The Executive relied on the monitoring evidence that it had obtained between 4 December 2017 and 22 November 2019. The Executive recorded a total of 22 calls which had the following results:

- 5 calls connected to the commercial organisation sought
- 1 call connected to an IVR which said that the call could not be taken
- 16 calls connected to a French IVR message which, when translated into English stated “The person you are calling cannot be reached. Here is the number we have called 00442086052149.”

The Executive confirmed that it had been charged £2.50 plus the network access charge for each call made to the Service numbers.

The Executive stated that the Level 2 provider had been directed to supply reasons as to why the Service connected to a French IVR. In November 2018 the Level 2 provider responded by saying:

*“Our service provider told us that this is a Bug - when the shop do not answer, the system displays the shop number using TextToSpeech. This will be corrected as soon as they will upgrade the TextToSpeech in English”.*

The Executive stated that despite this assertion, the monitoring which had been undertaken by the Executive on 30 October 2019, 5 November 2019 and 22 November 2019 demonstrated that the problem had not been fixed.

The Executive also relied on call statistics provided by Innecto, one of the Level 1 providers for the Service to evidence that some consumers were not receiving the Service. The Executive stated that the call statistics between April 2017 and August 2018 showed that calls only had an average length of 78 seconds which appeared to be low. As a result of this the Executive asked Innecto for a breakdown of all calls for February 2018. When this was provided it showed that 498 calls out of a total of 1,907 calls lasted between 0 and 10 seconds. The Executive submitted that the short call times were indicative of consumers not receiving the Service.

During questioning by the Tribunal, the Executive confirmed that the call statistics did show that some calls could last longer, with some calls lasting 29 minutes for example. The Executive also confirmed that the five minutes which was referred to within the Level 2's promotional material did not mean that calls were cut off after five minutes, but meant that the number of the Service was only displayed for five minutes.

In light of the above the Executive asserted that it was clear that some consumers were not receiving the Service and that a breach of rule 2.3.1 of the Code had therefore occurred.

2. The Level 2 provider responded to the breach by confirming that it had contacted the Level 1 provider (Innecto) about the French message in November 2018 and that the Level 1 provider had informed it that the error would be corrected. The Level 2 provider confirmed that they had spoken to the Level 1 provider again about the French message and that while it had been corrected, the correction did not work for every case so some calls were still receiving the French message.
3. The Tribunal carefully considered all of the evidence before it and the written representations by the Level 2 provider.

The Tribunal noted that the monitoring evidence of the recorded calls clearly demonstrated that some calls did not connect to the relevant commercial organisation and was of the view that the call statistics supported this assertion.

The Tribunal further noted that the Level 2 provider in its response appeared to accept that some calls still connected to the French IVR message and were of the view that this was likely to confuse consumers who would not understand the meaning of the IVR. The Tribunal was of the view that this had the potential to result in consumers making repeat calls to the same number when they received the French IVR as they may not understand the message.

Although the Tribunal accepted that some calls did connect to the relevant stores, the Tribunal was of the view that there was clear evidence to demonstrate that not all calls did and that consumers would be charged whether the call connected or not. The Tribunal was of the view that this was unfair to consumers. The Tribunal was accordingly satisfied on the balance of probabilities that a breach of rule 2.3.1 of the Code had occurred.

Decision: UPHELD

### **Alleged breach 3**

#### **Rule 2.3.2 of the Code**

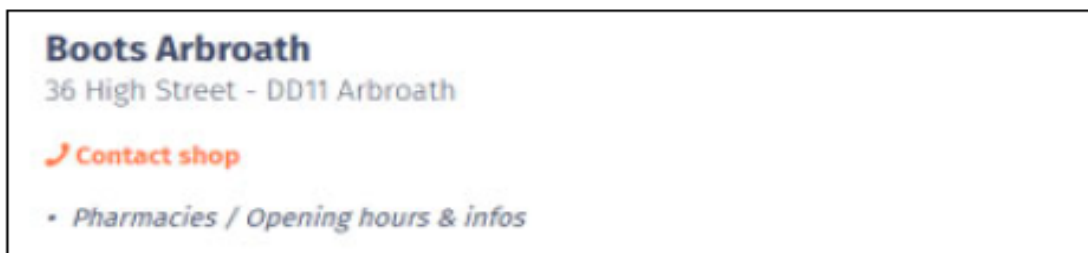
***“PRS must not mislead or be likely to mislead in any way”***

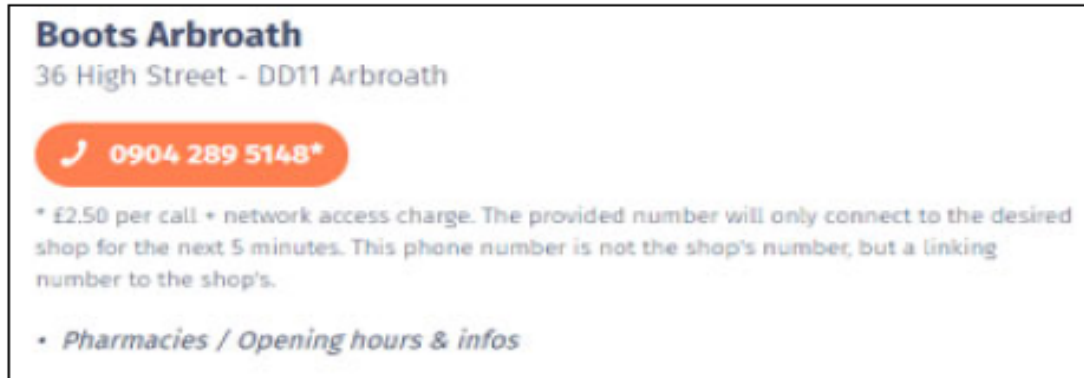
1. The Executive asserted that a breach of rule 2.3.2 of the Code had occurred as consumers were likely to have been misled into using the Service through believing that they were being connected to the relevant stores in question.

The Executive relied on the monitoring evidence that it had gathered. On the original website the words “phone number” were included alongside the “display phone number” button and the Service number for the relevant store as demonstrated below:



The Executive also relied on monitoring for the new website which had been live since August 2019. The monitoring demonstrated that on the new version of the website the words “contact shop” appeared beneath the relevant store’s name and address (as shown below) and that if the “contact shop” link was pressed the number for the Service appeared:





The Executive asserted that the language used on the original website was misleading as the use of phrases such as “phone number” and “display phone number” implied that the number being provided was the direct number for the relevant store.

In relation to the new website the Executive submitted the use of the phrase “contact shop” was also misleading in that it implied that number being provided was the contact number for the relevant store. Although the second screen did refer to the number being provided for the Service as a “linking number” the Executive submitted that it would not have been clear to consumers what this meant. The Executive asserted that a breach of rule 2.3.2 of the Code had occurred as consumers were likely to have been misled into believing that they were contacting the relevant stores directly.

2. The Level 2 provider denied the breach.

In its response to the Warning Notice the Level 2 provider stated that it was of the view that the indication of the price and the informative message on the new website were sufficient to make it clear that the numbers being used were premium rate services. The Level 2 provider further asserted that they had used similar wording for other websites in other countries.

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

The Tribunal was satisfied that the original website was misleading as both the format of the website listing for the relevant stores and the wording such as “display phone number” would lead consumers to believe that they were calling the relevant store directly.

The Tribunal accepted the Level 2's assertion that more wording had been added to the new website in order to explain the nature of the Service. The Tribunal was not however persuaded that the changes made to the new website would prevent consumers from being misled. In particular the Tribunal accepted the Executive's case that the use of phrases such as "contact shop" had the potential to mislead consumers into believing they were calling the relevant store directly. The Tribunal was also of the view that the information provided was not sufficient to explain the nature of the Service as consumers would not necessarily understand what the difference was between a direct number to the relevant shop and a linking number.

In light of the above the Tribunal was satisfied on the balance of probabilities that a breach of rule 2.3.2 of the Code had occurred.

Decision: UPHELD

#### **Alleged breach 4**

##### **Paragraph 3.11.3 of the Code, ICSS Special Condition 3**

***"Any reference to compliance with the rules or obligations under this Code shall include compliance with obligations imposed under the special conditions. A breach of any special condition in respect of a high-risk service imposed under paragraph 3.11.1 shall be a breach of the Code."***

***ICSS Special condition 3 (2016 version) "Promotional material must clearly and prominently state (where this is factually the case) that the information (including the number), advice or assistance provided by the PRS is available direct from the relevant public or commercial organisation at no or lower cost. The presentation of this information should be in a manner which is clear, prominent and proximate to the premium rate number advertised, and should include a link to the homepage of the website containing the actual number the consumer is looking for where such a website exists".***

***ICSS Special condition 3 (2019 version) "All promotional material must clearly and prominently state (where it is factually the case) that the information (including the contact number) advice, or assistance provided by the PRS is available directly from the relevant public or commercial organisation at no or lower cost".***

***This statement should:***

- (i) be set out above the premium rate number***
- (ii) include a link to the homepage of the official website of the organisation that contains the contact number the consumer is looking for where such a website exists.***

1. The Executive asserted that in both the original and the newer version of the website there was no reference to the number of the relevant store being available at no or at a lower cost. The Executive relied on the monitoring evidence that it had gathered in relation to this as set out below:

The original website:

Like 933

Friday 6th July 2018 - 17:23  
Soon: Summer Bank Holiday

Shops > Buckinghamshire > MK9 - Milton Keynes > Apple Store

### Apple Store in Milton Keynes

Made to Measure Bespoke Suits - Business Suits, Wedding Suits  
Pro Handmade in the UK Suits. Perfect fit. Beautiful fabric at Affordable cost the-riverside-tailors.co.uk

**Address & Contacts**

09042895142\*

**Apple Store**  
26 Midsummer Place  
MK9 Milton Keynes

\* £2.5 per call - This phone number is valid 5 minutes (until 05/07/2018 16:17:47). - Our service will connect you with this shop.

**Opening Times**

Monday	09:30 - 18:00
Tuesday	09:30 - 18:00
Wednesday	09:30 - 18:00
Thursday	09:30 - 20:00
Friday	09:30 - 20:00
Saturday	09:00 - 19:00
Sunday	11:00 - 17:00

Please note, The-Shops.co.uk is a participative site where each person can indicate opening hours. Should you find any errors, please let us know.  
**Usually the store is open Sunday.**  
These times do not include public holidays. To see if your store is open these days, contact them.

**Vispring at And So to Bed® - Save Up To 30% Off**  
Plus Free protector, Pillows & Delivery - Enter Code OFFER At Checkout. Buy Now.  
andsotobed.co.uk

The new website:

### Shops with the keyword "b&q" near London

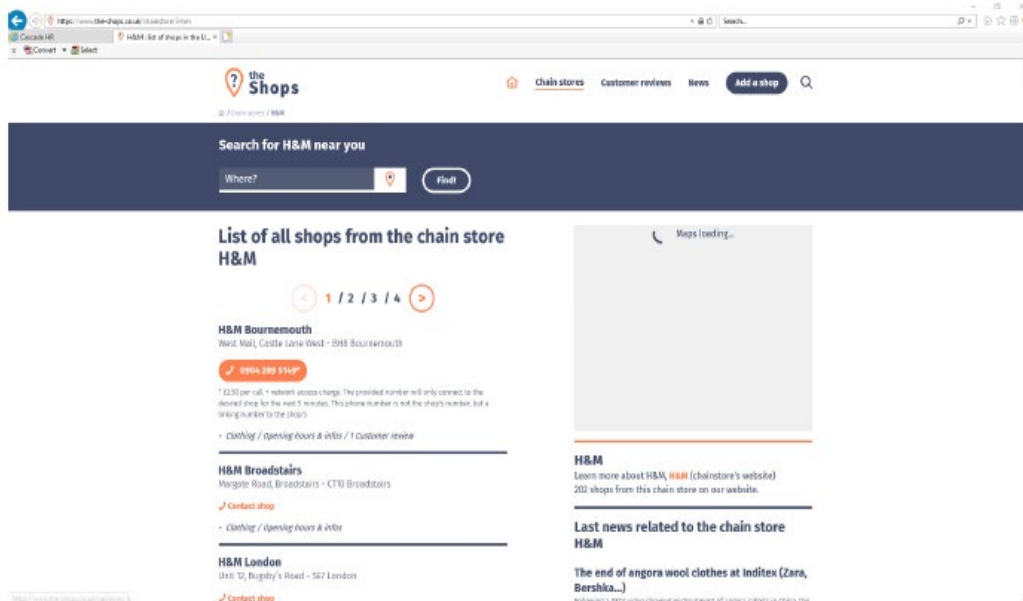
> See all shops in London CR4  
> See all shops from the chain store B&Q

- 1 About 3 miles  
**B&Q New Malden**  
Shannon Commercial Centre, Beverley Way - KT3 New Malden  
0904 289 5147\*  
\* £2.50 per call - network access charge. The provided number will only connect to the desired shop for the next 5 minutes. This phone number is not the shop's number, but a linking number to the shops.  
• DIY shops / Opening hours & infos
- 2 About 4 miles  
**B&Q London**  
Smugglers Way, Wandsworth - SW18 London  
Contact shop  
• DIY shops / Opening hours & infos
- 3 About 6 miles  
**B&Q London**  
524 Old Kent Road - SE1 London  
Contact shop

**£75 ad credit for you**  
Google Ads  
Get discovered - Claim your Google Ads credit\* today.  
LEARN MORE

The Executive also submitted that the original website contained no links to the official website of any of the relevant stores that consumers were looking for. In relation to the new website, the Executive submitted that while links to the new website were contained these were only visible when consumers scrolled down as shown below:





In conclusion the Executive asserted that the Level 2 provider had acted in breach of paragraph 3.11.3 of the Code as it had failed to adhere to ICSS Special Condition 3.

2. The Level 2 provider denied the breach.

The Level 2 provider stated that in the new version of the website it had added a link to the relevant commercial organisation's website and that it had been of the view that this would be enough to ensure compliance.

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

The Tribunal was of the view that it was clear that the original website contained no reference to the relevant store's contact number being either free or available at a lower cost. In addition to this, the Tribunal noted that there were no links on the original website to the relevant stores' official websites.

In relation to the new website, the Tribunal accepted that the Level 2 provider had made changes which included the provision of a link to the relevant store's official website. However, the Tribunal noted that the links were often hard to see and that a consumer would need to scroll down to find the relevant link. In addition to this, the Tribunal further noted that there was no reference on the new website to any of the contact numbers being available for free or at a lower cost from the official website of the relevant store.

The Tribunal considered the wording of ICSS Special Condition 3 and was of the view that the requirements of ICSS Special Condition 3 in both the 2016 and 2019 versions were clear. Accordingly, the Tribunal was not persuaded by the assertion of the Level 2 provider that it felt that it had done enough to comply with ICSS Special Condition 3.

In light of the above the Tribunal was satisfied on the balance of probabilities that a breach of paragraph 3.11.3 of the Code had occurred as the Level 2 provider had not adhered to the requirements of ICSS Special Condition 3.

Decision: UPHELD

### **Alleged breach 5**

#### ***Paragraph 3.4.8 of the Code***

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

1. The Executive outlined that the Level 2 provider registered with the PSA on 7 March 2017 but that after its registration lapsed on 7 March 2018, the Level 2 provider failed to renew its registration.

The Executive stated that due to a technical issue the PSA’s automated registration reminder emails which should have been sent to the Level 2 provider on 7 February 2018 and 21 February 2018 prior to the Level 2 provider’s registration lapsing were not sent.

On 8 August 2018 during the course of the investigation into the breaches, the Level 2 provider stated the following to the Executive in relation to the failure to renew its registration:

*“...we tried to check the payments in our account on the PSA website but we only have access to "Organisation" and "Change My Password". And there is no message whatsoever to tell us that there we failed to renew our registration and I don't think we were informed by email.”*

As a result of the technical error which resulted in the Level 2 provider not being sent automatic reminders to renew its registration, the Executive confirmed that it would not consider any associated registration breach on 15 August 2018. The Executive outlined that following on from this on 18 October 2018, a further email was sent to the Level 2 provider reminding it of its obligation to renew its registration. However, the Level 2 provider failed to renew its registration at that stage and remained unregistered.

The Executive also relied on a report which it had obtained dated 15 June 2020 from the Head of Technology and Analysis. This report confirmed that an upgrade of the registration system in March 2018 had caused the automated registration renewal reminders not to be sent to the Level 2 provider. The report further confirmed that the Level 2 provider had not contacted the registration helpdesk via email or telephone since May 2017 and that between April and December 2018 there had been no support tickets (issues) raised in relation to the renewal payment function for registration.

The Executive argued that while it did issue automated registration renewals it did so as a courtesy and that there was no obligation on it to issue annual reminders to providers. The Executive emphasised that the onus was on providers to ensure that they maintained their registration. The Executive confirmed that had the Level 2 provider renewed its registration between August and October 2018 it would not have pursued a registration breach against the Level 2 provider. However, the Executive submitted that the Level 2 provider had since failed to renew its registration from October 2018 onwards and that a breach of paragraph 3.4.8 of the Code was therefore made out.

2. The Level 2 provider responded to the breach by stating that since it had informed the Executive of the problems with renewing its registration in August 2018 it had tried several times to make changes to its account but only had limited access and could not therefore do this. The Level 2 provider stated that it had thought informing the Executive of the registration issue [in August 2018] was enough as the issue was with the Executive's website.
3. The Tribunal carefully considered all of the evidence before it, including the Level 2 provider's response. The Tribunal observed that there was no dispute that the Level 2 provider remained unregistered with the Executive from October 2018 and that the issue before it was whether the Level 2 provider had failed to renew its registration in the circumstances.

The Tribunal noted that the Executive had not initially raised a registration breach as a result of the technical issue which resulted in automatic reminders to renew registration not being sent to the Level 2 provider. The Tribunal observed that this had occurred in August 2018 and since that time the Level 2 provider had been sent an email in October 2018 reminding it to renew its registration but that it had not done so.

The Tribunal accepted the Executive's submission that the onus was on the Level 2 provider to ensure that it maintained its registration. The Tribunal noted that the Level 2 provider had not tried to contact the registration helpdesk at any time since October 2018 to ensure that it remained registered. The Tribunal was therefore satisfied that on the balance of probabilities that the Level 2 provider had failed to renew its registration and that a breach of paragraph 3.4.8 of the Code had occurred.

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 2.2.1

This breach was **serious**.

The Tribunal considered that the breach had a clear detrimental impact on consumers as pricing information and information about the nature of the Service was either not provided or not clear. As such the Tribunal considered that some consumers may have made the decision to proceed to use the Service without understanding the cost or nature of the Service.

The Tribunal considered that this breach had been committed recklessly noting that the Level 2 provider had been aware of the Code requirements and made some attempts to rectify the pricing on the new version of the website which had not been sufficient.

### Rule 2.3.1

This breach was **very serious**.

The Tribunal considered that the breach had a clear and highly detrimental impact on consumers who despite being charged were unable to access the Service. The Tribunal were of the opinion that the breach was likely to damage confidence in premium rate services and that the breach occurred over a lengthy period of time as the issue with the French IVR and the calls failing to connect had not been remedied.

### Rule 2.3.2

This breach was **very serious**.

The Tribunal was of the view that the breach had a clear and highly detrimental impact on consumers who could have been misled into believing that they were contacting the relevant store directly. The Tribunal was of the view that the breach, by its very nature was likely to severely damage confidence in premium rate services. The Tribunal considered that the breach was repeated (in the context of the original and new websites) and that it therefore occurred over a significant duration.

### Paragraph 3.11.3 (ICSS SC 3)

This breach was **very serious**.

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

Tribunal considered that while there were some improvements to the new website, both websites failed to include the information required by ICSS SC 3 and therefore the breach occurred over a lengthy period of time.

### Paragraph 3.4.8

This breach was **serious**.

The Tribunal was of the view that this breach was committed recklessly as the Level 2 provider was aware that it should renew its registration but took inadequate steps to ensure that it did instead believing that it is was for the Executive to ensure that it remained registered. The Tribunal considered that the breach occurred over a significant duration of time.

## 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**".

- formal reprimand
- that access to the Service is barred until the Level 2 provider has paid its fine and administration charges in full, and sought and implemented compliance advice to the satisfaction of the PSA
- a requirement that the Level 2 provider must refund all consumers who claim a refund for the full amount spent by them on the Service within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
- a fine of £1,100,000 comprised of:
  - Rule 2.2.1 - £175,000
  - Rule 2.3.1 - £250,000
  - Rule 2.3.2 - £250,000
  - Rule 3.11.3 (ICSS SC 3) - £250,000
  - Paragraph 3.4.8 - £175,00.

The Tribunal agreed with the Executive's initial assessment of sanctions however it was of the view that the wording of the sanction which related to the Service being barred should be amended as follows:

- that access to the Level 2 provider's Service and all of its numbers is barred for a period of two years or until the Level 2 provider has paid its fine and administration charges in full, and sought and implemented compliance advice to the satisfaction of the PSA, whichever is the later.

## Proportionality assessment

### Assessment of mitigating and aggravating factors

#### Mitigation

The Executive submitted that there were no mitigating factors for the breaches or the case as a whole.

The Level 2 provider submitted that the fact that an investigation was conducted into the Service was taken very seriously by its teams and that this was demonstrated by the Level 2 provider's continued co-operation with the investigation and responses. In addition to this, the Level 2 provider also indicated that it had ceased using premium rate numbers since April 2020 on its websites.

The Tribunal recognised that the Level 2 provider had taken some steps to try to make the Service compliant, through for example amending the pricing format to £2.50 and through redesigning the website. While the Tribunal considered this to be a mitigating factor, it was of the view that this mitigation was limited as the re-designed website was still not compliant with the requirements of the Code.

The Tribunal did not consider that the decision to stop using premium rate numbers by the Level 2 provider was of itself a mitigating factor.

#### Aggravation

The Executive submitted that it was an aggravating factor that the Level 2 provider had failed to follow the Guidance, which had it been followed could have prevented the breaches from occurring. In addition to this, prior to the above breaches occurring, the Executive had given general compliance updates and published adjudications on its website in relation to ICSS services which made it clear what was expected of such services.

The Executive submitted that it was also an aggravating factor that the Level 2 provider had not engaged more fully with the compliance team in June 2018. The Executive further submitted that it was an aggravating factor for the Level 2 provider to have not fixed the issue with the French IVR and calls which failed to connect to the Service despite assuring the Executive that it would do so. This resulted in the breaches continuing for a significant period of time despite the Level 2 provider being aware of them.

The Tribunal did not accept the Executive's submission that the failure to follow published Guidance or take note of previous adjudications was an additional aggravating factor, deciding instead that these factors were inherent to the breaches themselves.

The Tribunal however agreed that failure to engage fully with the compliance team was an aggravating factor to the case, as was the failure of the Level 2 provider to remedy the issue regarding the Service not connecting the relevant store/the French IVR.

### Financial benefit/Need for deterrence

The Executive stated that the Level 2 provider had generated an estimated £88,786 (out of a total Service revenue of £165,152.50). The Executive submitted that the revenue flowed directly from the breaches in the case (save for the breach of paragraph 3.4.8), as if consumers been aware of the charges for the service and if they had been aware that they were not calling the relevant store in question directly, it was unlikely that they would have used the service.

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

The Tribunal was satisfied that the revenue flowed from the breaches for the reasons advanced by the Executive. The Tribunal also agreed that there was a need to remove the financial benefit accrued from the Service given the nature of breaches in order to send out a clear message that services which are not fair and/or mislead consumers were not acceptable.

### Sanctions adjustment

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

The Tribunal agreed that it was appropriate to adjust the initial recommended fine downwards, for the reasons advanced by the Executive. The Tribunal was of the view that the figure of £250,000 was proportionate as it removed the revenue which had been generated by the Service and was also sufficiently high to achieve the sanctioning objective of credible deterrence in combination with the other recommended sanctions.

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

### Sanctions imposed

- formal reprimand
- that access to the Level 2 provider's Service and all of its numbers is barred for a period of two years or until the Level 2 provider has paid its fine and administration charges in



full, and sought and implemented compliance advice to the satisfaction of the PSA, whichever is the later.

- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
- a fine of £250,000.

Administrative charge recommendation: 100%